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LEGISLATIVE ACTION

Senate

House

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Senator Gelber moved the following:

1 Senate Substitute for Amendment (950276) (with title
2 amendment)

3
4 Delete lines 223 - 320

5 and insert:

6 Section 3. (1) The Legislature finds that the Florida
7 Supreme Court opinion in Crescent Miami Center, LLC v. Florida
8 Department of Revenue, 903 So. 2d 913 (Fla. 2005), interprets s.
9 201.02, Florida Statutes, in a manner that permits tax avoidance
10 inconsistent with the intent of the Legislature at the time the
11 statute was amended in 1990.

12 (2) The Legislature finds that the opinion of the District



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13 Court of Appeal for the Third District of Florida in Crescent
14 Miami Center, LLC v. Florida Department of Revenue, 857 So. 2d
15 904 (Fla. 3d D.C.A. 2003), interprets s. 201.02, Florida
16 Statutes, in a manner that prevents tax avoidance consistent
17 with the intent of the Legislature at the time the statute was
18 amended in 1990.

19 (3) The Legislature recognizes that the Supreme Court's
20 opinion in Crescent is limited to the facts of the case and
21 accepts the court's interpretation of s. 201.02, Florida
22 Statutes, that no consideration exists when owners of real
23 property unencumbered by a mortgage convey an interest in such
24 property to an artificial entity whose ownership is identical to
25 the ownership of the real property before conveyance. The
26 Legislature expressly rejects any application of the court's
27 interpretation where the facts are not comparable to the facts
28 in Crescent. However, because the Supreme Court's
29 interpretation, combined with other settled law regarding the
30 application of s. 201.02, Florida Statutes, allows for the tax-
31 free transfer of ownership interests in real property from one
32 owner to another through the use of artificial entities, it is
33 the Legislature's intent by this act to impose the documentary
34 stamp tax when the beneficial ownership of real property is
35 transferred to a new owner or owners by the use of techniques
36 that apply the Supreme Court's decision in Crescent in
37 combination with respect to transfers of ownership of, or
38 distributions from, artificial entities.

39 Section 4. Subsection (1) of section 201.02, Florida
40 Statutes, is amended, and subsection (11) is added to that
41 section, to read:



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42 201.02 Tax on deeds and other instruments relating to real
43 property or interests in real property.—

44 (1) (a) On deeds, instruments, or writings whereby any
45 lands, tenements, or other real property, or any interest
46 therein, shall be granted, assigned, transferred, or otherwise
47 conveyed to, or vested in, the purchaser or any other person by
48 his or her direction, on each \$100 of the consideration therefor
49 the tax shall be 70 cents. When the full amount of the
50 consideration for the execution, assignment, transfer, or
51 conveyance is not shown in the face of such deed, instrument,
52 document, or writing, the tax shall be at the rate of 70 cents
53 for each \$100 or fractional part thereof of the consideration
54 therefor. For purposes of this section, consideration includes,
55 but is not limited to, the money paid or agreed to be paid; the
56 discharge of an obligation; and the amount of any mortgage,
57 purchase money mortgage lien, or other encumbrance, whether or
58 not the underlying indebtedness is assumed. If the consideration
59 paid or given in exchange for real property or any interest
60 therein includes property other than money, it is presumed that
61 the consideration is equal to the fair market value of the real
62 property or interest therein.

63 (b)1. For purposes of this paragraph the term:

64 a. "Conduit entity" means a legal entity to which real
65 property is conveyed without full consideration by a grantor who
66 owns an interest in the entity, or a successor entity.

67 b. "Full consideration" means the consideration that would
68 be paid in an arm's length transaction between unrelated
69 parties.

70 2. When an ownership interest in real property is conveyed



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71 to a conduit entity and an ownership interest in the conduit
72 entity is subsequently transferred for consideration within 3
73 years of such conveyance, tax is imposed each time an interest
74 in the conduit entity is transferred for consideration at the
75 rate of 70 cents for each \$100 or fraction thereof of the
76 consideration paid or given in exchange for the ownership
77 interest in the conduit entity.

78 3. When the ownership interest in the conduit entity being
79 transferred includes assets other than the real property
80 conveyed to the conduit entity, the tax on the transfer of the
81 ownership interests in the conduit entity shall be prorated
82 based on the percentage the value of such real property
83 represents of the total value of all assets owned by the conduit
84 entity.

85 4. The gift of an ownership interest in a conduit entity is
86 not subject to tax to the extent there is no consideration. If
87 the real property is transferred as a gift and is encumbered by
88 a mortgage, tax is due on the amount due on the mortgage.

89 5. The transfer for purposes of estate planning by a
90 natural person of an interest in a conduit entity to an
91 irrevocable grantor trust pursuant to subpart e, of Part 1, of
92 Subchapter J, of Chapter 1, of the United States Revenue Code is
93 not subject to tax under this subsection.

94 6. The purpose of this paragraph is to impose the
95 documentary stamp tax on the transfer for consideration of a
96 beneficial interest in real property. The provisions of this
97 paragraph are to be construed liberally to effectuate this
98 purpose.

99 (c) Conversion or merger of a trust that is not a legal



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100 entity that owns real property in this state into a legal entity
101 shall be treated as a conveyance of the real property for the
102 purposes of this section.

103 (d) Taxes imposed by this subsection shall be paid pursuant
104 to s. 201.133 when no document is recorded. If a document is
105 recorded, taxes imposed by the paragraph shall be paid as
106 required for all other taxable documents that are recorded.

107 (11) The documentary stamp tax imposed by this section
108 applies to a deed, instrument, or writing that transfers any
109 interest in real property pursuant to a short sale, as defined
110 in this subsection. The taxable consideration for a short sale
111 transfer does not include unpaid indebtedness that is forgiven
112 or released by a mortgagee holding a mortgage on the grantor's
113 interest in the property. A short sale is a purchase and sale of
114 real property in which:

115 (a) The grantor's interest in the real property is
116 encumbered by a mortgage or mortgages securing indebtedness in
117 an aggregate amount greater than the purchase price paid by the
118 grantee;

119 (b) A mortgagee releases the real property from its
120 mortgage in exchange for a partial payment of less than all of
121 the outstanding mortgage indebtedness owing to the releasing
122 mortgagee;

123 (c) The releasing mortgagee does not receive, directly or
124 indirectly, any interest in the property transferred; and

125 (d) The releasing mortgagee, grantor, and grantee are
126 dealing with each other at arm's length.

127 Section 5. The amendments to subsections (1) and (11) of s.
128 201.02, Florida Statutes, made by this act and



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===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 30 - 48

and insert:

involving legal entities; amending s. 201.02, F.S.; defining terms; imposing the tax on certain transfers of a conduit entity; providing for the apportionment of the consideration for an interest in a conduit entity between real property interests and other assets; exempting from the tax property transferred as a gift to the extent there is no consideration; providing for trusts; providing legislative intent; providing for tax; imposing the tax on