

1 A bill to be entitled
2 An act relating to the discretionary surtax on documents;
3 amending s. 3, ch. 83-220, Laws of Florida, as amended;
4 extending a future repeal date of provisions authorizing
5 counties to levy a discretionary surtax on documents;
6 amending s. 125.0167, F.S.; limiting the percentage of
7 surtax revenues that may be used for administrative costs;
8 specifying a minimum amount of surtax revenues to be used
9 for housing for certain low-income and moderate-income
10 families; requiring an affirmative vote of a local
11 government governing body to rehabilitate certain
12 governmentally owned housing; authorizing certain counties
13 to create by ordinance a housing choice assistance voucher
14 program for the purpose of down payment assistance;
15 providing definitions; providing eligibility requirements
16 for such vouchers; authorizing purchasing employers to
17 file for allocations for such vouchers; limiting
18 allocations; requiring distribution of allocations to
19 employees in the form of such vouchers; prohibiting use of
20 allocations for such vouchers if not awarded within a
21 certain period after certain documentary stamps taxes are
22 collected; requiring the Office of Program Policy Analysis
23 and Government Accountability to conduct a continuing
24 review of the discretionary surtax program operated by
25 counties; requiring reports to the Legislature; amending
26 s. 201.02, F.S.; revising criteria determining liability
27 for payment of the tax; providing that the consideration
28 for certain transfers of interests in real property does

29 | not include any change in value of certain ownership
 30 | interests in such property; specifying a holding period
 31 | limitation on such exclusion for certain transfers;
 32 | providing criteria for the treatment and taxation of such
 33 | consideration; providing a limitation on the cumulative
 34 | amount of such consideration; providing for proration of
 35 | such consideration and a basis for such proration;
 36 | limiting the taxability of certain portions of prorated
 37 | consideration; providing a requirement for payment of the
 38 | tax on such transferred ownership interests; amending s.
 39 | 201.031, F.S.; expanding requirements for counties levying
 40 | the discretionary surtax to include housing plan,
 41 | affordable housing element, and annual reporting
 42 | requirements; authorizing the Department of Revenue to
 43 | adopt rules; providing for application; providing an
 44 | effective date.

45 |
 46 | Be It Enacted by the Legislature of the State of Florida:
 47 |

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

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

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

57 | 125.0167 Discretionary surtax on documents; adoption;
58 | application of revenue.--

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

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

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

112 new construction as provided herein. The proceeds of the surtax
113 shall not be used for rent subsidies or grants.

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

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

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

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

147 (6) Rehabilitation of housing owned by a recipient
148 government may be authorized only after a determination approved
149 by a majority of the governing body that no other sources of
150 funds are available.

151 (7) (a) The governing body of each county as defined in s.
152 125.011(1) may, by county ordinance and pursuant to procedures
153 and requirements provided by such ordinance, create a housing
154 choice assistance voucher program.

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

156 1. "Housing choice assistance voucher" means the document
157 used to access assistance paid by the county from the
158 discretionary surtax balance in the Housing Assistance Trust
159 Fund to a prospective purchaser of a single-family residence
160 which must be the purchaser's homestead.

161 2. "Purchasing employer" means a business or business
162 entity that has acquired real property within the county and
163 paid the surtax due as a result of the acquisition of that
164 property pursuant to this section.

165 (c) Housing choice assistance vouchers shall be used for
166 down payment assistance for the purchase of a single-family
167 residence by low-income or moderate-income persons within the

168 county and within a 5-mile radius of the purchasing employer who
169 are:

170 1. Actively employed by the purchasing employer or by a
171 business entity directly affiliated with the purchasing
172 employer.

173 2. Prequalified for a mortgage loan by a certified lending
174 institution.

175 (d) Upon payment of the discretionary surtax pursuant to
176 this section, the purchasing employer may file for an allocation
177 for housing choice assistance vouchers from the county in an
178 amount not to exceed 50 percent of the amount of the
179 discretionary surtax paid. The purchasing employer shall
180 distribute the allocation to employees in the form of housing
181 choice assistance vouchers pursuant to rules and procedures
182 established for the program.

183 (e) Any housing choice assistance voucher allocation not
184 distributed to employees and redeemed by an employee within 1
185 year after the date the discretionary surtax is paid may not be
186 used for housing choice assistance vouchers under this
187 subsection.

188 (f) Any housing assistance paid pursuant to the housing
189 choice assistance voucher program shall be included in the
190 calculation determining the percentage of discretionary surtax
191 funds used for homeownership purposes during the year in which
192 the surtax funds for such purposes are expended.

193 (8) By June 30, 2012, and every 5 years thereafter, the
194 Office of Program Policy Analysis and Government Accountability
195 shall review the discretionary surtax program operated by

196 counties under this section and shall provide a report to the
 197 President of the Senate and the Speaker of the House of
 198 Representatives.

199 Section 3. Subsection (1) of section 201.02, Florida
 200 Statutes, is amended, and subsections (11) and (12) are added to
 201 that section, to read:

202 201.02 Tax on deeds and other instruments relating to real
 203 property or interests in real property.--

204 (1) On deeds, instruments, documents, or writings whereby
 205 any lands, tenements, or other real property, or any interest
 206 therein, shall be granted, assigned, transferred, or otherwise
 207 conveyed to, or vested in, the purchaser or any other person by
 208 his or her direction, on each \$100 of the consideration therefor
 209 the tax shall be 70 cents. When the full amount of the
 210 consideration for the execution, assignment, transfer, or
 211 conveyance is not shown in the face of such deed, instrument,
 212 document, or writing, the tax shall be at the rate of 70 cents
 213 for each \$100 or fractional part thereof of the consideration
 214 therefor. For purposes of this section, consideration includes,
 215 but is not limited to, the money paid or agreed to be paid; the
 216 discharge of an obligation; ~~and~~ the amount of any mortgage,
 217 purchase money mortgage lien, or other encumbrance, whether or
 218 not the underlying indebtedness is assumed; and any
 219 consideration given in exchange for a direct or indirect
 220 ownership interest in a grantee entity within the holding period
 221 as set forth in subsection (12). If the consideration paid or
 222 given in exchange for real property or any interest therein
 223 includes property other than money, it is presumed that the

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224 consideration is equal to the fair market value of the real
225 property or interest therein.

226 (11) If a deed, instrument, document, or writing grants,
227 assigns, transfers, or conveys any interest in real property
228 from a grantor that is a corporation, partnership, limited
229 liability company, or other business entity to one or more
230 grantees that wholly or partially own such grantor entity,
231 whether directly or indirectly through another intermediate
232 entity or entities, to the extent such interest in real property
233 received by such a grantee is in the same proportion as the
234 grantee's direct or indirect ownership interest in the grantor
235 entity, the consideration for such transfer for purposes of this
236 section shall not be deemed to include any change in the value
237 of the grantee's ownership interest in the grantor entity or in
238 any intermediate entity resulting from such transfer.

239 (12) (a) If a deed, instrument, document, or writing
240 grants, assigns, transfers, or conveys any interest in real
241 property from one or more grantors to a grantee that is a
242 corporation, partnership, limited liability company, or other
243 business entity that is wholly or partially owned by the grantor
244 or grantors, whether directly or indirectly through another
245 intermediate entity or entities, to the extent the interest in
246 real property transferred by such a grantor is in the same
247 proportion as the grantor's ownership interest in the grantee
248 entity, the consideration for such transfer for purposes of this
249 section shall not be deemed to include any change in the value
250 of the grantor's ownership interest in the grantee entity or in
251 any intermediate entity resulting from such transfer to the

252 extent the grantor continues to own directly or indirectly the
 253 same percentage of the ownership interests in the grantee entity
 254 for a holding period ending on the earlier of:

255 1. The date that is 1 year after the transfer of such
 256 interest in real property to the grantee entity; or

257 2. The date that the grantee entity no longer owns any
 258 interest in such real property, whether directly or indirectly
 259 through another intermediate entity or entities.

260 (b) Upon the transfer for consideration of all or any
 261 portion of the direct or indirect ownership interest of such a
 262 grantor in the grantee entity to a purchaser other than the
 263 grantor within the holding period set forth in paragraph (a),
 264 whether by sale, assignment, merger, exchange, consolidation,
 265 conversion, or otherwise, the consideration given for the
 266 transferred ownership interest shall be deemed to have been
 267 exchanged for the previous transfer of the interest in real
 268 property to the grantee entity and the tax imposed by subsection
 269 (1) shall apply to the previous transfer of the interest in real
 270 property to the grantee entity based on such consideration. The
 271 direct or indirect ownership interests in a grantee entity
 272 described in this subsection shall not include any shares or
 273 similar equity interests dealt in or traded on securities
 274 exchanges or in securities markets.

275 (c) The cumulative amount of all such consideration under
 276 this subsection shall not in any event exceed the fair market
 277 value of the transferred real property interest at the time of
 278 the transfer of the ownership interest in the grantee entity,
 279 less any consideration on which tax was paid.

280 (d) Upon the transfer of such direct or indirect ownership
 281 interest in a grantee entity that owns assets other than such
 282 real property interest, the consideration described in this
 283 subsection shall be prorated based on the fair market value of
 284 the real property interest and the fair market value of the
 285 other assets at the time of such transfer of the ownership
 286 interest in the grantee entity, and only the portion of such
 287 consideration prorated to the real property interest shall be
 288 subject to the tax under subsection (1).

289 (e) The tax payable as set forth in this subsection shall
 290 be paid prior to the 20th day of the month following the
 291 transfer of the ownership interest.

292 Section 4. Section 201.031, Florida Statutes, is amended
 293 to read:

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

297 (1) Each county, as defined by s. 125.011(1), may levy,
 298 subject to the provisions of s. 125.0167, a discretionary surtax
 299 on documents taxable under the provisions of s. 201.02, except
 300 that there shall be no surtax on any document pursuant to which
 301 the interest granted, assigned, transferred, or conveyed
 302 involves only a single-family residence. The ~~Such~~ single-family
 303 residence may be a condominium unit, a unit held through stock
 304 ownership or membership representing a proprietary interest in a
 305 corporation owning a fee or a leasehold initially in excess of
 306 98 years, or a detached dwelling.

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

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

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

316 (b) Adopt a housing plan every 3 years that includes
 317 provisions substantially similar to the plans required in s.
 318 420.9075(1).

319 (c) Have adopted an affordable housing element of its
 320 comprehensive land use plan that complies with s.
 321 163.3177(6)(f).

322 (d) Require by resolution that the staff or entity that
 323 has administrative authority for implementing the housing plan
 324 prepare and submit to the county's governing body an annual
 325 report substantially similar to the annual report required in s.
 326 420.9075(10).

327 Section 5. The Department of Revenue may adopt any rules
 328 necessary to implement and administer this act.

329 Section 6. This act shall take effect July 1, 2009, and
 330 the amendment to s. 201.02, Florida Statutes, made by this act
 331 shall apply to transfers of property for which the first
 332 transfer to an artificial entity occurs after such date.