**STORAGE NAME**: h4373a.gg
**DATE**: April 23, 1998

**HOUSE OF REPRESENTATIVES**
**AS FURTHER REVISED BY THE COMMITTEE ON**
**GENERAL GOVERNMENT APPROPRIATIONS**
**BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #**: HB 4373

**RELATING TO**: Excise Tax on Documents

**SPONSOR(S)**: Representatives Flanagan and Alexander

**COMPANION BILL(S)**: SB 1082 (s)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE**:
(1) FINANCIAL SERVICES YEAS 9 NAYS 0
(2) FINANCE AND TAXATION YEAS 13 NAYS 0
(3) GENERAL GOVERNMENT APPROPRIATIONS YEAS 8 NAYS 0
(4)
(5)

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I. SUMMARY:


Current law imposes a tax on promissory notes and other written obligations to pay money that are executed, transferred, or assigned in the state. This documentary stamp tax is also imposed on the renewal of promissory notes.

When renewing a promissory note at an increased obligation, it is considered to be common practice to avoid paying documentary stamp tax on the original amount of the note by creating a new “side note” in the amount of the increase and consolidating the two notes. Documentary stamp tax is paid on the “side note” and consolidation does not increase any additional documentary stamp tax liability.

HB 4373 would allow promissory notes to be renewed at an increased level of obligation without the borrower having to pay documentary stamp tax on the full amount of the obligation. This could be accomplished without the step of creating and executing a “side note.” The documentary stamp tax would only be imposed on the amount of the increase.

The total estimated fiscal impact of the bill as originally filed upon the General Revenue Fund is ($0.2) million for FY 98-99 and ($0.2) million for FY 99-2000. The total estimated fiscal impact upon various state trust funds is ($0.1) million for FY 98-99 and ($0.1) million for FY 99-2000. An amendment adopted by the Committee on Finance and Taxation adds an additional impact upon the General Revenue Fund of ($0.2) million and ($0.1) million on various state trust funds for FY 98-99.

## II. SUBSTANTIVE RESEARCH:

### A. PRESENT SITUATION:

*Payment of Documentary Stamp Tax on Promissory Note Renewals*

Section 201.08, Florida Statutes, imposes a tax on promissory notes and other written obligations to pay money that are executed, transferred or assigned in the state. This documentary stamp tax is also imposed on the renewal of promissory notes. The tax is 35¢ per $100 of the indebtedness or obligation.[1]

Section 201.09, Florida Statutes, provides an exemption from the payment of documentary stamp tax for certain renewal notes. If a renewal note is executed by the same obligors and continues the identical contractual obligations without enlarging the original obligation, it is exempt. For revolving lines of credit, one with a floating principal balance, the balance is rarely fully funded on a renewal date. In order to periodically renew such obligations customers may repay documentary stamps or structure the transactions to avoid the tax. Typically, institutions require the line to be "funded up" to the original principal amount immediately before the renewal, renew the note tax free pursuant to section 201.09, Florida Statutes, then require repayment of the amount funded. Structuring the renewal in this way avoids the tax on the renewals.

Promissory note renewals must qualify under section 201.09, Florida Statutes, to be exempt renewals. Payment of documentary stamp tax on the original obligation is a prerequisite to qualifying under the section. Renewal notes evidencing a revolving obligation which is executed only by the original obligor and renewed or extended by no more than the original face amount of the original contract or obligation are currently exempt from taxation.

When renewing a promissory note at an increased obligation, it is considered to be common practice to avoid paying documentary stamp tax on the original amount of the note by creating a new "side note" in the amount of the increase and consolidating the two notes. Documentary stamp tax is paid on the "side note" and consolidation does not increase any additional documentary stamp tax liability.[2]

For example, assume Joe Homeowner acquires a mortgage loan for $50,000 and executes a promissory note for that amount. Joe would pay documentary stamp tax for the face amount of the loan. Joe wants to add a room on his home and seeks to increase the original obligation by another $20,000. Joe could either: (a) execute a "side note" for the $20,000 increase and consolidate the two notes; or (b) execute a new

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[1]More specifically, section 201.08, Florida Statutes, imposes a tax on promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries, wages, or other compensation made, executed, delivered, sold, transferred, or assigned in the state and on each renewal of the same and on mortgages, trusts deeds, security agreements, or other evidences of indebtedness filed or recorded in this state, and for each renewal.

[2]Although one would avoid paying documentary stamp taxes on the total obligation, one would be required to pay the fees charged by the financial institution for the origination of the "side note."

promissory note for the full amount of the obligation -- $70,000. If Joe chose option (a) Joe would be required to pay tax only on the increased amount -- $20,000. If Joe chose option (b) Joe would be required to pay tax on the full amount of the obligation -- $70,000 and, in effect, pay documentary stamp taxes for the $50,000 obligation twice.

B. EFFECT OF PROPOSED CHANGES:

Promissory notes could be renewed at an increased level of obligation without the borrower having to pay documentary stamp tax on the full amount of the obligation. This could be accomplished without the step of creating and executing a "side note." The documentary stamp tax would only be imposed on the amount of the increase.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

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?

      No.

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

      No.

   c. Does the bill reduce total taxes, both rates and revenues?

      Yes. Individuals no longer must pay excise taxes on "side notes." Because of this, taxes and revenues may be reduced due to no longer collecting these funds.

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

      No.

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

      No.

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?

      Yes. The bill would eliminate the necessity of creating "side notes" to avoid excise taxes when an existing obligation evidenced by a promissory note is increased and the promissory note obligation is renewed.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      N/A

5. Family Empowerment:

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

D. STATUTE(S) AFFECTED:

Amends s. 201.09, F.S.

E. SECTION-BY-SECTION RESEARCH:

**Section 1.** Amends s. 201.09, F.S. A renewal promissory note evidencing a term obligation which increases the unpaid balance of the original obligation, but meets the exemption criteria of s. 201.09, F.S., would be taxable only on the face amount of the increase of the original obligation. A renewal promissory note evidencing a revolving obligation which increases the unpaid balance of the original obligation, but meets the exemption criteria of s. 201.09, F.S., would be taxable only on the face amount of the increase of the original obligation.

**Section 2.** Provides an effective date of July 1 of the year enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

Revenues

The fiscal impact of the bill, estimated by the Revenue Estimating Conference, is as follows:

| | FY 98-99 | FY 99-00 |
|---|---|---|
| General Revenue Fund | ($0.2M) | ($0.2M) |
| Trust Funds (Various)[3] | ($0.1M) | ($0.1M) |

Expenditures

None.

[3] Land Acquisition Trust Fund, Conservation & Recreation Lands Trust Fund, State Housing Trust Fund, and Local Government Housing Trust Fund. See s. 210.15, F.S.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

   See A.2. above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   To the extent funds from the Local Government Housing Trust Fund are affected, there may be less funds to grant to local government housing projects.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Financial institutions may collect reduced fees for the origination of "side notes" when certain promissory notes are renewed at an increased level of obligation.

2. Direct Private Sector Benefits:

   Individuals would not have to pay financial institution fees associated with "side notes," as they would be able to renew certain promissory notes at an increased level of obligation without the added step of creating and executing a "side note."

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

   Indeterminate.

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 the expenditure of funds by counties or municipalities.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue raising authority of counties or municipalities.

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

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

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 14, 1998, the Committee on Finance and Taxation adopted one amendment. The amendment would make a renewal note evidencing a revolving obligation which is executed only by the original obligor and renewed or extended by no more than the original face amount of the original contract or obligation exempt from taxation retroactively. The retroactive application would apply to any promissory note evidencing a revolving credit obligation executed on or after January 1, 1990, for which the tax under s. 201.09, F.S., had not been paid and which is the subject of a pending protest that was initiated prior to January 1, 1998. The changes made by the amendment would go into effect upon becoming law.

The fiscal impact of the amendment to the bill is an additional ($0.2M) to the General Revenue Fund and ($0.1M) to various state trust funds for fiscal year 1998-99.

The amendment was left traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

| Prepared by: | Legislative Research Director: |
|---|---|
| Michael A. Kliner | Stephen T. Hogge |

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

| Prepared by: | Legislative Research Director: |
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| George T. Levesque | Keith G. Baker, Ph.D. |

AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

| Prepared by: | Legislative Research Director: |
|---|---|
| Jenny Underwood Dietzel | Cynthia P. Kelly |