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LEGISLATIVE ACTION

Senate

House

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Floor: 3/RS/2R

04/24/2009 04:31 PM

Senator Gelber moved the following:

Senate Amendment (with title amendment)

Delete lines 223 - 320

and insert:

Section 3. (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 the statute was amended in 1990.

(2) The Legislature finds that the opinion of the District Court of Appeal for the Third District of Florida in Crescent



950276

13 Miami Center, LLC v. Florida Department of Revenue, 857 So. 2d
14 904 (Fla. 3d D.C.A. 2003), interprets s. 201.02, Florida
15 Statutes, in a manner that prevents tax avoidance consistent
16 with the intent of the Legislature at the time the statute was
17 amended in 1990.

18 (3) The Legislature recognizes that the Supreme Court's
19 opinion in Crescent is limited to the facts of the case and
20 accepts the court's interpretation of s. 201.02, Florida
21 Statutes, that no consideration exists when owners of real
22 property unencumbered by a mortgage convey an interest in such
23 property to an artificial entity whose ownership is identical to
24 the ownership of the real property before conveyance. The
25 Legislature expressly rejects any application of the court's
26 interpretation where the facts are not comparable to the facts
27 in Crescent. However, because the Supreme Court's
28 interpretation, combined with other settled law regarding the
29 application of s. 201.02, Florida Statutes, allows for the tax-
30 free transfer of ownership interests in real property from one
31 owner to another through the use of artificial entities, it is
32 the Legislature's intent by this act to impose the documentary
33 stamp tax when the beneficial ownership of real property is
34 transferred to a new owner or owners by the use of techniques
35 that apply the Supreme Court's decision in Crescent in
36 combination with respect to transfers of ownership of, or
37 distributions from, artificial entities.

38 Section 4. Subsection (1) of section 201.02, Florida
39 Statutes, is amended, and subsection (11) is added to that
40 section, to read:

41 201.02 Tax on deeds and other instruments relating to real



950276

42 property or interests in real property.-

43 (1)(a) On deeds, instruments, or writings whereby any
44 lands, tenements, or other real property, or any interest
45 therein, shall be granted, assigned, transferred, or otherwise
46 conveyed to, or vested in, the purchaser or any other person by
47 his or her direction, on each \$100 of the consideration therefor
48 the tax shall be 70 cents. When the full amount of the
49 consideration for the execution, assignment, transfer, or
50 conveyance is not shown in the face of such deed, instrument,
51 document, or writing, the tax shall be at the rate of 70 cents
52 for each \$100 or fractional part thereof of the consideration
53 therefor. For purposes of this section, consideration includes,
54 but is not limited to, the money paid or agreed to be paid; the
55 discharge of an obligation; and the amount of any mortgage,
56 purchase money mortgage lien, or other encumbrance, whether or
57 not the underlying indebtedness is assumed. If the consideration
58 paid or given in exchange for real property or any interest
59 therein includes property other than money, it is presumed that
60 the consideration is equal to the fair market value of the real
61 property or interest therein.

62 (b)1. For purposes of this paragraph the term:

63 a. "Conduit entity" means an entity that is not a natural
64 person to which real property is conveyed without full
65 consideration, or a successor entity.

66 b. "Full consideration" means the consideration that would
67 be paid in an arm's length transaction between unrelated
68 parties.

69 2. When an ownership interest in real property is conveyed
70 to a conduit entity and an ownership interest in the conduit



950276

71 entity is subsequently transferred for consideration within 3
72 years of such conveyance, tax is imposed each time an interest
73 in the conduit entity is transferred for consideration at the
74 rate of 70 cents for each \$100 or fraction thereof of the
75 consideration paid or given in exchange for the ownership
76 interest in the conduit entity.

77 3. When the ownership interest in the conduit entity being
78 transferred includes assets other than the real property
79 conveyed to the conduit entity, the tax on the transfer of the
80 ownership interests in the conduit entity shall be prorated
81 based on the percentage the value of such real property
82 represents of the total value of all assets owned by the conduit
83 entity.

84 4. The gift of an ownership interest in a conduit entity is
85 not subject to tax to the extent there is no consideration.

86 5. The purpose of this paragraph is to impose the
87 documentary stamp tax on the transfer for consideration of a
88 beneficial interest in real property. The provisions of this
89 paragraph are to be construed liberally to effectuate this
90 purpose.

91 (11) The documentary stamp tax imposed by this section
92 applies to a deed, instrument, or writing that transfers any
93 interest in real property pursuant to a short sale, as defined
94 in this subsection. The taxable consideration for a short sale
95 transfer does not include unpaid indebtedness that is forgiven
96 or released by a mortgagee holding a mortgage on the grantor's
97 interest in the property. A short sale is a purchase and sale of
98 real property in which:

99 (a) The grantor's interest in the real property is



950276

100 encumbered by a mortgage or mortgages securing indebtedness in
 101 an aggregate amount greater than the purchase price paid by the
 102 grantee;

103 (b) A mortgagee releases the real property from its
 104 mortgage in exchange for a partial payment of less than all of
 105 the outstanding mortgage indebtedness owing to the releasing
 106 mortgagee;

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

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

111 Section 5. The amendments to subsections (1) and (11) of s.
 112 201.02, Florida Statutes, made by this act and

114 ===== T I T L E A M E N D M E N T =====

115 And the title is amended as follows:

116 Delete lines 30 - 48

117 and insert:

118 involving legal entities; amending s. 201.02, F.S.; defining
 119 terms; imposing the tax on certain transfers of a conduit
 120 entity; providing for the apportionment of the consideration for
 121 an interest in a conduit entity between real property interests
 122 and other assets; exempting from the tax property transferred as
 123 a gift to the extent there is no consideration; providing
 124 legislative intent; imposing the tax on