

**STORAGE NAME:** h0153.ft

**DATE:** February 18, 1997

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
FINANCE AND TAXATION  
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 153

**RELATING TO:** Excise tax on documents

**SPONSOR(S):** Representative Thrasher

**STATUTE(S) AFFECTED:** Section 201.02, Florida Statutes

**COMPANION BILL(S):** SB 62

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) REAL PROPERTY & PROBATE YEAS 7 NAYS 0
- (2) FINANCE & TAXATION

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I. SUMMARY:

HB 153 exempts from the documentary stamp tax, a conveyance of the marital home from one spouse to the other when such conveyance is made in accordance with a judgment of dissolution of marriage or in anticipation of and within 1 year of the dissolution of marriage. This exemption only applies to deeds, conveyances, and transfers executed after July 1, 1997. If the conveyance occurs prior to the dissolution, the tax is due at the time of the conveyance but may be refunded after the dissolution.

There will be a negative fiscal impact of (\$7.3) million annualized and negative cash impacts of (\$3.7) million in FY 1997-98, and (\$7.5) million in FY 1998-99 on the amount of documentary stamp tax revenue collected since a number of conveyances would no longer be subject to the tax. At the fund level the annualized negative impacts will be (\$4.8) million on the General Revenue Fund, (\$0.6) million on the Land Acquisition Trust Fund, (\$0.4) million on the Water Management Lands Trust Fund, (\$0.4) million on the Conservation and Recreation Lands Trust Fund, (\$0.3) million on the State Housing Trust Fund, and (\$0.8) million on the Local Housing Trust Fund.

The bill provides a mechanism for administering the exemption when the conveyance occurs prior to the dissolution. The tax will be due at the time of conveyance but will be refunded after the dissolution of marriage.

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## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

Section 201.02, F.S. imposes a tax on documents conveying an interest in real property. The tax is 70¢ per \$100 of consideration paid. Consideration is defined to include the money paid, the discharge of an obligation, and the amount of any mortgage or other encumbrance.

Rules 12B-4.013(32) and 12B-4.014(2)(d), Florida Administrative Code, provide that unencumbered property transferred between spouses is not taxable; however, encumbered property transferred between spouses is taxable based on the balance of the mortgage in proportion to the interest transferred by the grantor. The law is applied identically to transfers between joint tenants and tenants in common.

For example, a husband and wife jointly own a \$150,000 home encumbered by a \$120,000 mortgage (for which both are liable); husband and wife divorce; the dissolution judgment awards the home to the wife. The documentary stamp tax is due based on  $\frac{1}{2}$  of the outstanding mortgage balance -- \$420 ( $\$120,000 \times 50\% \text{ interest} \times 70 \text{ cents per } \$100$ ). The same amount of tax would be due if Tenant A and Tenant B, non-spousal joint tenants, executed an identical transaction (but without a judgment of dissolution).

Section 201.15, F.S., sets forth the distribution of the revenues of the documentary stamp taxes. After deducting the service charge imposed by s. 215.20, the revenues are distributed:

- 62.63% General Revenue Fund -- with a deduction for debt service to pay Preservation 2000 bonds
- 9.50% Land Acquisition Trust Fund
- 5.84% Conservation and Recreation Lands Trust Fund
- 5.84% Water Management Lands Trust Fund
- 7.53% State Housing Trust Fund --  $\frac{1}{2}$  of which is transferred to the Local Housing Trust Fund
- 8.66% State Housing Trust Fund --  $\frac{7}{8}$  of which is transferred to the Local Housing Trust Fund

### B. EFFECT OF PROPOSED CHANGES:

The conveyance in the foregoing example will be subject to only the minimum documentary stamp tax. Conveyances made in anticipation of divorce, within one year prior to the actual entry of the judgment of dissolution of marriage, also will be subject to only the minimum documentary stamp tax. This provision is intended to ensure that pre-dissolution transfers are treated in the same manner as post-dissolution transfers.

This legislation will not affect the taxation of conveyances of property other than the marital home between spouses, nor will this legislation affect the taxation of a conveyance of the marital home between spouses made for reasons other than a dissolution of marriage. These conveyances will remain subject to the documentary stamp tax as provided in Florida Administrative Code rules 12B-4.013(32) and -

4.014(2)(d). The exemption only applies to deeds, conveyances, and transfers executed after July 1, 1997.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 201.02, F.S., to exempt from the documentary stamp tax a conveyance of the marital home between spouses where such conveyance was made in accordance with a judgment of dissolution of marriage or was made within 1 year of and in anticipation of a dissolution. This section also provides a mechanism for administering this exemption when the conveyance occurs prior to dissolution. The tax will be due at the time of the conveyance but will be refunded after the dissolution of marriage. The exemption only applies to deeds, conveyances, and transfers executed after July 1, 1997.

Section 2 provides an effective date of July 1, 1997.

D. APPLICATION OF PRINCIPLES:

1. LESS GOVERNMENT:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes? N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals? N/A

(3) any entitlement to a government service or benefit? N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity? N/A

(2) what is the cost of such responsibility at the new level/agency? N/A

(3) how is the new agency accountable to the people governed? N/A

2. LOWER TAXES:

a. Does the bill increase anyone's taxes? N/A

b. Does the bill require or authorize an increase in any fees? N/A

c. Does the bill reduce total taxes, both rates and revenues? See Fiscal Impact On State Agencies/State Funds.

d. Does the bill reduce total fees, both rates and revenues? N/A

e. Does the bill authorize any fee or tax increase by any local government? N/A

3. PERSONAL RESPONSIBILITY:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy? N/A
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation? N/A

4. INDIVIDUAL FREEDOM:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs? N/A
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity? N/A

5. FAMILY EMPOWERMENT:

For the limited purpose of this part of the bill analysis, a family is defined as a group of people living in the same household and related to one another by marriage, blood and/or adoption.

- a. If the bill purports to provide services to families or children:
  - (1) Who evaluates the family's needs? N/A
  - (2) Who makes the decisions? N/A
  - (3) Are private alternatives permitted? N/A
  - (4) Are families required to participate in a program? N/A
  - (5) Are families penalized for not participating in a program? N/A
- b. Does the bill directly affect the legal rights and obligations between family members? N/A
- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:
  - (1) parents and guardians? N/A
  - (2) service providers? N/A
  - (3) government employees/agencies? N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENICES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

There will be a negative fiscal impact of (\$7.3) million annualized and negative cash impacts of (\$3.7) million in FY 1997-98 and (\$7.5) million in FY 1998-99 on the amount of documentary stamp tax revenue collected since a number of conveyances would no longer be subject to the tax. As a result, the funds or programs to which this revenue is distributed pursuant to section 201.15, F.S., will also be affected.

	<u>Annualized</u>	FY <u>1997-98</u>	FY <u>1998-99</u>
Revenues:			
General Revenue Fund	(\$4.8) m	(\$2.4) m	(\$4.9) m
LATF	(0.6) m	(0.3) m	(0.7) m
WMLTF	(0.4) m	(0.2) m	(0.4) m
CARL	(0.4) m	(0.2) m	(0.4) m
State Housing Trust Fund	(0.3) m	(0.2) m	(0.3) m
Local Housing Trust Fund	<u>(0.8) m</u>	<u>(0.4) m</u>	<u>(0.8) m</u>
TOTAL	(\$7.3) m	(\$3.7) m	(\$7.5) m

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	<u>Annualized</u>	FY <u>1997-98</u>	FY <u>1998-99</u>
Revenues:			
General Revenue Fund	(\$4.8) m	(\$2.4) m	(\$4.9) m
LATF	(0.6) m	(0.3) m	(0.7) m
WMLTF	(0.4) m	(0.2) m	(0.4) m
CARL	(0.4) m	(0.2) m	(0.4) m
State Housing Trust Fund	(0.3) m	(0.2) m	(0.3) m
Local Housing Trust Fund	<u>(0.8) m</u>	<u>(0.4) m</u>	<u>(0.8) m</u>
TOTAL	(\$7.3) m	(\$3.7) m	(\$7.5) m

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Those individuals who transfer their marital home to their spouse in accordance with a judgment of dissolution of marriage or in anticipation of a dissolution will no longer be required to pay a documentary stamp tax on that conveyance.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

**D. FISCAL COMMENTS:**

None.

**IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:**

**A. APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

According to the 1996 Florida Tax Handbook, a trial court in the 11th Judicial Circuit has required the Department of Revenue to refund documentary stamp taxes collected for conveyances which were the result of a dissolution of marriage. See Bauta v. Department of Revenue, Case No. 95-443-C. The case is currently on appeal.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

none

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Staff Director:

Kurt Bauerle

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