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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/17/2009	.	
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The Policy and Steering Committee on Ways and Means (Gelber) recommended the following:

Senate Amendment (with title amendment)

Delete lines 216 - 281
and insert:

Section 4. (1) The Legislature finds that the Florida Supreme Court opinion in *Crescent Miami Center, LLC v. Florida Department of Revenue*, 903 So. 2d 913 (Fla. 2005), interprets s. 201.02, Florida Statutes, in a manner that permits tax avoidance inconsistent with the intent of the Legislature at the time said



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12 statute was amended in 1990.

13 (2) The Legislature finds that the District Court of
14 Appeals for the Third District of Florida opinion 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 that prevents tax avoidance consistent
18 with the intent of the Legislature at the time said statute was
19 amended in 1990.

20 (3) The Legislature intends, by this act, to prevent tax
21 avoidance through the use of artificial entities to transfer the
22 beneficial ownership of real property that changes, by a step or
23 series of steps, excluding certain entities that are used for
24 estate planning purposes.

25 Section 5. Subsection (1) of section 201.02, Florida
26 Statutes, is amended and subsections (11) through (13) are added
27 to that section to read:

28 201.02 Tax on deeds and other instruments relating to real
29 property or interests in real property.—

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



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41 but is not limited to, the money paid or agreed to be paid; the
42 discharge of an obligation; and the amount of any mortgage,
43 purchase money mortgage lien, or other encumbrance, whether or
44 not the underlying indebtedness is assumed. If the consideration
45 paid or given in exchange for real property or any interest
46 therein includes property other than money, it is presumed that
47 the consideration is equal to the fair market value of the real
48 property or interest therein.

49 (b) Except as provided in subsection (11), consideration is
50 given for real property when conveyance of an interest in real
51 property is made between a person or persons and a legal entity,
52 or between legal entities, whether or not the conveyance is
53 characterized as a mere change in the method of holding title or
54 of the legal form of ownership or the proportional beneficial
55 interests of all parties remain the same before and after the
56 conveyance. The consideration given is presumed to equal the
57 fair market value of the real property or interest therein.

58 (11) The conveyance of an interest in real property between
59 a person or persons and a legal entity or between legal entities
60 is exempt from the tax imposed by paragraph (1)(b) when the
61 conveyance is not a precursor to the transfer of the ownership
62 or control of an interest in the entity or a conveyance of the
63 real property by whatever method, means, or operation of law. If
64 within three years from the date of the conveyance exempt
65 pursuant to this section a subsequent direct or indirect
66 transfer of all or a portion of an interest in the entity or a
67 conveyance of the real property is made, the original conveyance
68 is presumed to have been a precursor to the transfer or
69 conveyance and the tax imposed by this section is due on the



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70 subsequent transfer or conveyance of that portion of the real
71 property transferred measured by the fair market value of the
72 portion of the transferred real property at the time of the
73 subsequent transfer or conveyance.

74 (12) The requirements of this section do not apply to any
75 deed, instrument, or other writing which transfers or conveys
76 real property, or an interest therein, other than that portion
77 subject to the tax imposed by paragraph (1) (a), when the
78 transfer or conveyance is by inter vivos gift for purposes of
79 estate planning, or when by reason of the death of any person,
80 such real property, or interests therein, are transferred
81 outright to, or in trust for the benefit of, any person or
82 entity.

83 (13) The documentary stamp tax imposed by this section
84 applies to a deed, instrument, or writing that transfers any
85 interest in real property pursuant to a short sale, as defined
86 in this subsection. The taxable consideration for a short sale
87 transfer does not include unpaid indebtedness that is forgiven
88 or released by a mortgagee holding a mortgage on the grantor's
89 interest in the property. A short sale is a purchase and sale of
90 real property in which:

91 (a) The grantor's interest in the real property is
92 encumbered by a mortgage or mortgages securing indebtedness in
93 an aggregate amount greater than the purchase price paid by the
94 grantee;

95 (b) A mortgagee releases the real property from its
96 mortgage in exchange for a partial payment of less than all of
97 the outstanding mortgage indebtedness owing to the releasing
98 mortgagee;



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

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

103
104 ===== T I T L E A M E N D M E N T =====

105 And the title is amended as follows:

106 Delete lines 31 - 47

107 and insert:

108
109 involving legal entities; amending s. 201.02, F.S.; creating a
110 presumption for purposes of the excise tax on documents that
111 consideration is given for deeds, instruments, or writings that
112 convey property between certain individuals and entities;
113 creating a presumption of the amount of the consideration;
114 creating an exemption from the tax for certain deeds,
115 instruments, or writings that convey property; creating a
116 presumption that the deed, instrument, or writing was taxable if
117 a subsequent conveyance of the property or grantee entity is
118 made within a certain period of time; specifying the calculation
119 of tax due on the original conveyance; providing that the tax on
120 the original deed, instrument, or writing does not apply if the
121 subsequent conveyance is the result of an inter vivos gift or
122 the death of any person; providing that the tax applies to
123 transfers involving the exchange of real property for shares of
124 stock or as a capital contribution; imposing the tax on deeds,
125 instruments, and other writings on the consideration for a
126 transfer of real property pursuant to a short sale; providing
127 that the consideration subject to the tax does not include



128 unpaid indebtedness that is forgiven by a mortgagee; defining
129 the term "short sale"; authorizing the