

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/CS/SB 1584

INTRODUCER: Finance and Tax Committee; Community Affairs Committee; and Senator Gruters

SUBJECT: Taxation of Real Property Platform Transactions

DATE: April 14, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
2.	<u>Kim</u>	<u>Babin</u>	<u>FT</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1584 limits the documentary stamp tax to the difference between the price the seller paid and the price the subsequent purchaser paid for a single-family residence or condominium, if the seller sells the property:

- To an unrelated purchaser in an arm's length transaction within 75 calendar days after the date the seller bought the property; and
- For a price that is 110 percent or less than what the seller paid for the property.

The Revenue Estimating Conference has not yet reviewed CS/CS/SB 1584. Staff estimates the bill will have a significant but indeterminate negative impact on state revenues.

The bill takes effect July 1, 2021.

II. Present Situation:

Documentary Stamp Tax

Chapter 201, F.S., levies an excise tax (called the documentary stamp tax) on documents such as deeds, stocks and bonds, notes and written obligations to pay money, mortgages, liens, and other evidences of indebtedness. The Florida Department of Revenue (DOR) administers the

provisions of that chapter,¹ including provisions governing the collection of documentary stamp taxes, which are distributed each fiscal year to the General Revenue Fund and various other trust funds.

The DOR classifies the documentary stamp taxes as two taxes imposed on different bases at different tax rates.² The first tax rate is 70 cents on each \$100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property or interest that are granted, assigned, transferred, conveyed or vested in a purchaser.³ The second tax rate is 35 cents per each \$100 of consideration, capped at \$2,450, for certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements.⁴

After certain required payments on debt service on bonds, documentary stamp taxes are deposited into various trust funds⁵ including the Land Acquisition Trust Fund, State Transportation Trust Fund, Grants and Donations Trust Fund, and the State Housing Trust Fund. All documentary stamp tax revenues, except those which are transferred to the Land Acquisition Trust Fund in compliance with the Florida Constitution, are subject to an 8 percent service charge,⁶ which is transferred to the General Revenue Fund.⁷ Additionally, the DOR is permitted to deduct the amount necessary to pay for the cost it incurs in collecting the revenues.

Miami-Dade County is authorized to charge a local surtax on documents except for those involving the sale or transfer of a single family home.⁸ The surtax must be used to fund local affordable housing plans. In Miami-Dade County the documentary stamp tax is 60 cents on each \$100, paid to the state, and a 45 cent per \$100 surtax on transactions other than those involving single family homes, paid to Miami-Dade County.

III. Effect of Proposed Changes:

The bill provides a limitation on the documentary stamp tax to the difference between the price the seller paid and the price the subsequent purchaser paid for residential property, if the seller sells the property:

- To an unrelated purchaser in an arm's length transaction within 75 calendar days after the date the seller bought the property; and
- For a price that is 110 percent or less than what the seller paid for the property.

The bill defines "residential property" as a property classified as single family or condominium for property tax assessment purposes, which is a single dwelling unit.

The bill takes effect July 1, 2021.

¹ Section 201.11, F.S.

² Florida Revenue Estimating Conference, *2020 Florida Tax Handbook*, at 77 (2020) available at: <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited April 9, 2021).

³ *Id.* See also s. 201.02(1), F.S.

⁴ *Id.*

⁵ Section 201.15, F.S.

⁶ Section 201.15, F.S.

⁷ Section 215.20, F.S.

⁸ Section 201.031, F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Art. VII, s. 18 of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet reviewed CS/CS/SB 1584. Staff estimates the bill will have a significant but indeterminate negative impact on state revenues.

B. Private Sector Impact:

Sellers and purchasers of single-family residences or condominiums whose transactions meet the bill's criteria will benefit from reduced documentary stamp taxes.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- One reading of lines 20-24 is that the tax is calculated by subtracting the seller's purchase price from the subsequent purchaser's purchase price. Adding "The consideration upon which" at the beginning of line 20 may provide clarification.
- The relating-to clause of the bill on lines 2-3 should be expanded beyond taxation of real property platform transactions.

VIII. Statutes Affected:

This bill substantially amends section 201.02 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on April 14, 2021:

The CS:

- Provides that sales by any original purchaser of real property may be eligible, rather than limiting eligibility to sales by real property platforms and their affiliated groups of corporations.
- Reduces the timeframe in which the seller must purchase and sell the property from 180 days to 75 days.
- Removes a restriction against the seller using the property for certain purposes while the seller owns it.
- Defines "residential property" and removes the definitions of "affiliated group of corporations" and "real property platform."

CS by Community Affairs on March 30, 2021:

The CS:

- Narrows the term "real property platform" to require it be a publically traded company;
- Provides that the tax exemption only applies to arm's length deals for single dwelling units;
- Provides that the tax exemption applies to sales as well as other forms of property interest transfer; and
- Otherwise clarifies the exemption without changing the substantive effect of the bill.

- B. **Amendments:**

None.