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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment (with title amendment)

Delete lines 197 - 427

and insert:

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

(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 consistent with the intent of the  
17 Legislature.

18 (3) The Legislature finds that the administrative rules  
19 adopted by the department premised on the enactment of s. 7,  
20 chapter 90-132, Laws of Florida, correctly interpret s. 201.02,  
21 Florida Statutes, in a manner consistent with the intent of the  
22 Legislature.

23 (4) The Legislature intends, by this act, to return Florida  
24 law, administrative rules, and policy on the issue addressed in  
25 the cited opinions to the state of such law, rule, and policy  
26 which existed prior to the Supreme Court opinion.

27 Section 4. Subsection (1) of section 201.02, Florida  
28 Statutes, is amended, and subsection (11) is added that section,  
29 to read:

30 201.02 Tax on deeds and other instruments relating to real  
31 property or interests in real property.—

32 (1) On deeds, instruments, or writings whereby any lands,  
33 tenements, or other real property, or any interest therein,  
34 shall be granted, assigned, transferred, or otherwise conveyed  
35 to, or vested in, the purchaser or any other person by his or  
36 her direction, on each \$100 of the consideration therefor the  
37 tax shall be 70 cents. When the full amount of the consideration  
38 for the execution, assignment, transfer, or conveyance is not  
39 shown in the face of such deed, instrument, document, or  
40 writing, the tax shall be at the rate of 70 cents for each \$100  
41 or fractional part thereof of the consideration therefor. For



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42 purposes of this section, consideration includes, but is not  
43 limited to, the money paid or agreed to be paid; the discharge  
44 of an obligation; ~~and~~ the amount of any mortgage, purchase money  
45 mortgage lien, or other encumbrance, whether or not the  
46 underlying indebtedness is assumed; and conveyance of real  
47 property to a corporation in exchange for shares of its capital  
48 stock, or as a contribution to the capital of a corporation. If  
49 the consideration paid or given in exchange for real property or  
50 any interest therein includes property other than money, it is  
51 presumed that the consideration is equal to the fair market  
52 value of the real property or interest therein.

53 (11) The documentary stamp tax imposed by this section  
54 applies to a deed, instrument, or writing that transfers any  
55 interest in real property pursuant to a short sale, as defined  
56 in this subsection. The taxable consideration for a short sale  
57 transfer does not include unpaid indebtedness that is forgiven  
58 or released by a mortgagee holding a mortgage on the grantor's  
59 interest in the property. A short sale is a purchase and sale of  
60 real property in which:

61 (a) The grantor's interest in the real property is  
62 encumbered by a mortgage or mortgages securing indebtedness in  
63 an aggregate amount greater than the purchase price paid by the  
64 grantee;

65 (b) A mortgagee releases the real property from its  
66 mortgage in exchange for a partial payment of less than all of  
67 the outstanding mortgage indebtedness owing to the releasing  
68 mortgagee;

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



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

73 Section 5. The Department of Revenue is directed to readopt  
74 administrative rules and policies substantially similar to those  
75 that are no longer enforced, or were changed, repealed, or  
76 discontinued, as a result of *Crescent Miami Canter, LLC v.*  
77 *Florida Department of Revenue*, 903 So. 2d 913 (Fla. 2005).

78 Section 6. The amendment to subsection (1) of section  
79 201.02, Florida Statutes, made by this act and the provisions of  
80 sections 3 and 5 of this act are intended to be clarifying and  
81 remedial in nature, but do not provide a basis for assessments  
82 of tax, or refunds of tax, for periods before July 1, 2009.

83 Section 7. Effective upon this act becoming a law, the  
84 Department of Revenue is authorized, and all conditions are  
85 deemed met, to adopt emergency rules under ss. 120.536(1) and  
86 120.54(4), Florida Statutes, to implement section 3 of this act  
87 relating to short sales. Notwithstanding any other provision of  
88 law, such emergency rules shall remain effective for 6 months  
89 after the date of adoption and may be renewed during the  
90 pendency of procedures to adopt rules addressing the subject of  
91 the emergency rules.

92  
93 ===== T I T L E A M E N D M E N T =====

94 And the title is amended as follows:

95 Delete lines 28 - 41

96 and insert:

97 Legislature; providing intent to reverse a judicial opinion  
98 relating to the application of the excise tax on documents to  
99 certain transactions involving legal entities; amending s.



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100 201.02, F.S.; providing that the excise tax on documents applies  
101 to transfers involving the exchange of real property for shares  
102 of stock or as a capital contribution; imposing the tax on  
103 deeds, instruments, and other writings on the consideration for  
104 a transfer of real property pursuant to a short sale; providing  
105 that the consideration subject to the tax does not include  
106 unpaid indebtedness that is forgiven by a mortgagee; defining  
107 the term "short sale"; directing the Department of Revenue to  
108 re-adopt rules relating to the application of the excise tax on  
109 documents to transfers of real property involving a legal  
110 entity; providing intent that the statutory changes relating to  
111 the application of the excise tax on documents for transfers  
112 involving legal entities are to be clarifying and remedial in  
113 nature; providing for the expiration of provisions relating to  
114 the application of the excise tax on documents on certain  
115 transactions involving legal entities; authorizing the  
116 Department of Revenue to adopt emergency rules relating to short  
117 sales; amending s. 201.031,