HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 647 Excise Tax on Documents
SPONSOR(S): Hudson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 376

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Safety & Security Council		Bond	Havlicak
2) Policy & Budget Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The state collects a documentary stamp tax on deeds. In general, the amount of the tax is based on the sale price. In order to impose the tax on transactions that include assumption of a mortgage, the outstanding balance on any mortgage is considered part of the sale price. An effect of using the mortgage balance in calculating the tax is that a deed transferring property encumbered by a mortgage but intended as a gift is subject to the documentary stamp tax.

This bill provides that the documentary stamp tax does not apply to addition or removal of the name of a spouse when such is in the nature of a gift.

This bill appears to have a negative recurring impact on state general revenue of $2.6 million annually. This bill appears to have an unknown and likely insignificant negative recurring fiscal impact on local governments. This bill will have a corresponding economic benefit to the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes -- This bill creates a tax exemption.

B. EFFECT OF PROPOSED CHANGES:

Background

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. A documentary stamp tax is also assessed on mortgages and stock certificates. In fiscal year 2006-2007, the documentary stamp tax on deeds assessed under s. 201.02, F.S., generated income to the state of $1,559,814,084,[1] which was split between the General Revenue Fund and 14 different trust funds that primarily fund affordable housing and land acquisition.

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 cents on each $100 or fractional part thereof of the consideration paid, or to be paid.[2] "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. See s. 201.02(1), F.S.

A transfer of unencumbered real property in the nature of a gift is not taxable as there is no consideration for the deed. Where the property is encumbered (mortgaged), however, the documentary stamp tax on the transfer is based on the mortgage balance in proportion to the interest transferred by the grantor.[3]

> For example, assume that Jane has married and wishes to execute a deed from her alone to her and her new husband Mark, as a tenancy by the entireties. If the house is worth $300,000 and is encumbered by a $240,000 mortgage, the documentary stamp tax due on the deed that creates joint ownership is $840, calculated as follows: $120,000 (1/2 of the outstanding mortgage balance) x 0.007 (70 cents per $100) = $840.

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.[4] The exemption applies regardless of any consideration, including the assumption of underlying indebtedness. There are other exemptions to the documentary stamp tax that are in case law or in statute, including transfer

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[1] http://dor.myflorida.com/dor/taxes/doc_stamp_coll.html
[2] The rate is 60¢ per $100 of consideration in Miami-Dade County, but the county is authorized to impose an additional local documentary stamp tax of 45¢ per $100 of consideration. See s. 125.0167, F.S.
[3] F.A.C. 12B-4.013(28).
[4] Chapter 97-191, L.O.F.

between a business entity and a wholly-owned subsidiary,[5] transfers from a nonprofit entity to the state or a local government,[6] and transfers from an employee to an employee relocation service.[7]

A "joint tenancy with right of survivorship" is a form of real estate ownership by which the joint tenants each own an undivided share of the real property. The share owned by a person is automatically terminated upon the death of such person, which share is deemed transferred automatically by operation of law (and outside of the probate estate) to the survivor.

A "life estate" is the right to possess and use real property during the lifetime of the owner of the life estate. Every life estate has one or more persons who hold a "remainder interest," such persons are the legal owner of the real property, but have no right to possess or use the property until the death of the life tenant.

Effect of Bill

This bill provides that the documentary stamp tax will not be assessed "to the addition or removal of the name of a spouse as a joint tenant with right of survivorship or holder of a life estate or remainder interest in property to or from any deed or other instrument relating to real property or an interest in real property in the absence of any consideration paid or given and upon which deed or other instrument the taxes imposed by this section have previously been paid."

C. SECTION DIRECTORY:

Section 1 amends s. 201.02, F.S., regarding the excise tax on deeds and other instruments.

Section 2 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference estimates that this bill will have the following negative fiscal impacts on state revenues (in millions):

	FY 08-09 Annualized	FY 08-09 Cash	FY 09-10 Cash	FY 10-11 Cash	FY 11-12 Cash
General Revenue	-$0.9	-$1.9	-$2.5	-$2.6	-$2.6
State Trust Funds	-$1.7	-$3.3	-$0.1	-$0.1	-$0.1
Total State Impact	-$2.6	-$5.2	-$2.6	-$2.7	-$2.7

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[5] *Crescent Miami Center, LLC v. Florida Dept. of Revenue*, 903 So.2d 913 (Fla. 2005).
[6] Section 201.02(6), F.S.
[7] Section 201.02(8), F.S.

As to revenues payable to clerks of court or county recorders, this bill will have an unknown but likely minimal negative recurring impact. Local recording offices are entitled to a collection allowance of 0.5% of any documentary stamp tax paid through such offices.[8] The state recurring impact above yields a net recurring impact to the clerks of court or county recorders of $13,000 annually statewide.

Miami-Dade County has implemented the local discretionary surtax on documents whereby the county charges an additional 45¢ per $100 of consideration.[9] Miami-Dade County's collection of this surcharge will be negatively affected by the exemption created by this bill, although the scope is unknown.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will directly benefit spouses who engage in certain inter-spousal transactions by exempting the transaction from documentary stamp tax.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not create, amend, or remove existing rulemaking power. It is likely that the Department of Revenue would have to amend existing rules as a result of the changes made by this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As written, this bill may not exempt from the tax a deed by a married person to the person and his or her spouse that was filed for the purpose of creating a tenancy by the entireties, which is the typical form of title for married persons.

This bill uses the colloquial or common term of "adding" a name "to the deed." Technically, one cannot amend an existing deed to add a name. The term is inaccurate and the bill perhaps should be amended to more properly reflect common real estate practice.

D. STATEMENT OF THE SPONSOR

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[8] Section 201.11(2), F.S.

[9] Section 125.0167, F.S.

This bill will eliminate an issue of double taxation that is being imposed upon newly married couples in Florida. This bill supports marriage as opposed to current statute that supports divorce. Currently if a single person with a home gets married the outstanding balance of their mortgage triggers the collection of documentary stamp taxes at the time the new spouse is added to the deed. The homeowner already paid the tax when they purchased the home and thus is simple double taxation. Conversely when a person has a dissolution of marriage with that same outstanding mortgage balance and a name is removed from the deed no taxes are collected. Simply stated a YES Vote to this bill supports marriage and an end to double taxation a NO vote supports divorce and double taxation. The bill does carry a fiscal impact however the revenue estimating conference used methodology that does not properly illustrate the true fiscal impact. The conference used the full value of the mortgage instead of just the portion that relates to the new spouse 50%. Therefore the fiscal impact is clearly only 50% of the current forecast. Let your constituents be your guide.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

n/a