

STORAGE NAME: h1915b.rpp

DATE: March 29, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
ANALYSIS**

BILL #: HB 1915

RELATING TO: Excise Tax on Documents

SPONSOR(S): Representative Bilirakis

TIED BILL(S): none

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

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

I. SUMMARY:

The state imposes a documentary stamp tax on transfers of real property, including a transfer where an individual transfers real property to a spouse. This bill exempts a transfer of real property between spouses from the documentary stamp tax.

The preliminary analysis of the Revenue Estimating Conference assigned this bill a recurring annual negative fiscal impact to the state of \$16.3 million. The negative annual fiscal impact on local government of that amount is \$81,900. See "Fiscal Analysis & Economic Impact Statement". The Revenue Estimating Conference is scheduled to re-visit its analysis and prepare a final estimate on Friday, March 31, 2000. See "Fiscal Comments".

Two amendments were adopted by the Committee on Real Property & Probate, and are traveling with this bill. See "Amendments or Committee Substitute Changes".

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

B. PRESENT SITUATION:

Section 201.02, F.S., imposes a tax on deeds, instruments, or writings, whereby any lands, tenements, or other realty, or any interests therein is granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser, or any other person by his or her direction. The tax attaches at the time the deed or other instrument of conveyance is delivered, irrespective of the time when the sale is made.¹ A documentary stamp tax is also assessed on mortgages and stock certificates. The total fiscal year 1998-1999 documentary stamp tax revenue was \$1,179,803,618.²

Currently, the tax under s. 201.02, F.S., on deeds, instruments, documents, or writings whereby any lands, tenements, or other realty or any interest therein is transferred or conveyed is 70 cents³ on each \$100 or fractional part thereof of the consideration paid, or to be paid.⁴ "Consideration" under s. 201.02, F.S., includes, money paid or to be paid, the amount of any indebtedness discharged by a transfer of any interest in real property, mortgage indebtedness and other encumbrances which the real property interest being transferred is subject to, notwithstanding that the transferee may be liable for such indebtedness. Where property other than money is exchanged for interests in real property, there is the presumption that the consideration is equal to the fair market value of the real property interest being transferred.⁵

A transfer of unencumbered real property between spouses is not taxable, except that any consideration paid by one spouse to the other spouse for additional shares greater in value than their undivided interest is taxable. Where the property is encumbered, however, the

¹ F.A.C. 12B-4.011

² Tax Statistics from the Department of Revenue, at <http://sun6.dms.state.fl.us/dor/tables/f21999.html>.

³ In Dade County, the rate is 60 cents per \$100 consideration, although the county imposes an additional 45 cents local surtax.

⁴ F.A.C. 12B-4.012(1)

⁵ F.A.C. 12B-4.012(2)

documentary stamp tax on the transfer is based on the mortgage balance in proportion to the interest transferred by the grantor.⁶

For example, assume an unmarried person purchases a house and later marries. After the marriage, the person then wishes to add the spouse's name to the title. If the house is worth \$150,000 and is encumbered by a \$120,000 mortgage, the documentary stamp tax due on the conveyance that creates joint ownership is \$420, calculated as follows: \$60,000 (½ of the outstanding mortgage balance) x 0.007 (70 cents per \$100) = \$420.

This same rule used to apply to deeds when a spouse or former spouse would transfer title to a jointly owned home subsequent to divorce. However, in 1997, s. 201.02(7), F.S., was created to exempt from the documentary stamp tax any deed, transfer, or conveyance of the marital home, or any interest therein, between spouses or former spouses upon dissolution of their marriage.⁷ The exemption applies regardless of any consideration, including the assumption of underlying indebtedness.

C. EFFECT OF PROPOSED CHANGES:

This bill provides that a transfer of real property between spouses is exempt from the documentary stamp tax.

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 a recurring annual negative fiscal impact to the state of \$16.3 million.⁸

2. Expenditures:

none

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁶ F.A.C. 12B-4.013(32).

⁷ Chapter 97-191, L.O.F., HB 153, by Representative Thrasher.

⁸ Analysis of Documentary Stamp Tax for Transfers Between Spouses, Revenue Estimating Conference, February 29, 2000.

1. Revenues:

This bill will have an insignificant negative impact on local governments. The county comptroller, or, the clerk of the court if there is no county comptroller, receives a collections commission of 0.5% of documentary stamp tax collected.⁹ On \$16.3 million of net documentary stamp tax paid to the state, the collections commission is \$81,909.55.

2. Expenditures:

none

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will directly benefit persons transferring title to real property to a spouse by exempting the transaction from documentary stamp tax.

D. FISCAL COMMENTS:

The formula used by the Revenue Estimating Conference in calculating the preliminary fiscal impact for this bill multiplies the total value of the property at the time of marriage by the documentary stamp tax rate. However, Rule 12B-4.013(32), Florida Administrative Code (F.A.C.), provides that the documentary stamp tax is calculated on "the mortgage balance in proportion to interest transferred by the grantor". This requires two adjustments to the preliminary estimate.

The first adjustment is to account for the difference between the value of the home, and the outstanding mortgage balance at the time of the transfer. Taking into account appreciation in value over time, together with payment of principal, it may be appropriate to assume an average equity of 20 percent in homes. Accordingly, the total value of homes owned by persons marrying would be multiplied by 0.8 to arrive at the estimated outstanding mortgage balance.

The second adjustment is to calculate the formula for determining the amount of documentary stamp tax due on the transaction. The preliminary Revenue Estimating Conference analysis uses the full value of the home in calculating the estimated documentary stamp tax income. However, Rule 12B-4.013(32), F.A.C., provides that only one-half of the outstanding mortgage balance is used to calculate the documentary stamp tax when a spouse transfers real property to the other to create a joint tenancy. Accordingly, the outstanding mortgage balance should be multiplied by 0.5 to arrive at the value for calculating documentary stamp tax.

Making these two adjustments reduces the estimated negative annual fiscal impact to \$6.5 million. The Revenue Estimating Conference is scheduled to re-visit its analysis and prepare a final estimate on Friday, March 31, 2000.

⁹ Section 201.11(2), F.S.

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:

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. Under current law, it is unlawful to pay less than the required amount of documentary stamp taxes on a deed or other instrument,¹⁰ 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

¹⁰ Section 201.17, F.S.

turn may affect the value of other nearby homes.¹¹ The second amendment creates s. 201.205, 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 to deliberately affix or cause to affix 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 this amendment 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.¹² This amendment benefits the private sector by eliminating the 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.¹³

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

J. Marleen Ahearn, Ph.D., J.D.

¹¹ 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.

¹² Analysis of HB 105 by the Committee on Finance & Tax, February 1, 2000, at 6.

¹³ *Id.* at 7.