



919544

593-03666B-09

Proposed Committee Substitute by the Committee on Finance and
Tax

1 A bill to be entitled
2 An act relating to the discretionary surtax on
3 documents; amending s. 3, ch. 83-220, Laws of Florida,
4 as amended; extending a future repeal date of
5 provisions authorizing counties to levy a
6 discretionary surtax on documents; amending s.
7 125.0167, F.S.; limiting the percentage of surtax
8 revenues that may be used for administrative costs;
9 specifying a minimum amount of surtax revenues to be
10 used for housing for certain low-income and moderate-
11 income families; requiring an affirmative vote of a
12 local government governing body to rehabilitate
13 certain government-owned housing; authorizing certain
14 counties to create by ordinance a housing choice
15 assistance voucher program for the purpose of down
16 payment assistance; providing definitions; providing
17 eligibility requirements for such vouchers;
18 authorizing purchasing employers to file for
19 allocations for such vouchers; limiting allocations;
20 requiring distribution of allocations to employees in
21 the form of such vouchers; prohibiting use of
22 allocations for such vouchers if not awarded within a
23 certain period after certain documentary stamps taxes
24 are collected; requiring the Office of Program Policy
25 Analysis and Government Accountability to conduct a
26 continuing review of the discretionary surtax program
27 operated by counties; requiring reports to the



919544

593-03666B-09

28 Legislature; amending s. 201.02, F.S.; applying the
29 excise tax on documents to certain transfers involving
30 certain legal entities; providing for a credit against
31 the tax under certain circumstances; specifying the
32 rate of tax; imposing the tax on deeds, instruments,
33 and other writings on the consideration for a transfer
34 of real property pursuant to a short sale; providing
35 that the consideration subject to the tax does not
36 include unpaid indebtedness that is forgiven by a
37 mortgagee; defining the term "short sale"; authorizing
38 the Department of Revenue to adopt emergency rules;
39 amending s. 201.031, F.S.; expanding requirements for
40 counties levying the discretionary surtax to include
41 housing plan, affordable housing element, and annual
42 reporting requirements; amending s. 719.105, F.S.;
43 conforming a cross-reference; providing for
44 application of specified provisions of the act;
45 providing effective dates.

46
47 Be It Enacted by the Legislature of the State of Florida:

48
49 Section 1. Section 3 of chapter 83-220, Laws of Florida, as
50 amended by section 1 of chapter 84-270, Laws of Florida, and
51 section 1 of chapter 89-252, Laws of Florida, is amended to
52 read:

53 Section 3. Sections 1 and 2 of chapter 83-220, Laws of
54 Florida, as amended by this act, are repealed effective October
55 1, 2031 ~~2011~~.

56 Section 2. Section 125.0167, Florida Statutes, is amended



919544

593-03666B-09

57 to read:

58 125.0167 Discretionary surtax on documents; adoption;
59 application of revenue.—

60 (1) Pursuant to the provisions of s. 201.031, the governing
61 authority in each county, as defined by s. 125.011(1), is
62 authorized to levy a discretionary surtax on documents for the
63 purpose of establishing and financing a Housing Assistance Loan
64 Trust Fund to assist in the financing of construction,
65 rehabilitation, or purchase of housing for low-income and
66 moderate-income families. No less than 50 percent of the funds
67 used in each county to provide such housing assistance shall be
68 for the benefit of low-income families. For the purpose of this
69 section, "low-income family" means a family whose income does
70 not exceed 80 percent of the median income for the area, and
71 "moderate-income family" means a family whose income is in
72 excess of 80 percent but less than 140 percent of the median
73 income for the area. For purposes of this section, the term
74 "housing" is not limited to single-family, detached dwellings.
75 The rate of the surtax shall not exceed the rate of 45 cents for
76 each \$100 or fractional part thereof of the consideration
77 therefor. Such surtax shall apply only to those documents
78 taxable under s. 201.02, except that there shall be no surtax on
79 any document pursuant to which the interest granted, assigned,
80 transferred, or conveyed involves only a single-family
81 residence. Such single-family residence may be a condominium
82 unit, a unit held through stock ownership or membership
83 representing a proprietary interest in a corporation owning a
84 fee or a leasehold initially in excess of 98 years, or a
85 detached dwelling.



919544

593-03666B-09

86 (2) The levy of the discretionary surtax and the creation
87 of a Housing Assistance Loan Trust Fund shall be by ordinance
88 which shall set forth the policies and procedures of the
89 assistance program. The ordinance shall be proposed at a regular
90 meeting of the governing authority at least 2 weeks prior to
91 formal adoption. Formal adoption shall not be effective unless
92 approved on final vote by a majority of the total membership of
93 the governing authority. The ordinance shall not take effect
94 until 90 days after formal adoption.

95 (3) The county shall deposit revenues from the
96 discretionary surtax in the Housing Assistance Loan Trust Fund
97 of the county, except that a portion of such revenues may be
98 deposited into the Home Investment Trust Fund of the county as
99 defined by and created pursuant to the requirements of federal
100 law. The county shall use the revenues only to help finance the
101 construction, rehabilitation, or purchase of housing for low-
102 income families and moderate-income families, to pay necessary
103 costs of collection and enforcement of the surtax, and to fund
104 any local matching contributions required pursuant to federal
105 law. For purposes of this section, authorized uses of the
106 revenues include, but are not limited to, providing funds for
107 first and second mortgages and acquiring property for the
108 purpose of forming housing cooperatives. Special consideration
109 shall be given toward using the revenues in the neighborhood
110 economic development programs of community development
111 corporations. No more than 50 percent of the revenues collected
112 each year pursuant to this section may be used to help finance
113 new construction as provided herein. The proceeds of the surtax
114 shall not be used for rent subsidies or grants.



919544

593-03666B-09

115 (4) No more than 10 percent of surtax revenues collected
116 under this section by the Department of Revenue and remitted to
117 the county in any fiscal year may be used for administrative
118 costs.

119 (5) (a) Notwithstanding the provisions of subsection (3), of
120 the discretionary surtax revenues collected by the Department of
121 Revenue remaining after any deduction for administrative costs
122 as provided in subsection (4), no less than 35 percent shall be
123 used to provide homeownership assistance for low-income and
124 moderate-income families, and no less than 35 percent shall be
125 used for construction, rehabilitation, and purchase of rental
126 housing units. The remaining amount may be allocated to provide
127 for homeownership assistance or rental housing units, at the
128 discretion of the county. Any funds allocated for homeownership
129 assistance or rental housing units which are not committed at
130 the end of the fiscal year shall be available for homeownership
131 assistance or construction, rehabilitation, and purchase of
132 rental housing units in subsequent years.

133 (b) For purposes of this subsection, the term
134 "homeownership assistance" means assisting low-income and
135 moderate-income families in purchasing a home as their primary
136 residence, including, but not limited to, reducing the cost of
137 the home with below-market construction financing, the amount of
138 down payment and closing costs paid by the borrower, or the
139 mortgage payment to an affordable amount for the purchaser or
140 using any other financial assistance measure set forth in s.
141 420.5088.

142 (6) Rehabilitation of housing owned by a recipient
143 government may be authorized only after a determination approved



919544

593-03666B-09

144 by a majority of the governing body that no other sources of
145 funds are available.

146 (7) (a) The governing body of each county as defined in s.
147 125.011(1) may, by county ordinance and pursuant to procedures
148 and requirements provided by such ordinance, create a housing
149 choice assistance voucher program.

150 (b) For purposes of this subsection, the term:

151 1. "Housing choice assistance voucher" means the document
152 used to access assistance paid by the county from the
153 discretionary surtax balance in the Housing Assistance Trust
154 Fund to a prospective purchaser of a single-family residence,
155 which must be the purchaser's homestead.

156 2. "Purchasing employer" means a business or business
157 entity that has acquired real property within the county and
158 paid the surtax due as a result of the acquisition of that
159 property pursuant to this section.

160 (c) Housing choice assistance vouchers shall be used for
161 down payment assistance for the purchase of a single-family
162 residence by low-income or moderate-income persons within the
163 county and within a 5-mile radius of the purchasing employer who
164 are:

165 1. Actively employed by the purchasing employer or by a
166 business entity directly affiliated with the purchasing
167 employer.

168 2. Prequalified for a mortgage loan by a certified lending
169 institution.

170 (d) Upon payment of the discretionary surtax pursuant to
171 this section, the purchasing employer may file for an allocation
172 for housing choice assistance vouchers from the county in an



919544

593-03666B-09

173 amount not to exceed 50 percent of the amount of the
174 discretionary surtax paid. The purchasing employer shall
175 distribute the allocation to employees in the form of housing
176 choice assistance vouchers pursuant to rules and procedures
177 established for the program.

178 (e) Any housing choice assistance voucher allocation not
179 distributed to employees and redeemed by an employee within 1
180 year after the date the discretionary surtax is paid may not be
181 used for housing choice assistance vouchers under this
182 subsection.

183 (f) Any housing assistance paid pursuant to the housing
184 choice assistance voucher program shall be included in the
185 calculation determining the percentage of discretionary surtax
186 funds used for homeownership purposes during the year in which
187 the surtax funds for such purposes are expended.

188 (8) By June 30, 2012, and every 5 years thereafter, the
189 Office of Program Policy Analysis and Government Accountability
190 shall review the discretionary surtax program operated by
191 counties under this section and shall provide a report to the
192 President of the Senate and the Speaker of the House of
193 Representatives.

194 Section 3. Section 201.02, Florida Statutes, is amended to
195 read:

196 201.02 Tax on deeds and other instruments relating to real
197 property or interests in real property.-

198 (1) On deeds, instruments, documents, or writings whereby
199 any lands, tenements, or other real property, or any interest
200 therein, shall be granted, assigned, transferred, or otherwise
201 conveyed to, or vested in, the purchaser or any other person by



919544

593-03666B-09

202 his or her direction, on each \$100 of the consideration therefor
203 the tax shall be 70 cents. When the full amount of the
204 consideration for the execution, assignment, transfer, or
205 conveyance is not shown in the face of such deed, instrument,
206 document, or writing, the tax shall be at the rate of 70 cents
207 for each \$100 or fractional part thereof of the consideration
208 therefor. For purposes of this section, consideration includes,
209 but is not limited to, the money paid or agreed to be paid; the
210 discharge of an obligation; and the amount of any mortgage,
211 purchase money mortgage lien, or other encumbrance, whether or
212 not the underlying indebtedness is assumed. If the consideration
213 paid or given in exchange for real property or any interest
214 therein includes property other than money, it is presumed that
215 the consideration is equal to the fair market value of the real
216 property or interest therein.

217 (2) (a) A tax is hereby imposed on all transfers of an
218 ownership interest in real property which entitle the purchaser
219 to the use or occupancy of land, including transfers of
220 beneficial ownership interests, when the transfer is by means of
221 the sale or exchange of shares, or of comparable rights or
222 property interests, in a real property entity.

223 (b) A real property entity is a corporation, limited
224 liability company, or any other form of organization or legal
225 entity, such as a trust, which owns real property that
226 constitutes at least 80 percent of the value of the entity's
227 assets.

228 (c) If a transfer that is taxable under this subsection
229 also involves an instrument, document, or writing that is
230 taxable under subsection (1), a credit against the tax imposed



919544

593-03666B-09

231 under this subsection shall be given for any tax paid pursuant
232 to subsection (1) if the taxable instrument, document, or
233 writing is executed coincident to the transfer. To qualify for
234 this credit, the person liable for payment of the tax imposed
235 under subsection (1) must:

236 1. Cause a notation to be made on the document taxable
237 pursuant to subsection (1), filed in the public records, which
238 identifies the persons party to the transfer and states the
239 amount of tax paid; and

240 2. Include evidence in its return as specified by rule of
241 the department showing payment of the tax imposed under
242 subsection (1).

243 (d) The tax imposed by this subsection shall be at the rate
244 of 70 cents for each \$100 or fractional part thereof or such
245 other rate provided by law or local ordinance. The tax is
246 imposed on the present fair market value of the real property
247 multiplied by the percentage of interest transferred. The tax
248 shall be due, collected, and remitted in the same manner as the
249 tax imposed under subsection (1). The fair market value of the
250 real property is measured without reduction for any lien,
251 mortgage indebtedness, or other encumbrance.

252 (e) For purposes of this subsection, a transfer does not
253 occur upon a trade or sale of the regulated security of a public
254 company.

255 (f) For each transfer of an interest in real property
256 subject to tax imposed by this subsection, the grantor and the
257 grantee shall file a joint return on a form prescribed by the
258 department.

259 (g) The tax imposed by this subsection does not apply to a



919544

593-03666B-09

260 transfer between a person or persons and a legal entity or
261 entities that results solely in a change in the method of
262 holding title or to the form of its ownership and in which the
263 proportional beneficial interests of all parties remain the same
264 before and after the transfer.

265 (h) The tax imposed by this subsection does not apply to
266 transfers between a family corporation, family partnership,
267 family limited partnership, family trust, or family limited
268 liability company and its stockholders, partners, limited
269 partners, beneficiaries, or members for the purpose of
270 transferring real property in the organization, dissolution, or
271 liquidation of the family corporation, family partnership,
272 family limited partnership, family trust, or family limited
273 liability company under the laws of this state if the transfer
274 is made for no consideration other than shares, interests, or
275 debt securities of the family corporation, family partnership,
276 family limited partnership, family trust, or the family limited
277 liability company. For purposes of this paragraph, a family
278 corporation, family partnership, family limited partnership,
279 family trust, or a family limited liability company is an entity
280 in which the majority of the voting stock or ownership interest
281 is held by persons who are related to each other, including by
282 adoption, as descendants, spouses, parents, grandparents, lineal
283 ascendants of grandparents or their spouses, or persons acting
284 in a fiduciary capacity for persons so related.

285 (i) The provisions of subsections (7) through (12) apply to
286 the tax imposed by this subsection.

287 (3)(2) The tax imposed by subsection (1) shall also be
288 payable upon documents by which the right is granted to a



919544

593-03666B-09

289 tenant-stockholder to occupy an apartment in a building owned by
290 a cooperative apartment corporation or in a dwelling on real
291 property owned by any other form of cooperative association as
292 defined in s. 719.103.

293 ~~(4)(3)~~ The tax imposed by subsection (2) shall be paid by
294 the purchaser, and the document recorded in the office of the
295 clerk of the circuit court as evidence of ownership.

296 ~~(5)(4)~~ The tax imposed by subsection (1) shall also be
297 payable upon documents which convey or transfer, pursuant to s.
298 689.071, any beneficial interest in lands, tenements, or other
299 real property, or any interest therein, even though such
300 interest may be designated as personal property, notwithstanding
301 the provisions of s. 689.071(6). The tax shall be paid upon
302 execution of any such document.

303 ~~(6)(5)~~ All conveyances of real property to a partner from a
304 partnership which property was conveyed to the partnership after
305 July 1, 1986, are taxable if:

306 (a) The partner receiving the real property from the
307 partnership is a partner other than the partner who conveyed the
308 real property to the partnership; or

309 (b) The partner receiving the real property from the
310 partnership is the partner who conveyed the real property to the
311 partnership and there is a mortgage debt or other debt secured
312 by such real property for which the partner was not personally
313 liable prior to conveying the real property to the partnership.

314

315 For purposes of this subsection, the value of the consideration
316 paid for the conveyance of the real property to the partner from
317 the partnership includes, but is not limited to, the amount of



919544

593-03666B-09

318 any outstanding mortgage debt or other debt which the partner
319 pays or agrees to pay in exchange for the real property,
320 regardless of whether the partner was personally liable for the
321 debts of the partnership prior to the conveyance to the partner
322 from the partnership.

323 ~~(7)(6)~~ Taxes imposed by this section shall not apply to any
324 assignment, transfer, or other disposition, or any document,
325 which arises out of a transfer of real property from a nonprofit
326 organization to the Board of Trustees of the Internal
327 Improvement Trust Fund, to any state agency, to any water
328 management district, or to any local government. For purposes of
329 this subsection, "nonprofit organization" means an organization
330 whose purpose is the preservation of natural resources and which
331 is exempt from federal income tax under s. 501(c)(3) of the
332 Internal Revenue Code. The Department of Revenue shall provide a
333 form, or a place on an existing form, for the nonprofit
334 organization to indicate its exempt status.

335 ~~(8)(7)~~ Taxes imposed by this section do not apply to a
336 deed, transfer, or conveyance between spouses or former spouses
337 pursuant to an action for dissolution of their marriage wherein
338 the real property is or was their marital home or an interest
339 therein. Taxes paid pursuant to this section shall be refunded
340 in those cases in which a deed, transfer, or conveyance occurred
341 1 year before a dissolution of marriage. This subsection applies
342 in spite of any consideration as defined in subsection (1). This
343 subsection does not apply to a deed, transfer, or conveyance
344 executed before July 1, 1997.

345 ~~(9)(8)~~ Taxes imposed by this section do not apply to a
346 contract to sell the residence of an employee relocating at his



919544

593-03666B-09

347 or her employer's direction or to documents related to the
348 contract, which contract is between the employee and the
349 employer or between the employee and a person in the business of
350 providing employee relocation services. In the case of such
351 transactions, taxes apply only to the transfer of the real
352 property comprising the residence by deed that vests legal title
353 in a named grantee.

354 ~~(10)~~⁽⁹⁾ A certificate of title issued by the clerk of court
355 under s. 45.031(5) in a judicial sale of real property under an
356 order or final judgment issued pursuant to a foreclosure
357 proceeding is subject to the tax imposed by subsection (1).
358 However, the amount of the tax shall be computed based solely on
359 the amount of the highest and best bid received for the property
360 at the foreclosure sale. This subsection is intended to clarify
361 existing law and shall be applied retroactively.

362 ~~(11)~~⁽¹⁰⁾ (a) In recognition of the special escrow
363 requirements that apply to sales of timeshare interests in
364 timeshare plans pursuant to s. 721.08, tax on deeds or other
365 instruments conveying any interest in Florida real property
366 which are executed in conjunction with the sale by a developer
367 of a timeshare interest in a timeshare plan is due and payable
368 on the earlier of the date on which:

369 1. The deed or other instrument conveying the interest in
370 Florida real property is recorded; or

371 2. All of the conditions precedent to the release of the
372 purchaser's escrowed funds or other property pursuant to s.
373 721.08(2)(c) have been met, regardless of whether the developer
374 has posted an alternative assurance. Tax due pursuant to this
375 subparagraph is due and payable on or before the 20th day of the



919544

593-03666B-09

376 month following the month in which these conditions were met.

377 (b)1. If tax has been paid to the department pursuant to
378 subparagraph (a)2., and the deed or other instrument conveying
379 the interest in Florida real property with respect to which the
380 tax was paid is subsequently recorded, a notation reflecting the
381 prior payment of the tax must be made upon the deed or other
382 instrument conveying the interest in Florida real property.

383 2. Notwithstanding paragraph (a), if funds are designated
384 on a closing statement as tax collected from the purchaser, but
385 a default or cancellation occurs pursuant to s. 721.08(2)(a) or
386 (b) and no deed or other instrument conveying interest in
387 Florida real property has been recorded or delivered to the
388 purchaser, the tax must be paid to the department on or before
389 the 20th day of the month following the month in which the funds
390 are available for release from escrow unless the funds have been
391 refunded to the purchaser.

392 (c) The department may adopt rules to administer the method
393 for reporting tax due under this subsection.

394 (12) The documentary stamp tax imposed by this section
395 applies to a deed, instrument, or writing that transfers any
396 interest in real property pursuant to a short sale, as defined
397 in this subsection. The taxable consideration for a short sale
398 transfer does not include unpaid indebtedness that is forgiven
399 or released by a mortgagee holding a mortgage on the grantor's
400 interest in the property. A short sale is a purchase and sale of
401 real property in which:

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



919544

593-03666B-09

405 grantee;

406 (b) A mortgagee releases the real property from its
407 mortgage in exchange for a partial payment of less than all of
408 the outstanding mortgage indebtedness owing to the releasing
409 mortgagee;

410 (c) Neither the releasing mortgagee nor any person related
411 to the releasing mortgagee receives any interest in the property
412 transferred; and

413 (d) The releasing mortgagee is not controlled by or related
414 to the grantor or the grantee, and the grantor and the grantee
415 are not controlled by or related to each other.

416 Section 4. Effective upon this act becoming law, the
417 Department of Revenue is authorized, and all conditions are
418 deemed met, to adopt emergency rules under ss. 120.536(1) and
419 120.54(4), Florida Statutes, to implement section 3 of this act.
420 Notwithstanding any other provision of law, such emergency rules
421 shall remain effective for 6 months after the date of adoption
422 and may be renewed during the pendency of procedures to adopt
423 rules addressing the subject of the emergency rules.

424 Section 5. Section 201.031, Florida Statutes, is amended to
425 read:

426 201.031 Discretionary surtax; administration and
427 collection; Housing Assistance Loan Trust Fund; reporting
428 requirements.—

429 (1) Each county, as defined by s. 125.011(1), may levy,
430 subject to the provisions of s. 125.0167, a discretionary surtax
431 on documents taxable under the provisions of s. 201.02, except
432 that there shall be no surtax on any document pursuant to which
433 the interest granted, assigned, transferred, or conveyed



919544

593-03666B-09

434 involves only a single-family residence. ~~The Such~~ single-family
435 residence may be a condominium unit, a unit held through stock
436 ownership or membership representing a proprietary interest in a
437 corporation owning a fee or a leasehold initially in excess of
438 98 years, or a detached dwelling.

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

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

445 (a) Include in the financial report required under s.
446 218.32 information showing the revenues and the expenses of the
447 trust fund for the fiscal year.

448 (b) Adopt a housing plan every 3 years which includes
449 provisions substantially similar to the plans required in s.
450 420.9075(1).

451 (c) Have adopted an affordable housing element of its
452 comprehensive land use plan which complies with s.
453 163.3177(6)(f).

454 (d) Require by resolution that the staff or entity that has
455 administrative authority for implementing the housing plan
456 prepare and submit to the county's governing body an annual
457 report substantially similar to the annual report required in s.
458 420.9075(10).

459 Section 6. Paragraph (a) of subsection (1) of section
460 719.105, Florida Statutes, is amended to read:

461 719.105 Cooperative parcels; appurtenances; possession and
462 enjoyment.-



919544

593-03666B-09

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

464 (a) Evidence of membership, ownership of shares, or other
465 interest in the association with the full voting rights
466 appertaining thereto. Such evidence must include a legal
467 description of each dwelling unit and must be recorded in the
468 office of the clerk of the circuit court as required by s.
469 201.02(4) ~~s. 201.02(3)~~.

470 Section 7. Except as otherwise expressly provided in this
471 act and except for this section, which shall take effect upon
472 becoming a law, this act shall take effect July 1, 2009, and
473 section 3 of this act applies to transfers of real property
474 occurring on or after July 1, 2009.