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LEGISLATIVE ACTION

Senate

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House

The Committee on Finance and Tax (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 197 - 478

and insert:

Section 3. Subsection (1) of section 201.02, Florida Statutes, is amended, and subsection (11) is added to that section to read:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.-

(1) On deeds, instruments, documents, or writings whereby



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12 any lands, tenements, or other real property, or any interest
13 therein, shall be granted, assigned, transferred, or otherwise
14 conveyed to, or vested in, the purchaser or any other person by
15 his or her direction, on each \$100 of the consideration therefor
16 the tax shall be 70 cents. When the full amount of the
17 consideration for the execution, assignment, transfer, or
18 conveyance is not shown in the face of such deed, instrument,
19 document, or writing, the tax shall be at the rate of 70 cents
20 for each \$100 or fractional part thereof of the consideration
21 therefor. For purposes of this section, consideration includes,
22 but is not limited to, the money paid or agreed to be paid; the
23 discharge of an obligation; and the amount of any mortgage,
24 purchase money mortgage lien, or other encumbrance, whether or
25 not the underlying indebtedness is assumed. If the consideration
26 paid or given in exchange for real property or any interest
27 therein includes property other than money, it is presumed that
28 the consideration is equal to the fair market value of the real
29 property or interest therein.

30 (11) The documentary stamp tax imposed by this section
31 applies to a deed, instrument, or writing that transfers any
32 interest in real property pursuant to a short sale, as defined
33 in this subsection. The taxable consideration for a short sale
34 transfer does not include unpaid indebtedness that is forgiven
35 or released by a mortgagee holding a mortgage on the grantor's
36 interest in the property. A short sale is a purchase and sale of
37 real property in which:

38 (a) The grantor's interest in the real property is
39 encumbered by a mortgage or mortgages securing indebtedness in
40 an aggregate amount greater than the purchase price paid by the



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41 grantee;

42 (b) A mortgagee releases the real property from its
43 mortgage in exchange for a partial payment of less than all of
44 the outstanding mortgage indebtedness owing to the releasing
45 mortgagee;

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

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

50 Section 4. The Department of Revenue may adopt rules to
51 specify criteria indicating that a purported short sale is not
52 an arm's length transaction.

53 Section 5. Effective upon this act becoming a law, the
54 Department of Revenue is authorized, and all conditions are
55 deemed met, to adopt emergency rules under ss. 120.536(1) and
56 120.54(4), Florida Statutes, to implement section 3 of this act
57 relating to short sales. Notwithstanding any other provision of
58 law, such emergency rules shall remain effective for 6 months
59 after the date of adoption and may be renewed during the
60 pendency of procedures to adopt rules addressing the subject of
61 the emergency rules.

62 Section 6. Effective July 1, 2010, subsection (1) of
63 section 201.02, Florida Statutes, as amended by this act, is
64 amended, and subsections (12) and (13) are added to that
65 section, to read:

66 201.02 Tax on deeds and other instruments relating to real
67 property or interests in real property.—

68 (1) On deeds, instruments, documents, or writings whereby
69 any lands, tenements, or other real property, or any interest



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70 therein, shall be granted, assigned, transferred, or otherwise
71 conveyed to, or vested in, the purchaser or any other person by
72 his or her direction, on each \$100 of the consideration therefor
73 the tax shall be 70 cents. When the full amount of the
74 consideration for the execution, assignment, transfer, or
75 conveyance is not shown in the face of such deed, instrument,
76 document, or writing, the tax shall be at the rate of 70 cents
77 for each \$100 or fractional part thereof of the consideration
78 therefor. For purposes of this section, consideration includes,
79 but is not limited to, the money paid or agreed to be paid; the
80 discharge of an obligation; ~~and~~ the amount of any mortgage,
81 purchase money mortgage lien, or other encumbrance, whether or
82 not the underlying indebtedness is assumed; and any
83 consideration given in exchange for a direct or indirect
84 ownership interest in a grantee entity within the holding period
85 pursuant to subsection (13). If the consideration paid or given
86 in exchange for real property or any interest therein includes
87 property other than money, it is presumed that the consideration
88 is equal to the fair market value of the real property or
89 interest therein.

90 (12) If a deed, instrument, document, or writing grants,
91 assigns, transfers, or conveys any interest in real property
92 from a grantor that is a corporation, partnership, limited
93 liability company, or other business entity to one or more
94 grantees that wholly or partially own such grantor entity,
95 whether directly or indirectly through another intermediate
96 entity or entities, to the extent that such interest in real
97 property received by such a grantee is in the same proportion as
98 the grantee's direct or indirect ownership interest in the



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99 grantor entity, the consideration for such transfer for purposes
100 of this section shall not be deemed to include any change in the
101 value of the grantee's ownership interest in the grantor entity
102 or in any intermediate entity resulting from such transfer.

103 (13) (a) If a deed, instrument, document, or writing grants,
104 assigns, transfers, or conveys any interest in real property
105 from one or more grantors to a grantee that is a corporation,
106 partnership, limited liability company, or other business entity
107 that is wholly or partially owned by the grantor or grantors,
108 whether directly or indirectly through another intermediate
109 entity or entities, to the extent that the interest in real
110 property transferred by such a grantor is in the same proportion
111 as the grantor's ownership interest in the grantee entity, the
112 consideration for such transfer for purposes of this section
113 shall not be deemed to include any change in the value of the
114 grantor's ownership interest in the grantee entity or in any
115 intermediate entity resulting from such transfer, to the extent
116 that the grantor continues to own directly or indirectly the
117 same percentage of the ownership interests in the grantee entity
118 for a holding period ending on the earlier of:

119 1. The date that is 1 year after the transfer of such
120 interest in real property to the grantee entity; or

121 2. The date that the grantee entity no longer owns any
122 interest in such real property, whether directly or indirectly
123 through another intermediate entity or entities.

124 (b) Upon the transfer for consideration of all or any
125 portion of the direct or indirect ownership interest of such a
126 grantor in the grantee entity to a purchaser other than the
127 grantor within the holding period set forth in paragraph (a),



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128 whether by sale, assignment, merger, exchange, consolidation,
129 conversion, or otherwise, the consideration given for the
130 transferred ownership interest shall be deemed to have been
131 exchanged for the previous transfer of the interest in real
132 property to the grantee entity, and the tax imposed by
133 subsection (1) applies to the previous transfer of the interest
134 in real property to the grantee entity based on such deemed
135 consideration. The direct or indirect ownership interests in a
136 grantee entity described in this subsection does not include any
137 shares or similar equity interests dealt in or traded on
138 securities exchanges or in securities markets.

139 (c) The cumulative amount of all such deemed consideration
140 under this subsection may not in any event exceed the fair
141 market value of the transferred real property interest at the
142 time of the transfer of the ownership interest in the grantee
143 entity, less any consideration on which tax was paid.

144 (d) Upon the transfer of such direct or indirect ownership
145 interest in a grantee entity that owns assets other than such
146 real property interest, the deemed consideration described in
147 this subsection shall be prorated based on the fair market value
148 of the real property interest and the fair market value of the
149 other assets at the time of such transfer of the ownership
150 interest in the grantee entity, and only the portion of the
151 deemed consideration prorated to the real property interest
152 shall be subject to the tax under subsection (1).

153 (e) The tax becoming payable as set forth in this
154 subsection shall be paid prior to the 20th day of the month
155 following the transfer of the ownership interest.

156 Section 7. The Department of Revenue may adopt rules to



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157 administer or illustrate the application of section 6 of this
158 act.

159 Section 8. Section 201.031, Florida Statutes, is amended to
160 read:

161 201.031 Discretionary surtax; administration and
162 collection; Housing Assistance Loan Trust Fund; reporting
163 requirements.—

164 (1) Each county, as defined by s. 125.011(1), may levy,
165 subject to the provisions of s. 125.0167, a discretionary surtax
166 on documents taxable under the provisions of s. 201.02, except
167 that there shall be no surtax on any document pursuant to which
168 the interest granted, assigned, transferred, or conveyed
169 involves only a single-family residence. The ~~Such~~ single-family
170 residence may be a condominium unit, a unit held through stock
171 ownership or membership representing a proprietary interest in a
172 corporation owning a fee or a leasehold initially in excess of
173 98 years, or a detached dwelling.

174 (2) All provisions of chapter 201, except s. 201.15, ~~shall~~
175 apply to the surtax. The Department of Revenue shall pay to the
176 governing authority of the county which levies the surtax all
177 taxes, penalties, and interest collected under this section less
178 any costs of administration.

179 (3) Each county that ~~which~~ levies the surtax shall:

180 (a) Include in the financial report required under s.
181 218.32 information showing the revenues and the expenses of the
182 trust fund for the fiscal year.

183 (b) Adopt a housing plan every 3 years which includes
184 provisions substantially similar to the plans required in s.
185 420.9075(1).



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186 (c) Have adopted an affordable housing element of its
187 comprehensive land use plan which complies with s.
188 163.3177(6) (f).

189 (d) Require by resolution that the staff or entity that has
190 administrative authority for implementing the housing plan
191 prepare and submit to the county's governing body an annual
192 report substantially similar to the annual report required in s.
193 420.9075(10).

194 Section 9. Paragraph (a) of subsection (1) of section
195 719.105, Florida Statutes, is amended to read:

196 719.105 Cooperative parcels; appurtenances; possession and
197 enjoyment.—

198 (1) Each cooperative parcel has, as appurtenances thereto:

199 (a) Evidence of membership, ownership of shares, or other
200 interest in the association with the full voting rights
201 appertaining thereto. Such evidence must include a legal
202 description of each dwelling unit and must be recorded in the
203 office of the clerk of the circuit court as required by s.
204 201.02(4) ~~s. 201.02(3)~~.

205 Section 10. Except as otherwise expressly provided in this
206 act and except for this section, which shall take effect upon
207 becoming a law, this act shall take effect July 1, 2009. Section
208 3 of this act applies to transfers of real property occurring on
209 or after July 1, 2009. Section 6 of this act applies to
210 transfers of real property for which the first transfer to a
211 grantee entity occurs on or after January 1, 2010.

212
213 ===== T I T L E A M E N D M E N T =====

214 And the title is amended as follows:



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215 Delete lines 28 - 41
216 and insert:
217 Legislature; amending s. 201.02, F.S.; imposing the tax on
218 deeds, instruments, and other writings on the consideration for
219 a transfer of real property pursuant to a short sale; providing
220 that the consideration subject to the tax does not include
221 unpaid indebtedness that is forgiven by a mortgagee; defining
222 the term "short sale"; authorizing the Department of Revenue to
223 adopt criteria by rule indicating that a purported short sale is
224 not an arm's length transaction; authorizing the Department of
225 Revenue to adopt emergency rules; applying the excise tax on
226 documents to certain transfers involving certain legal entities;
227 authorizing the Department of Revenue to adopt rules to
228 administer or illustrate the application of the tax on certain
229 transactions involving legal entities; amending s. 201.031,