

STORAGE NAME: h0173.jo.doc
DATE: November 19, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 173
RELATING TO: Excise Tax on Documents
SPONSOR(S): Representative Goodlette
TIED BILL(S): none

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

- (1) JUDICIAL OVERSIGHT
 - (2) FISCAL POLICY & RESOURCES
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

The state collects a documentary stamp tax applicable to certain types of documents. The amount of the tax on documents transferring title to real property is calculated based on the sales price plus the value of any indebtedness assumed. If property is sold by judicial sale (typically by foreclosure), the clerk of court issues the winning bidder a certificate of title. The documentary stamp tax is applicable to certificates of title. This bill provides that the documentary stamp tax on a certificate of title is calculated solely on the final bid amount and regardless of any indebtedness assumed. This bill further specifies that this provision applies retroactively.

The Revenue Estimating Conference has not developed an estimate regarding this bill for this legislative session. The same language was analyzed for last year's legislative session. The Revenue Estimating Conference then determined that this language would result in a loss of \$1.2 million in FY 2001-02 and a recurring loss of \$0.6 million. The general revenue impact was estimated as a loss of \$0.8 million in FY 2001-02 and a recurring loss of \$0.4 million; and the impact upon the various trust funds that receive documentary stamp tax revenue was estimated at a loss of \$0.4 million in FY 2001-02 and a recurring loss of \$0.2 million. This bill has an insignificant negative impact on local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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

Chapter 201, F.S., creates the documentary stamp taxes. 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. Documentary stamp taxes are also applicable to mortgages and stock certificates. The total of all documentary stamp taxes under ch. 201, F.S., collected in fiscal year 1999-2000, was \$1,212,177,570.¹

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 cents² on each \$100 or fractional part thereof of the consideration paid, or to be paid.³ "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.⁴

Should a foreclosure proceeding result in a foreclosure sale, the clerk of court issues a certificate of title to the winning bidder. The certificate of title is recorded, and shows in the public record the transfer of title, and thus is in the nature of a deed. A clerks' certificate of title is subject to documentary stamp taxes imposed by s. 201.02, F.S. The general rule is that the documentary stamp tax on a certificate of title is calculated using the final bid price. 1953-1954 Op. Atty. Gen. 267. The clerk of court must collect the documentary stamp tax from the winning bidder before issuing the certificate of title. 1960 Op. Atty. Gen., 060-177.

The purchaser has the legal duty to properly calculate and pay the correct documentary stamp tax. In practice, the clerks of court calculate the documentary stamp on behalf of the purchaser, solely utilizing the final bid in the calculation. If the foreclosure is a foreclosure of the first mortgage, as

¹ Tax Statistics from the Department of Revenue, at <http://sun6.dms.state.fl.us/dor/tables/f2fy00.html>.

² In Dade County, the rate is 60 cents per \$100 consideration. Dade County imposes an additional 45 cents local surtax.

³ F.A.C. 12B-4.012(1)

⁴ F.A.C. 12B-4.012(2)

the vast majority of foreclosures are, the clerk's calculation based solely on the amount of the winning bid is the correct calculation. If the plaintiff is foreclosing a second mortgage, however, the clerk's calculation based solely on the bid amount will be incorrect. Section 201.02, F.S., was amended in 1990 to add the following:

For purposes of this section, consideration includes, but is not limited to, the money paid or agreed to be paid; the discharge of an obligation; and the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether or not the underlying indebtedness is assumed.

Prior to this 1990 change, the clerks were correct in calculating the documentary stamp tax solely upon the bid price. Subsequent to this change, the legally correct calculation of the documentary stamp tax on a foreclosure of an inferior lien (including a foreclosure of a second mortgage, homeowners' association fees, or condominium or cooperation association fees) requires that the bid amount plus the outstanding balance of superior liens be totaled to determine the consideration upon which the documentary stamp tax is calculated. In practice, clerks of court calculating the documentary stamp tax on a certificate of title will not research the property records to discover the existence of superior liens, and foreclosure plaintiffs have unwittingly and uniformly not paid the documentary stamp tax on the value of the underlying mortgage since s. 201.02, F.S., was amended.

C. EFFECT OF PROPOSED CHANGES:

This bill creates s. 201.02(8), F.S., to provide that the documentary stamp tax on a certificate of title is calculated solely on the final bid amount, regardless of the any underlying indebtedness. The bill states that this is to "clarify existing law" and thus applies retroactively.

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 not developed an estimate regarding this bill for this legislative session.

The same language was in SB 1632, filed in the 2001 legislative session. The Senate bill analysis detailed the fiscal impact for that bill as follows:

The Revenue Estimating Conference has determined that this bill would result in a loss of \$1.2 million in FY 2001-02 and a recurring loss of \$0.6 million. The general revenue impact is a loss of \$0.8 million in FY 2001-02 and a recurring loss of \$0.4 million.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill will have an insignificant negative impact on local governments. Section 201.11(2), F.S., provides that 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.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will directly benefit persons foreclosing second mortgages, and homeowners' and condominium associations that are foreclosing to collect fees due to them, by lessening the amount of documentary stamp tax that they are required to pay as part of the foreclosure process.

D. FISCAL COMMENTS:

The documentary stamp tax on deeds is expected to generate approximately \$767.3 million in FY 2001-2002.

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.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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