

By the Committee on Judiciary and Senator Bennett

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1 A bill to be entitled
2 An act relating to the excise tax on documents;
3 amending s. 201.02, F.S.; imposing the tax on deeds,
4 instruments, and other writings on the consideration
5 for a transfer of real property pursuant to a short
6 sale; providing that the consideration subject to the
7 tax does not include unpaid indebtedness that is
8 forgiven by a mortgagee; defining the term "short
9 sale"; providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. Section 201.02, Florida Statutes, is amended to
14 read:

15 201.02 Tax on deeds and other instruments relating to real
16 property or interests in real property.—

17 (1) On deeds, instruments, or writings whereby any lands,
18 tenements, or other real property, or any interest therein,
19 shall be granted, assigned, transferred, or otherwise conveyed
20 to, or vested in, the purchaser or any other person by his or
21 her direction, on each \$100 of the consideration therefor the
22 tax shall be 70 cents. When the full amount of the consideration
23 for the execution, assignment, transfer, or conveyance is not
24 shown in the face of such deed, instrument, document, or
25 writing, the tax shall be at the rate of 70 cents for each \$100
26 or fractional part thereof of the consideration therefor. For
27 purposes of this section, consideration includes, but is not
28 limited to, the money paid or agreed to be paid; the discharge
29 of an obligation; and the amount of any mortgage, purchase money

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30 mortgage lien, or other encumbrance, whether or not the
31 underlying indebtedness is assumed. If the consideration paid or
32 given in exchange for real property or any interest therein
33 includes property other than money, it is presumed that the
34 consideration is equal to the fair market value of the real
35 property or interest therein.

36 (2) The tax imposed by subsection (1) shall also be payable
37 upon documents by which the right is granted to a tenant-
38 stockholder to occupy an apartment in a building owned by a
39 cooperative apartment corporation or in a dwelling on real
40 property owned by any other form of cooperative association as
41 defined in s. 719.103.

42 (3) The tax imposed by subsection (2) shall be paid by the
43 purchaser, and the document recorded in the office of the clerk
44 of the circuit court as evidence of ownership.

45 (4) The tax imposed by subsection (1) shall also be payable
46 upon documents which convey or transfer, pursuant to s. 689.071,
47 any beneficial interest in lands, tenements, or other real
48 property, or any interest therein, even though such interest may
49 be designated as personal property, notwithstanding the
50 provisions of s. 689.071(6). The tax shall be paid upon
51 execution of any such document.

52 (5) All conveyances of real property to a partner from a
53 partnership which property was conveyed to the partnership after
54 July 1, 1986, are taxable if:

55 (a) The partner receiving the real property from the
56 partnership is a partner other than the partner who conveyed the
57 real property to the partnership; or

58 (b) The partner receiving the real property from the

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59 partnership is the partner who conveyed the real property to the
60 partnership and there is a mortgage debt or other debt secured
61 by such real property for which the partner was not personally
62 liable prior to conveying the real property to the partnership.
63

64 For purposes of this subsection, the value of the consideration
65 paid for the conveyance of the real property to the partner from
66 the partnership includes, but is not limited to, the amount of
67 any outstanding mortgage debt or other debt which the partner
68 pays or agrees to pay in exchange for the real property,
69 regardless of whether the partner was personally liable for the
70 debts of the partnership prior to the conveyance to the partner
71 from the partnership.

72 (6) Taxes imposed by this section shall not apply to any
73 assignment, transfer, or other disposition, or any document,
74 which arises out of a transfer of real property from a nonprofit
75 organization to the Board of Trustees of the Internal
76 Improvement Trust Fund, to any state agency, to any water
77 management district, or to any local government. For purposes of
78 this subsection, "nonprofit organization" means an organization
79 whose purpose is the preservation of natural resources and which
80 is exempt from federal income tax under s. 501(c)(3) of the
81 Internal Revenue Code. The Department of Revenue shall provide a
82 form, or a place on an existing form, for the nonprofit
83 organization to indicate its exempt status.

84 (7) Taxes imposed by this section do not apply to a deed,
85 transfer, or conveyance between spouses or former spouses
86 pursuant to an action for dissolution of their marriage wherein
87 the real property is or was their marital home or an interest

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88 therein. Taxes paid pursuant to this section shall be refunded
89 in those cases in which a deed, transfer, or conveyance occurred
90 1 year before a dissolution of marriage. This subsection applies
91 in spite of any consideration as defined in subsection (1). This
92 subsection does not apply to a deed, transfer, or conveyance
93 executed before July 1, 1997.

94 (8) Taxes imposed by this section do not apply to a
95 contract to sell the residence of an employee relocating at his
96 or her employer's direction or to documents related to the
97 contract, which contract is between the employee and the
98 employer or between the employee and a person in the business of
99 providing employee relocation services. In the case of such
100 transactions, taxes apply only to the transfer of the real
101 property comprising the residence by deed that vests legal title
102 in a named grantee.

103 (9) A certificate of title issued by the clerk of court
104 under s. 45.031(5) in a judicial sale of real property under an
105 order or final judgment issued pursuant to a foreclosure
106 proceeding is subject to the tax imposed by subsection (1).
107 However, the amount of the tax shall be computed based solely on
108 the amount of the highest and best bid received for the property
109 at the foreclosure sale. This subsection is intended to clarify
110 existing law and shall be applied retroactively.

111 (10) (a) In recognition of the special escrow requirements
112 that apply to sales of timeshare interests in timeshare plans
113 pursuant to s. 721.08, tax on deeds or other instruments
114 conveying any interest in Florida real property which are
115 executed in conjunction with the sale by a developer of a
116 timeshare interest in a timeshare plan is due and payable on the

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117 earlier of the date on which:

118 1. The deed or other instrument conveying the interest in
119 Florida real property is recorded; or

120 2. All of the conditions precedent to the release of the
121 purchaser's escrowed funds or other property pursuant to s.
122 721.08(2)(c) have been met, regardless of whether the developer
123 has posted an alternative assurance. Tax due pursuant to this
124 subparagraph is due and payable on or before the 20th day of the
125 month following the month in which these conditions were met.

126 (b)1. If tax has been paid to the department pursuant to
127 subparagraph (a)2., and the deed or other instrument conveying
128 the interest in Florida real property with respect to which the
129 tax was paid is subsequently recorded, a notation reflecting the
130 prior payment of the tax must be made upon the deed or other
131 instrument conveying the interest in Florida real property.

132 2. Notwithstanding paragraph (a), if funds are designated
133 on a closing statement as tax collected from the purchaser, but
134 a default or cancellation occurs pursuant to s. 721.08(2)(a) or
135 (b) and no deed or other instrument conveying interest in
136 Florida real property has been recorded or delivered to the
137 purchaser, the tax must be paid to the department on or before
138 the 20th day of the month following the month in which the funds
139 are available for release from escrow unless the funds have been
140 refunded to the purchaser.

141 (c) The department may adopt rules to administer the method
142 for reporting tax due under this subsection.

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

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

151 (a) The grantor's interest in the real property is
152 encumbered by a mortgage or mortgages securing indebtedness in
153 an aggregate amount greater than the purchase price paid by the
154 grantee;

155 (b) A mortgagee releases the real property from its
156 mortgage in exchange for a partial payment of less than all of
157 the outstanding mortgage indebtedness owing to the releasing
158 mortgagee;

159 (c) Neither the releasing mortgagee nor any person related
160 to the releasing mortgagee receives any interest in the property
161 transferred; and

162 (d) The releasing mortgagee is not controlled by or related
163 to the grantor or the grantee, and the grantor and the grantee
164 are not controlled by or related to each other.

165 Section 2. This act shall take effect July 1, 2009.