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LEGISLATIVE ACTION

Senate

House

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Floor: WD/2R

04/24/2009 04:29 PM

Senator Altman 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



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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 that prevents tax avoidance consistent
17 with the intent of the Legislature at the time the statute was
18 amended in 1990.

19 (3) The Legislature recognizes that the Supreme Court's
20 opinion in *Crescent* is limited to the facts of the case and
21 accepts the court's interpretation of s. 201.02, Florida
22 Statutes, that no consideration exists when owners of real
23 property unencumbered by a mortgage convey an interest in such
24 property to an artificial entity whose ownership is identical to
25 the ownership of the real property before conveyance. The
26 Legislature expressly rejects any application of the court's
27 interpretation where the facts are not identical to the facts in
28 *Crescent* and finds that rule 12B-4.013(7), (8), and (10),
29 Florida Administrative Code, which was premised on the enactment
30 of chapter 90-132, s. 7, Laws of Florida, but repealed by the
31 Department of Revenue in 2007, reflects the Legislature's intent
32 in adopting the 1990 amendments to s. 201.02, Florida Statutes,
33 in such situations. However, because the Supreme Court's
34 interpretation, combined with other settled law regarding the
35 application of s. 201.02, Florida Statutes, allows for the tax-
36 free transfer of ownership interests in real property from one
37 owner to another through the use of artificial entities, it is
38 the Legislature's intent by this act to impose the documentary
39 stamp tax when the beneficial ownership of real property is
40 transferred to a new owner or owners by the use of techniques
41 that apply the Supreme Court's decision in *Crescent* in



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42 combination with respect to transfers of ownership of, or
43 distributions from, artificial entities.

44 Section 4. Subsection (1) of section 201.02, Florida
45 Statutes, is amended, and subsection (11) is added to that
46 section, to read:

47 201.02 Tax on deeds and other instruments relating to real
48 property or interests in real property.-

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

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

69 a. "Conduit entity" means an entity that is not a natural
70 person to which real property is conveyed without full



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71 consideration or a successor entity.

72 b. "Full consideration" means the consideration that would
73 be paid in an arm's length transaction between unrelated
74 parties.

75 2. If an ownership interest in real property is conveyed to
76 a conduit entity and an ownership interest in the conduit entity
77 is subsequently transferred for consideration within 3 years of
78 such conveyance, tax is imposed each time an interest in the
79 conduit entity is transferred for consideration at the rate of
80 70 cents for each \$100 or fraction thereof of the consideration
81 paid or given in exchange for the ownership interest in the
82 conduit entity.

83 3. If the ownership interest in the conduit entity being
84 transferred includes assets other than the real property
85 conveyed to the conduit entity, the tax shall be prorated based
86 on the percentage the value of such real property represents of
87 the total value of all assets owned by the conduit entity.

88 4. If the real property is transferred as a gift and is not
89 encumbered by any mortgage, no tax is due. If the real property
90 is transferred as a gift and is encumbered by a mortgage, tax is
91 due on the amount due on the mortgage.

92 5. The purpose of this paragraph is to impose the
93 documentary stamp tax on the transfer for consideration of a
94 beneficial interest in real property. The provisions of this
95 paragraph are to be construed liberally to effectuate this
96 purpose.

97 (11) The documentary stamp tax imposed by this section
98 applies to a deed, instrument, or writing that transfers any
99 interest in real property pursuant to a short sale, as defined



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100 in this subsection. The taxable consideration for a short sale
 101 transfer does not include unpaid indebtedness that is forgiven
 102 or released by a mortgagee holding a mortgage on the grantor's
 103 interest in the property. A short sale is a purchase and sale of
 104 real property in which:

105 (a) The grantor's interest in the real property is
 106 encumbered by a mortgage or mortgages securing indebtedness in
 107 an aggregate amount greater than the purchase price paid by the
 108 grantee;

109 (b) A mortgagee releases the real property from its
 110 mortgage in exchange for a partial payment of less than all of
 111 the outstanding mortgage indebtedness owing to the releasing
 112 mortgagee;

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

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

117 Section 5. The amendments to subsections (1) and (11) of s.
 118 201.02, Florida Statutes, made by this act and

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

121 And the title is amended as follows:

122 Delete lines 30 - 48

123 and insert:

124 involving legal entities; amending s. 201.02, F.S.; defining
 125 terms; imposing the tax on deeds, instruments, and other
 126 writings to certain transfers of a conduit entity; providing for
 127 the apportionment of the consideration for an interest in a
 128 conduit entity between real property interests and other assets;



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129 exempting from the tax property transferred as a gift, unless
130 the property is encumbered by a mortgage; providing legislative
131 intent; imposing the tax on deeds,