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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/06/2009	.	
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The Committee on Finance and Tax (Pruitt) recommended the following:

**Senate Substitute for Amendment (606638) (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



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12 in 1990.

13 (2) The Legislature finds that the opinion of the District  
14 Court of Appeal for the Third District of Florida in *Crescent*  
15 *Miami Center, LLC v. Florida Department of Revenue*, 857 So. 2d  
16 904 (Fla. 3d D.C.A. 2003), interprets s. 201.02, Florida  
17 Statutes, in a manner consistent with the intent of the  
18 Legislature.

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

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

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

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

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



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41 writing, the tax shall be at the rate of 70 cents for each \$100  
42 or fractional part thereof of the consideration therefor. For  
43 purposes of this section, consideration includes, but is not  
44 limited to, the money paid or agreed to be paid; the discharge  
45 of an obligation; ~~and~~ the amount of any mortgage, purchase money  
46 mortgage lien, or other encumbrance, whether or not the  
47 underlying indebtedness is assumed; and conveyance of real  
48 property to a corporation in exchange for shares of its capital  
49 stock, or as a contribution to the capital of a corporation. If  
50 the consideration paid or given in exchange for real property or  
51 any interest therein includes property other than money, it is  
52 presumed that the consideration is equal to the fair market  
53 value of the real property or interest therein.

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

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

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



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

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

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

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

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

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

95 And the title is amended as follows:

96 Delete lines 28 - 41

97 and insert:

98 Legislature; providing intent to reverse a judicial opinion



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