

**STORAGE NAME:** h1915s1.ft

**DATE:** April 25, 2000

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
FINANCE & TAXATION  
ANALYSIS**

**BILL #:** CS/HB 1915

**RELATING TO:** Excise Tax on Documents

**SPONSOR(S):** Finance and Taxation, Representative Bilirakis

**TIED BILL(S):** none

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

- (1) REAL PROPERTY & PROBATE YEAS 7 NAYS 0
  - (2) FINANCE & TAXATION YEAS 15 NAYS 0
  - (3) GENERAL GOVERNMENT APPROPRIATIONS
  - (4)
  - (5)
- 

I.

This bill creates s. 201.205, F.S., which: requires that the documentary stamps affixed to a deed or writing reflect the correct amount of the sales price or other consideration for the interest in the property; prohibits the seller or conveyer of the interest in the property from deliberately affixing or causing to be affixed excess documentary stamps with the intent to imply a higher sale price than the actual sale price; provides that a violation is a first degree misdemeanor; and provides punishment.

In addition, the bill removes an obsolete provision in s. 201.132, F.S., which requires the county comptroller or the clerk of the court to sign each document showing that the documentary stamp tax has been paid.

The Revenue Estimating Conference has assigned this bill an indeterminate fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill specifies that the deliberate use of excess documentary stamps shall be considered at a first degree misdemeanor.

B. PRESENT SITUATION:

Under current law, it is unlawful to pay less than the required amount of documentary stamp taxes on a deed or other instrument,<sup>1</sup> but paying an excessive documentary stamp tax is not prohibited. Some persons intentionally pay excessive documentary stamp taxes on deeds in order to make it appear that a property sold for more than it really did, which in turn may affect the value of other nearby homes.<sup>2</sup>

C. EFFECT OF PROPOSED CHANGES:

This bill creates s. 201.205, F.S., which: requires that the documentary stamps affixed to a deed or writing reflect the correct amount of the sales price or other consideration for the interest in the property; prohibits the seller or conveyor of the interest in the property from deliberately affixing or causing to be affixed excess documentary stamps with the intent to imply a higher sale price than the actual sale price; provides that a violation is a first degree misdemeanor; and provides punishment.

The language in CS/HB 105 was in HB 105, as originally filed. That language was removed from that bill because of concerns that the language was not germane to the rest of the bill. This amendment may cause a decrease in documentary stamp tax revenue due to the requirement that the documentary stamp tax must reflect the true and actual sales price of the interest in the property. Although it is unknown how widespread this practice is, revenues may decrease.<sup>3</sup> This amendment benefits the private sector by eliminating the

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<sup>1</sup> Section 201.17, F.S.

<sup>2</sup> Statements by the sponsor of the amendment Representative Bilirakis, at the meeting of the Committee on Real Property & Probate, March 29, 2000. The amount of documentary stamp tax affixed to a deed is often used to determine the amount for which a property sold. A comparison of recent sales of similar nearby properties, known as the sales comparison approach, is the most common appraisal technique.

<sup>3</sup> Analysis of HB 105 by the Committee on Finance & Tax, February 1, 2000, at 6.

ability of parties to inflate the value of recent sales. Not only does this practice flaw the official records of the County property appraiser, it also is misleading to buyers, bankers, realtors, and private property appraisers who depend on such information. Recording an inflated price may also cause an over-assessment of property taxes. This amendment was taken from a proposal which was recommended by a 1990 statewide grand jury after it investigated a state land purchase on St. George Island. As a result of the use of increased documentary stamps, the State purchased land, the value of which had been artificially inflated.<sup>4</sup>

In addition, the bill removes an obsolete provision Section 201.132, F.S., which requires the county comptroller or the clerk of the court to sign each document showing that the documentary stamp tax has been paid.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has assigned this bill an indeterminate fiscal impact to the state.

2. Expenditures:

none

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

none

2. Expenditures:

none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

none

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<sup>4</sup> *Id.* At 7.

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.

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:

A. CONSTITUTIONAL ISSUES:

none

B. RULE-MAKING AUTHORITY:

none

C. OTHER COMMENTS:

none

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

As originally filed, this bill exempted a transfer of real property between spouses from the documentary stamps tax.

On March 29, 2000, the Committee on Real Property & Probate adopted two amendments to this bill.

1. The bill as filed provides that any transfer of real property between spouses is exempt from the documentary stamp tax. The first amendment narrows the exemption from documentary stamp tax to a transfer of homestead real property to create a tenancy by the entireties. A tenancy by the entireties is the form of real property ownership whereby a husband and wife hold title to real property in joint ownership.
2. The second amendment creates s. 201.205, F.S., which: requires that the documentary stamps affixed to a deed or writing reflect the correct amount of the sales price or other consideration for the interest in the property; prohibits the seller or conveyor of the interest

**STORAGE NAME:** h1915s1.ft

**DATE:** April 25, 2000

**PAGE 5**

in the property from deliberately affixing or causing to be to affixed excess documentary stamps with the intent to imply a higher sale price than the actual sale price; provides that a violation is a first degree misdemeanor; and provides punishment.

On April 24, 2000, the Committee on Finance and Taxation adopted an amendment which removed all provisions regarding the documentary stamp tax on transfers of real property between spouses. Only the deliberate use of excess documentary stamps is addressed in the bill which was adopted as a Committee Substitute.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

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AS REVISED BY THE COMMITTEE ON FINANCE & TAXATION:

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