

By the Committees on Finance and Tax; and Judiciary; and
Senators Lawson and Gelber

593-04396B-09

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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
28 Legislature; providing legislative intent to reverse a
29 judicial opinion relating to the application of the

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30 excise tax on documents to certain transactions
31 involving legal entities; amending s. 201.02, F.S.;
32 providing that the excise tax on documents applies to
33 transfers involving the exchange of real property for
34 shares of stock or as a capital contribution; imposing
35 the tax on deeds, instruments, and other writings on
36 the consideration for a transfer of real property
37 pursuant to a short sale; providing that the
38 consideration subject to the tax does not include
39 unpaid indebtedness that is forgiven by a mortgagee;
40 defining the term "short sale"; directing the
41 Department of Revenue to readopt rules relating to the
42 application of the excise tax on documents to
43 transfers of real property involving a legal entity;
44 providing intent that the statutory changes relating
45 to the application of the excise tax on documents for
46 transfers involving legal entities are to be
47 clarifying and remedial in nature; authorizing the
48 Department of Revenue to adopt emergency rules
49 relating to short sales; amending s. 201.031, F.S.;
50 expanding requirements for counties levying the
51 discretionary surtax to include housing plan,
52 affordable housing element, and annual reporting
53 requirements; amending s. 719.105, F.S.; conforming a
54 cross-reference; providing for application of
55 specified provisions of the act; providing effective
56 dates.

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58 Be It Enacted by the Legislature of the State of Florida:

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

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 Sections 1 and 2 of chapter 83-220, Laws of Florida, as amended by this act, are repealed effective October 1, 2031 ~~2011~~.

Section 2. Section 125.0167, Florida Statutes, is amended to read:

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

(1) Pursuant to the provisions of s. 201.031, the governing authority in each county, as defined by s. 125.011(1), is authorized to levy a discretionary surtax on documents for the purpose of establishing and financing a Housing Assistance Loan Trust Fund to assist in the financing of construction, rehabilitation, or purchase of housing for low-income and moderate-income families. No less than 50 percent of the funds used in each county to provide such housing assistance shall be for the benefit of low-income families. For the purpose of this section, "low-income family" means a family whose income does not exceed 80 percent of the median income for the area, and "moderate-income family" means a family whose income is in excess of 80 percent but less than 140 percent of the median income for the area. For purposes of this section, the term "housing" is not limited to single-family, detached dwellings. The rate of the surtax shall not exceed the rate of 45 cents for each \$100 or fractional part thereof of the consideration

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88 therefor. Such surtax shall apply only to those documents
89 taxable under s. 201.02, except that there shall be no surtax on
90 any document pursuant to which the interest granted, assigned,
91 transferred, or conveyed involves only a single-family
92 residence. Such single-family residence may be a condominium
93 unit, a unit held through stock ownership or membership
94 representing a proprietary interest in a corporation owning a
95 fee or a leasehold initially in excess of 98 years, or a
96 detached dwelling.

97 (2) The levy of the discretionary surtax and the creation
98 of a Housing Assistance Loan Trust Fund shall be by ordinance
99 which shall set forth the policies and procedures of the
100 assistance program. The ordinance shall be proposed at a regular
101 meeting of the governing authority at least 2 weeks prior to
102 formal adoption. Formal adoption shall not be effective unless
103 approved on final vote by a majority of the total membership of
104 the governing authority. The ordinance shall not take effect
105 until 90 days after formal adoption.

106 (3) The county shall deposit revenues from the
107 discretionary surtax in the Housing Assistance Loan Trust Fund
108 of the county, except that a portion of such revenues may be
109 deposited into the Home Investment Trust Fund of the county as
110 defined by and created pursuant to the requirements of federal
111 law. The county shall use the revenues only to help finance the
112 construction, rehabilitation, or purchase of housing for low-
113 income families and moderate-income families, to pay necessary
114 costs of collection and enforcement of the surtax, and to fund
115 any local matching contributions required pursuant to federal
116 law. For purposes of this section, authorized uses of the

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117 revenues include, but are not limited to, providing funds for
118 first and second mortgages and acquiring property for the
119 purpose of forming housing cooperatives. Special consideration
120 shall be given toward using the revenues in the neighborhood
121 economic development programs of community development
122 corporations. No more than 50 percent of the revenues collected
123 each year pursuant to this section may be used to help finance
124 new construction as provided herein. The proceeds of the surtax
125 shall not be used for rent subsidies or grants.

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

130 (5) (a) Notwithstanding the provisions of subsection (3), of
131 the discretionary surtax revenues collected by the Department of
132 Revenue remaining after any deduction for administrative costs
133 as provided in subsection (4), no less than 35 percent shall be
134 used to provide homeownership assistance for low-income and
135 moderate-income families, and no less than 35 percent shall be
136 used for construction, rehabilitation, and purchase of rental
137 housing units. The remaining amount may be allocated to provide
138 for homeownership assistance or rental housing units, at the
139 discretion of the county. Any funds allocated for homeownership
140 assistance or rental housing units which are not committed at
141 the end of the fiscal year shall be available for homeownership
142 assistance or construction, rehabilitation, and purchase of
143 rental housing units in subsequent years.

144 (b) For purposes of this subsection, the term
145 "homeownership assistance" means assisting low-income and

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146 moderate-income families in purchasing a home as their primary
147 residence, including, but not limited to, reducing the cost of
148 the home with below-market construction financing, the amount of
149 down payment and closing costs paid by the borrower, or the
150 mortgage payment to an affordable amount for the purchaser or
151 using any other financial assistance measure set forth in s.
152 420.5088.

153 (6) Rehabilitation of housing owned by a recipient
154 government may be authorized only after a determination approved
155 by a majority of the governing body that no other sources of
156 funds are available.

157 (7) (a) The governing body of each county as defined in s.
158 125.011(1) may, by county ordinance and pursuant to procedures
159 and requirements provided by such ordinance, create a housing
160 choice assistance voucher program.

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

162 1. "Housing choice assistance voucher" means the document
163 used to access assistance paid by the county from the
164 discretionary surtax balance in the Housing Assistance Trust
165 Fund to a prospective purchaser of a single-family residence,
166 which must be the purchaser's homestead.

167 2. "Purchasing employer" means a business or business
168 entity that has acquired real property within the county and
169 paid the surtax due as a result of the acquisition of that
170 property pursuant to this section.

171 (c) Housing choice assistance vouchers shall be used for
172 down payment assistance for the purchase of a single-family
173 residence by low-income or moderate-income persons within the
174 county and within a 5-mile radius of the purchasing employer who

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175 are:

176 1. Actively employed by the purchasing employer or by a
177 business entity directly affiliated with the purchasing
178 employer.

179 2. Prequalified for a mortgage loan by a certified lending
180 institution.

181 (d) Upon payment of the discretionary surtax pursuant to
182 this section, the purchasing employer may file for an allocation
183 for housing choice assistance vouchers from the county in an
184 amount not to exceed 50 percent of the amount of the
185 discretionary surtax paid. The purchasing employer shall
186 distribute the allocation to employees in the form of housing
187 choice assistance vouchers pursuant to rules and procedures
188 established for the program.

189 (e) Any housing choice assistance voucher allocation not
190 distributed to employees and redeemed by an employee within 1
191 year after the date the discretionary surtax is paid may not be
192 used for housing choice assistance vouchers under this
193 subsection.

194 (f) Any housing assistance paid pursuant to the housing
195 choice assistance voucher program shall be included in the
196 calculation determining the percentage of discretionary surtax
197 funds used for homeownership purposes during the year in which
198 the surtax funds for such purposes are expended.

199 (8) By June 30, 2012, and every 5 years thereafter, the
200 Office of Program Policy Analysis and Government Accountability
201 shall review the discretionary surtax program operated by
202 counties under this section and shall provide a report to the
203 President of the Senate and the Speaker of the House of

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204 Representatives.

205 Section 3. (1) The Legislature finds that the Florida
206 Supreme Court opinion in *Crescent Miami Canter, LLC v. Florida*
207 *Department of Revenue*, 903 So. 2d 913 (Fla. 2005) interprets s.
208 201.02, Florida Statutes, in a manner inconsistent with the
209 intent of the Legislature at the time that statute was amended
210 in 1990.

211 (2) The Legislature finds that the opinion of the District
212 Court of Appeal for the Third District of Florida in *Crescent*
213 *Miami Center, LLC v. Florida Department of Revenue*, 857 So. 2d
214 904 (Fla. 3d D.C.A. 2003), interprets s. 201.02, Florida
215 Statutes, in a manner consistent with the intent of the
216 Legislature.

217 (3) The Legislature finds that the administrative rules
218 adopted by the department premised on the enactment of s. 7,
219 chapter 90-132, Laws of Florida, correctly interpret s. 201.02,
220 Florida Statutes, in a manner consistent with the intent of the
221 Legislature.

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

226 Section 4. Subsection (1) of section 201.02, Florida
227 Statutes, is amended, and subsection (11) is added that section,
228 to read:

229 201.02 Tax on deeds and other instruments relating to real
230 property or interests in real property.—

231 (1) On deeds, instruments, or writings whereby any lands,
232 tenements, or other real property, or any interest therein,

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233 shall be granted, assigned, transferred, or otherwise conveyed
234 to, or vested in, the purchaser or any other person by his or
235 her direction, on each \$100 of the consideration therefor the
236 tax shall be 70 cents. When the full amount of the consideration
237 for the execution, assignment, transfer, or conveyance is not
238 shown in the face of such deed, instrument, document, or
239 writing, the tax shall be at the rate of 70 cents for each \$100
240 or fractional part thereof of the consideration therefor. For
241 purposes of this section, consideration includes, but is not
242 limited to, the money paid or agreed to be paid; the discharge
243 of an obligation; ~~and~~ the amount of any mortgage, purchase money
244 mortgage lien, or other encumbrance, whether or not the
245 underlying indebtedness is assumed; and conveyance of real
246 property to a corporation in exchange for shares of its capital
247 stock, or as a contribution to the capital of a corporation. If
248 the consideration paid or given in exchange for real property or
249 any interest therein includes property other than money, it is
250 presumed that the consideration is equal to the fair market
251 value of the real property or interest therein.

252 (11) The documentary stamp tax imposed by this section
253 applies to a deed, instrument, or writing that transfers any
254 interest in real property pursuant to a short sale, as defined
255 in this subsection. The taxable consideration for a short sale
256 transfer does not include unpaid indebtedness that is forgiven
257 or released by a mortgagee holding a mortgage on the grantor's
258 interest in the property. A short sale is a purchase and sale of
259 real property in which:

260 (a) The grantor's interest in the real property is
261 encumbered by a mortgage or mortgages securing indebtedness in

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262 an aggregate amount greater than the purchase price paid by the
263 grantee;

264 (b) A mortgagee releases the real property from its
265 mortgage in exchange for a partial payment of less than all of
266 the outstanding mortgage indebtedness owing to the releasing
267 mortgagee;

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

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

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

277 Section 6. The amendment to subsection (1) of section
278 201.02, Florida Statutes, made by this act and the provisions of
279 sections 3 and 5 of this act are intended to be clarifying and
280 remedial in nature, but do not provide a basis for assessments
281 of tax, or refunds of tax, for periods before July 1, 2009.

282 Section 7. Effective upon this act becoming a law, the
283 Department of Revenue is authorized, and all conditions are
284 deemed met, to adopt emergency rules under ss. 120.536(1) and
285 120.54(4), Florida Statutes, to implement section 4 of this act
286 relating to short sales. Notwithstanding any other provision of
287 law, such emergency rules shall remain effective for 6 months
288 after the date of adoption and may be renewed during the
289 pendency of procedures to adopt rules addressing the subject of
290 the emergency rules.

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291 Section 8. Section 201.031, Florida Statutes, is amended to
292 read:

293 201.031 Discretionary surtax; administration and
294 collection; Housing Assistance Loan Trust Fund; reporting
295 requirements.—

296 (1) Each county, as defined by s. 125.011(1), may levy,
297 subject to the provisions of s. 125.0167, a discretionary surtax
298 on documents taxable under the provisions of s. 201.02, except
299 that there shall be no surtax on any document pursuant to which
300 the interest granted, assigned, transferred, or conveyed
301 involves only a single-family residence. The ~~Such~~ single-family
302 residence may be a condominium unit, a unit held through stock
303 ownership or membership representing a proprietary interest in a
304 corporation owning a fee or a leasehold initially in excess of
305 98 years, or a detached dwelling.

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

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

312 (a) Include in the financial report required under s.
313 218.32 information showing the revenues and the expenses of the
314 trust fund for the fiscal year.

315 (b) Adopt a housing plan every 3 years which includes
316 provisions substantially similar to the plans required in s.
317 420.9075(1).

318 (c) Have adopted an affordable housing element of its
319 comprehensive land use plan which complies with s.

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320 163.3177(6)(f).

321 (d) Require by resolution that the staff or entity that has
322 administrative authority for implementing the housing plan
323 prepare and submit to the county's governing body an annual
324 report substantially similar to the annual report required in s.
325 420.9075(10).

326 Section 9. Paragraph (a) of subsection (1) of section
327 719.105, Florida Statutes, is amended to read:

328 719.105 Cooperative parcels; appurtenances; possession and
329 enjoyment.—

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

331 (a) Evidence of membership, ownership of shares, or other
332 interest in the association with the full voting rights
333 appertaining thereto. Such evidence must include a legal
334 description of each dwelling unit and must be recorded in the
335 office of the clerk of the circuit court as required by s.
336 201.02(4) ~~s. 201.02(3)~~.

337 Section 10. Except as otherwise expressly provided in this
338 act and except for this section, which shall take effect upon
339 becoming a law, this act shall take effect July 1, 2009, and
340 section 3 of this act applies to transfers of real property
341 occurring on or after July 1, 2009.