

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 1140

INTRODUCER: Senator Altman

SUBJECT: Excise Tax on Documents/Spousal Transfer

DATE: March 31, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Maclure	JU	Favorable
2.			FT	
3.			WPSC	
4.				
5.				
6.				

I. Summary:

This bill provides an additional exemption to the application of the documentary stamp tax on real property. Specifically, the bill provides that the tax does not apply to a deed that transfers or conveys homestead property between spouses, when the only consideration for the transfer or conveyance is the amount of a mortgage or other lien encumbering the homestead property at the time of the transfer or conveyance. The bill specifies that the exemption only applies if the transfer or conveyance is recorded within one year after the date of the marriage, and it applies to transfers or conveyances from one spouse to another, from one spouse to both spouses, or from both spouses to one spouse.

This bill substantially amends section 201.02, Florida Statutes.

II. Present Situation:

The documentary stamp tax imposes an excise tax on deeds or other documents that convey an interest in Florida real property.¹ Documents subject to the tax include deeds, bonds, notes and written obligations to pay money, and mortgages, liens, and other evidences of indebtedness.² The tax is calculated based on the consideration for the transfer, which includes money paid or agreed to be paid, the discharge of an obligation, and the amount of any mortgage or other encumbrance.³ When first enacted in 1931, the documentary stamp tax rate was 10 cents per

¹ Section 201.02(1), F.S.

² Fla. Dep't of Revenue, *Florida's Documentary Stamp Tax*, http://dor.myflorida.com/dor/taxes/doc_stamp.html (last visited Mar. 26, 2009); *see also* Fla. Admin. Code R. 12B-4.013 for a list of conveyances that are subject to the tax.

³ Section 201.02(1), F.S.

\$100 of consideration.⁴ Since that time, major rate increases have occurred in 1957, 1963, 1979, 1981, 1985, 1987, 1990, 1991, and 1992.⁵ The current tax rate is 70 cents on each \$100 of consideration for deeds, instruments, or writings under which lands, tenements, or other real property, or any interest in the property, are granted, assigned, transferred, conveyed, or vested in a purchaser.⁶

Subsections (6) through (9) of s. 201.02, F.S., provide exemptions and limitations to imposition of the documentary stamp tax. These include:

- Transfers of real property from a nonprofit organization to specified governmental entities;
- Transfers of a marital home between spouses or former spouses as part of an action for dissolution of marriage;
- Contracts to sell the residence of an employee relocating at his or her employer's direction, when the sales contract is between the employer and the employee; and
- Certificate of title issued by the clerk of the court in a judicial sale.⁷

Deeds transferring unencumbered property between spouses are not taxable, unless one spouse paid consideration to the other spouse for additional shares greater in value than their undivided interest. In that case, the consideration paid is taxable.⁸ If the property is encumbered (mortgaged), the tax is based on the mortgage balance in proportion to the interest transferred by the grantor.⁹ In 1997, s. 201.02(7), F.S., was created to provide a limitation on the documentary stamp tax for transfers of the marital home between spouses or former spouses upon dissolution of marriage. This section provides:

Taxes imposed by this section do not apply to a deed, transfer, or conveyance between spouses or former spouses pursuant to an action for dissolution of their marriage wherein the real property is or was their marital home or an interest therein. Taxes paid pursuant to this section shall be refunded in those cases in which a deed, transfer, or conveyance occurred 1 year before a dissolution of marriage.¹⁰

The exemption applies regardless of any consideration, including the assumption of underlying indebtedness. The term “marital home” is defined by administrative rule to mean “the primary

⁴ Office of Economic and Demographic Research et al., *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 56 (2008), available at <http://edr.state.fl.us/reports/taxhandbooks/taxhandbook2008.pdf> (last visited Mar. 25, 2009).

⁵ *Id.*

⁶ Section 201.02(1), F.S. A similar tax is also levied in s. 201.08, F.S., on a different tax base: certificates of indebtedness, promissory notes, wage assignments, and retail charge account agreements. *See Florida Tax Handbook, supra* note 4, at 56. Under s. 201.08, F.S., these items are taxed at a rate of 35 cents on each \$100 of the indebtedness or obligation.

⁷ Section 201.02(6)-(9), F.S. The certificate of title issued by the clerk of court is subject to the tax; however, the amount of the tax is computed based on the amount of the highest and best bid received at the foreclosure sale.

⁸ Fla. Admin. Code R. 12B-4.013(28).

⁹ *Id.*

¹⁰ Section 201.02(7), F.S.

residence of the married couple.”¹¹ Accordingly, under the rule, “a document that conveys any interest in another residence or investment property is taxable.”¹²

For fiscal year 2007-2008, total documentary stamp tax collections were an estimated \$1.8 billion, which was approximately \$1.2 billion less than what was collected in FY 2006-2007.¹³ Revenue from the documentary stamp tax is divided between the General Revenue Fund and various trust funds that are used to acquire public lands or support affordable housing.¹⁴

III. Effect of Proposed Changes:

This bill amends s. 201.02, F.S., to provide an additional exemption to the documentary stamp tax. The bill provides that the documentary stamp tax does not apply to a deed that transfers or conveys homestead property, or any interest in homestead property, between spouses, when the only consideration for the transfer or conveyance is the amount of a mortgage or other lien encumbering the homestead property at the time of the transfer or conveyance. This exemption only applies if the transfer or conveyance of homestead property is recorded within one year after the date of the marriage. The bill specifies that the exemption applies to transfers or conveyances from one spouse to another, from one spouse to both spouses, or from both spouses to one spouse.

This bill shall take effect upon becoming law. According to the Department of Revenue, the effective date of the bill may not provide sufficient time to notify appropriate parties, such as the clerks of the circuit court, the Florida Board of Realtors, and title agencies, who would need to be made aware of the change in law. These parties will need time to revise their procedures, forms, and any other programs associated with the documentary stamp tax.¹⁵

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ Fla. Admin. Code R. 12B-4.013(28).

¹² *Id.*

¹³ See http://dor.myflorida.com/dor/taxes/doc_stamp_coll.html (follow “FY 2007-08” and “FY 2006-07” hyperlinks) (last visited Mar. 26, 2009).

¹⁴ *Florida Tax Handbook*, *supra* note 4, at 56.

¹⁵ Dep’t of Revenue, *2009 Bill Analysis SB 1140*, 2 (Feb. 10, 2009) (on file with the Senate Judiciary Committee).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

This bill provides an additional exemption to the application of the documentary stamp tax, which is a tax on deeds or other documents that convey an interest in Florida real property. Accordingly, less documentary stamp taxes will be collected for certain transfers of property in Florida. See “Government Sector Impact” section below.

B. Private Sector Impact:

This bill would enable couples who have recently married to transfer or convey homestead property to each other without being assessed a documentary stamp tax.

C. Government Sector Impact:

This bill amends s. 201.02, F.S., to provide an additional exemption to the documentary stamp tax. According to the Revenue Estimating Conference, this bill would have the following fiscal impact on state revenues (in millions):¹⁶

	FY 2009-10 Annualized	FY 2009-10 Cash	FY 2010-11 Cash	FY 2011-12 Cash	FY 2012-13 Cash
General Revenue	-\$0.5	-\$0.5	-\$0.6	-\$1.0	-\$1.0
State Trust Funds	-\$0.8	-\$0.8	-\$0.7	-\$0.4	-\$0.4
Total State Impact	-\$1.3	-\$1.3	-\$1.3	-\$1.4	-\$1.4
Total Local Impact	-\$0.1	-\$0.1	-\$0.1	\$0	\$0
Total Impact	-\$1.4	-\$1.4	-\$1.4	-\$1.4	-\$1.4

The Department of Revenue has indicated that Rule 12B-4.013(28) of the Florida Administrative Code will need to be amended to provide for the exemption of deeds between spouses under the parameters set by the bill.¹⁷

VI. Technical Deficiencies:

According to the Department of Revenue (DOR or department), some documents that transfer an interest in real property do not have to be recorded, but they are still subject to the documentary stamp tax. The department suggests that in order to clarify that the exemption provided by the bill applies to both recorded and unrecorded documents transferring an interest in homestead property between spouses, that the phrase “is recorded” on line 21 of the bill be replaced with “occurs.”¹⁸

¹⁶ Office of Economic & Demographic Research, Fla. Legislature, *Revenue Estimating Conference*, 1 (Feb. 13, 2009), <http://edr.state.fl.us/conferences/revenueimpact/impact.htm> (follow “2/13/09 Results” hyperlink) (last visited Mar. 26, 2009).

¹⁷ Dep’t of Revenue, *supra* note 15, at 3.

¹⁸ *Id.*

Additionally, DOR suggests replacing the term “homestead property” throughout the bill with “marital home,” as used in s. 201.02(7), F.S. According to DOR, “[u]nder Florida’s homestead exemption provisions, the husband and wife may have separate homestead properties in the case where each spouse resides in a home which is his or her permanent residence. Under this circumstance, . . . the bill allows the transfer of each property between the spouses without the payment of the documentary stamp tax.”¹⁹ If the intent of the bill is to allow only one homestead property to be transferred, the department recommends using the term “marital home”²⁰ instead of “homestead property.”²¹

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁹ *Id.* at 2.

²⁰ The “marital home” is considered the primary residence of the married couple. Fla. Admin. Code R. 12B-4.013(28).

²¹ Dep’t of Revenue, *supra* note 15, at 3.