1997

Session Law 97-123

Florida Senate & House of Representatives

LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Sess. Law # 97-123	Sec. #	LOF cite
Prime Bill # H1337	Comp./Sim. Bills SB 648	

JLMC Hist. Cites	Senate	Comms. of Ref.	Senate
	House		House

COMMITTEE RECORDS

H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	√
H	F&T	97	PCB FT 97-01 (HB 1337)	19/2777	✓
			3/6 - 3/7/97	19/2776	
H	RPP	97	HB 1337 BF	19/2888	x
			4/4/97 MF (Amendment)	19/2886	✓
S	Commerce	97	SB 648 BF	18/2200	✓
			3/17/97 MF	18/2199	x
S	Ways & Means	97	SB 648 (4/23/97)	18/2278	✓
			☐ continued on reverse MF	18/2277	x

Senate/House Journals

Page #	?	Date	Page #	?	Date

Committee/Floor Tapes

H/S	c/f	Committee/subcommittee name	Date	#	Location Cite
H	c	F&T	3/6-7/97		414/1122
H	c	Real Property	4/4/97	2	414/1304
S	c	Commerce	3/17/97	2	625/786
S	c	Ways & Means	4/23/97	4	625/831

Other Documentation

Record Series Title, folder title, etc.	Location Cite

COMMITTEE RECORDS (continued)

H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	√

NOTES

- LIST
- CH 97-123 Title Page
- Passed Bill HB 1337 - History
  - HB 1337
  - Bill Analysis of PCB FT 97-01[HB 1337] (3/27/97 - Finance & Taxati
  - Bill Research of HB 1337 (4/2/97 - Real Property)
  - Bill Research of HB 1337 (4/4/97 - Real Property)
  - HB 1337 1st Engrossed
  - HB 1337 Enrolled (LOF CH 97-123)
  - Final Bill Research of HB 1337 (5/12/97 - Finance & Taxation)
- Substituted Bill SB 648 - History
  - SB 648
  - Staff Analysis of SB 648 (3/14/97 - Commerce)
  - Staff Analysis of SB 648 (4/21/97 - Ways & Means)
- Compare Bill HB 1427 - History
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- Compare Bill HB 2109 -History (see also 1998 session)
  - HB 2109
  - Bill Research of HB 2109 (4/24/97 - Finance & Taxation)
  - HB 2109 1st Engrossed
- Compare Bill SB 1544 - History
  - SB 1544
- Compare Bill SB 1868 - History
  - SB 1868

A bill to be entitled

An act relating to taxation; amending s. 199.143, F.S.; defining "residence" for purposes of provisions which specify when the nonrecurring intangible personal property tax is paid when the property subject to the mortgage, deed of trust, or other lien which secures a line of credit is the borrower's residence; amending s. 201.08, F.S., which imposes the excise tax on documents on notes and other obligations to pay money, and mortgages and other evidences of indebtedness; specifying the conditions under which a renewal of a document is taxable under said section; providing that taxability of a document shall be determined solely from the face of the document and separate documents expressly incorporated therein; specifying application of tax when multiple documents secure the same primary debt; providing that no tax imposed before the effective date of this act and not actually collected on certain documents exempted by this act shall be due with respect to such documents; specifying status of mortgages given by a taxpayer other than or in addition to the taxpayer obligated on the primary obligation or given to secure a guaranty or surety on a primary note; amending s. 201.09, F.S.; specifying conditions under which a renewal note evidencing a revolving obligation is exempt from said tax; creating s. 19 2777

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

201.091, F.S.; providing that if a document is not qualified for exemption as a renewal solely because of nonpayment of tax on a prior document, payment of the deficiency, interest, and any penalty shall allow the document to qualify for exemption; providing for administration; providing an effective date.

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

Section 1. Section 199.143, Florida Statutes, is amended to read:

199.143 Future advances.--

(1) Except as provided in subsection (3), if the mortgage, deed of trust, or other lien is recorded or executed after December 31, 1985, and secures a line of credit or otherwise secures future advances, as provided in s. 697.04, the nonrecurring tax shall initially be paid on the initial obligation secured, excluding future advances. Each time an additional amount is borrowed or a future advance is made, additional nonrecurring tax shall be paid on the amount of the advance. However, any increase in the amount of original indebtedness caused by interest accruing under an adjustable interest rate obligation having an initial interest rate adjustment interval of not less than 6 months shall be taxable as a future advance only to the extent such increase is a computable sum certain when the original indebtedness is incurred.

(2) The trustee, if a deed of trust, or the owner of the obligation, if a mortgage or other lien, making the advance shall pay the additional tax to the clerk to whom the

initial tax was paid. The clerk shall note the amount received upon the instrument, if one has been recorded, or shall otherwise give a receipt.

(3) If the property subject to the mortgage, deed of trust, or other lien which secures a line of credit is a residence of the borrower at the time the mortgage, deed of trust, or other lien is created, then the nonrecurring tax shall be paid as provided in s. 199.135 on the maximum amount of the line of credit and no further nonrecurring tax shall be due on any borrowing under the line of credit. As used in this subsection, "residence" includes only a dwelling unit that is a primary, secondary, or vacation home of the borrower, who is a natural person, and that has been primarily occupied for residential or recreational purposes at any time during the immediately preceding 1-year period by the borrower or by the borrower's spouse or children. The term excludes any dwelling that is used primarily as a rental unit. Use by a member of the borrower's immediate family for consideration is deemed rental of the dwelling unit. Notwithstanding the fact that a dwelling unit is held by a trustee, the dwelling unit shall be considered a residence of the borrower and may be used as security for a line of credit under this subsection, as long as the dwelling unit is a residence of the borrower, as defined in this subsection.

Section 2. (1) Subsections (5), (6), and (7) are added to section 201.08, Florida Statutes, 1996 Supplement, to read:

201.08 Tax on promissory or nonnegotiable notes, written obligations to pay money, or assignments of wages or other compensation; exception.--

(5) For purposes of this section, a renewal shall only include modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms. Modifications to documents which do not modify the terms of the indebtedness evidenced such as those given or recorded to correct error; modify covenants, conditions, or terms unrelated to the debt; sever a lien into separate liens; provide for additional, substitute, or further security for the indebtedness; consolidate indebtedness or collateral; add, change, or delete guarantors; or which substitute a new mortgagee or payee are not renewals and are not subject to tax pursuant to this section. If the taxable amount of a mortgage is limited by language contained in the mortgage or by the application of rules limiting the tax base when there is collateral in more than one state, then a modification which changes such limitation or tax base shall be taxable only to the extent of any increase in the limitation or tax base attributable to such modification. This subsection shall not be interpreted to exempt from taxation an original mortgage which would otherwise be subject to tax pursuant to subsection (1).

(6) Taxability of a document pursuant to this section shall be determined solely from the face of the document and any separate document expressly incorporated into the document. Taxability of a document pursuant to this section shall not be determined by reference to any separate document referenced or forming part of the same contract or obligation unless the separate document is expressly incorporated into the document. When multiple documents evidence, secure, or

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form part of the same primary debt, tax pursuant to this section shall not be imposed more than once, on the total indebtedness evidenced, notwithstanding the existence of multiple documents.

(7) A mortgage, trust deed, or security agreement filed or recorded in this state which is given by a taxpayer different than or in addition to the taxpayer obligated upon the primary note, certificate of indebtedness, or obligation, or which is given to secure a guaranty or surety of a primary note, certificate of indebtedness, or obligation, shall for purposes of this section be deemed to evidence and secure the primary note, certificate of indebtedness, or obligation, not a separate obligation, and to the extent that tax is paid on any document evidencing or securing the primary note, certificate of indebtedness, or obligation, such tax shall be paid once, notwithstanding that more than one mortgage, trust deed, or security agreement is recorded with respect to such note, certificate of indebtedness, or obligation.

(2) No tax imposed by s. 201.08, Florida Statutes, before July 1, 1997, and not actually collected on documents exempted by or otherwise not subject to tax pursuant to s. 201.08(6), Florida Statutes, as created by this act, shall be due from any person with respect to such documents.

Section 3. Subsection (1) of section 201.09, Florida Statutes, 1996 Supplement, as amended by chapter 96-395, Laws of Florida, is amended to read:

201.09 Renewal of existing promissory notes and mortgages; exemption.--

(1) When any promissory note is given in renewal of any existing promissory note, which renewal note only extends or continues the identical contractual obligations of the

original promissory note and evidences part or all of the original indebtedness evidenced thereby, not including any accumulated interest thereon and without enlargement in any way of the original contract and obligation, such renewal note shall not be subject to taxation under this chapter if such renewal note has attached to it the original promissory note with the proper notation thereon as required by s. 201.133. In order to be exempt from taxation under this section, a renewal note evidencing a term obligation shall not be executed by any person other than the original obligor and must renew and extend only the unpaid balance of the original contract and obligation. In order to be exempt from taxation under this section, a renewal note evidencing a revolving obligation shall not be executed by any person other than the original obligor and must renew and extend no more than the original face amount of the original contract and obligation.

Section 4. Section 201.091, Florida Statutes, is created to read:

201.091 Correction of prior error.--If the only reason a document is not exempt from tax pursuant to s. 201.09 is the nonpayment or underpayment of tax on the document evidencing the original contract and obligation or the original primary debt or mortgage, then payment of the tax deficiency plus interest at the current statutory rate and penalty, if any, on the prior document shall cause the renewal to qualify for the exemption. The corrective payment described in this section may be made on the original note, on the original mortgage, on any subsequent mortgage modification, or in such other manner as may be set forth in rules promulgated by the Department of Revenue. The application of this section shall not be limited by expiration of any applicable statute of limitations on assessment or collection of the omitted tax.

Section 5. This act shall take effect July 1, 1997.

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HOUSE SUMMARY

Defines "residence" for purposes of provisions which specify that the nonrecurring intangible personal property tax is paid on the maximum amount of a line of credit when it is opened if the property subject to the mortgage, deed of trust, or other lien which secures the line is the borrower's residence.

Revises provisions which impose the documentary stamp tax on notes and other obligations to pay money, and mortgages and other evidences of indebtedness. Specifies the conditions under which a renewal of a document is taxable. Provides that taxability of a document shall be determined solely from the face of the document and separate documents expressly incorporated therein. Specifies application of tax when multiple documents secure the same primary debt. Provides that no tax imposed before the effective date of the act and not actually collected on certain documents exempted by the act shall be due with respect to such documents. Specifies status of mortgages given by a taxpayer other than or in addition to the taxpayer obligated on the primary obligation or given to secure a guaranty or surety on a primary note. Specifies conditions under which a renewal note evidencing a revolving obligation is exempt from tax. Provides that if a document is not qualified for exemption as a renewal solely because of nonpayment of tax on a prior document, payment of the deficiency, interest, and any penalty shall allow the document to qualify for exemption.

Florida Legislature On-Line Sunshine

Bill By Hundreds | Bill Text | Amendments | Staff Analysis/Bill Research | Vote History | Citations

H1337: Taxation

H 1337 GENERAL BILL/1ST ENG by Finance & Taxation (FRC); Starks; (CO-SPONSORS) Arnall; Fasano; Rojas; Jacobs; Silver; Hill; Dockery; Gay; Futch; Thrasher; Flanagan; Burroughs; Bradley; King; Melvin; Crist; Culp; Roberts-Burke; Feeney; Cosgrove; Livingston; Ogles; Ritchie; Wise; Lacasa; Barreiro; Brown; Valdes; Posey; K. Pruitt; Dawson-White; Reddick; Warner; Maygarden; Brennan; Putnam; Murman; Wallace; Boyd; Edwards; Bullard; Betancourt; Fuller; Sanderson; Saunders; Bainter; Jones; Peaden; Crow; Effman; Merchant (Similar S 0648, Compare H 1427, 1ST ENG/H 2109, S 1544, S 1868)

Taxation; defines "residence" for purposes of provisions which specify when nonrecurring intangible personal property tax is paid when property subject to mortgage, deed of trust, or other lien which secures line of credit is borrower's residence; imposes excise tax on documents on notes & other obligations to pay money, & mortgages & other evidences of indebtedness, etc. Amends 199.143, 201.08,.09; creates 201.091.

EFFECTIVE DATE: 07/01/1997.

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03/11/97 HOUSE  Filed
03/13/97 HOUSE  Introduced -HJ 00191
03/24/97 HOUSE  Referred to Real Property & Probate (JC); General Government
                Appropriations -HJ 00323
03/31/97 HOUSE  On Committee agenda-- Real Property & Probate (JC), 04/04/97,
                8:00 am, 413C
04/04/97 HOUSE  Comm. Action: Unanimously Favorable with 1 amendment(s) by
                Real Property & Probate (JC) -HJ 00496
04/09/97 HOUSE  Now in General Government Appropriations -HJ 00496
04/11/97 HOUSE  Withdrawn from General Government Appropriations -HJ 00500
04/14/97 HOUSE  Pending Consent Calendar
04/16/97 HOUSE  Available for Consent Calendar
04/24/97 HOUSE  Placed on Consent Calendar; Read second time -HJ 00759;
                Amendment(s) adopted -HJ 00759; Read third time -HJ 00759;
                Passed as amended; YEAS  113  NAYS  2 -HJ 00759
04/24/97 SENATE In Messages
04/25/97 SENATE Received, referred to Commerce and Economic Opportunities;
                Ways and Means -SJ 00662
04/28/97 SENATE Withdrawn from Commerce and Economic Opportunities; Ways and
                Means -SJ 00699; Substituted for SB 648 -SJ 00699; Read
                second and third times -SJ 00699; Passed; YEAS  39  NAYS  0
                -SJ 00699
04/28/97 HOUSE  Ordered enrolled -HJ 01119
05/08/97   Signed by Officers and presented to Governor
05/24/97   Became Law without Governor's Signature; Chapter No. 97-123
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BILL TEXT: (Top)

hb1337(HTML,As Printed)

hb1337e1(HTML,As Printed)

hb1337er(HTML,As Printed)

House of Representatives
COMMITTEE INFORMATION RECORD

Committee on FINANCE AND TAXATION

Date of Meeting March 7 1997

Time 9:00 am

Place MORRIS HALL

BILL NO. PCBFT 97-01 /9 2777

FINAL ACTION: X Favorable
_____ Favorable with _____ Amendments
_____ Favorable with Committee Substitute
_____ Unfavorable

_____ Unanimous Favorable

VOTE:

YEA	MEMBER	NAY
X	ARNALL	
	COSGROVE	
X	DOCKERY	
X	FASANO	
	GELLER	
X	HILL	
X	JACOBS	
	LACASA	
	LAURENT	
	OGLES	
X	ROJAS	
X	SILVER	
	TOBIN	
X	STARKS, CHAIRMAN	

YEA	MEMBER	NAY

F PRESENT, MEMBER WOULD HAVE VOTED:

Total Yeas 8

Total Nays _____

Chair

APPEARANCE RECORD

he following persons (other than legislators) appeared before the committee during the consideration of this bill:

Name	Representing	Address
arsha Cantrell	Barnett Bank, Inc	Tallahassee, FL
ichael Fields	Nations Bank	Tallahassee, FL
rt Kiser	Equipment Leasing Association	Tallahassee, FL
ex Sanchez	Florida Baners Associaiton	Tallahassee, FL
ussell B. Hale	Florida Bankers Association	Tallahassee, FL

ote: Please indicate by an "X" any State
nployee appearing at the request of the Chair

(FILE WITH CLERK)

I-22(Revised 1997)

STORAGE NAME. pcba1.ft
DATE: March 10, 1997

HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCE & TAXATION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: PCB FT 97-01 19 2773

RELATING TO. Taxation

SPONSOR(S): Finance and Taxation Committee

STATUTE(S) AFFECTED: Sections 199 143, 201.08, 209.09, and 201 091, Florida Statutes

COMPANION BILL(S): SB 648 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCE & TAXATION YEAS 8 NAYS 0
(2)
(3)
(4)
(5)

I. SUMMARY:

The bill makes changes to the intangibles tax and documentary stamp tax provisions It provides that lines of credit secured by mortgages on the secondary or vacation homes of the borrower will be taxed in the same manner as the primary home It defines renewals as only those documents which change the terms of indebtedness by adding an obligor, increases the principal amount balance, or changes the interest rate, maturity date, or payment terms. It provides that to determine the taxable status of a document, only the document and any document expressly incorporated therein may be used. It eliminates multiple taxation when a mortgage, trust deed, or security agreement is given by a taxpayer different than or in addition to the taxpayer obligated on the primary obligation. It exempts renewal notes evidencing a revolving line of credit which is executed only by the original obligor for no more than the original face amount of the obligation. Finally, it permits taxpayers to correct errors in tax payments if the only reason a document is not exempt is due to nonpayment or underpayment of tax.

The state fiscal impact of the bill will be a negative ($0.66) million annualized for the documentary stamp tax. Negative cash impacts of ($0.43) million result in FY 1997-98 and ($0.35) million in FY 1998-99. The bill also results in a negative fiscal impact of ($1 03) million annualized and has negative cash impacts of ($0.87) million in FY 1997-98 and ($0.91) million in FY 1998-99 for the intangibles tax The bill has a negative local impact on the County Revenue Sharing Trust Fund of ($0 57) million annualized and negative cash impacts of ($0.47) in FY 1997-98 and ($0.50) in FY 1998-99.

II. SUBSTANTIVE ANALYSIS:

A PRESENT SITUATION:

Section 199 133, F.S , imposes a nonrecurring tax of 2 mills on each dollar of the just value of all notes, bonds, and other obligations for payment of money which are secured by mortgage, deed, or other lien upon real property in Florida

Section 199.143, F S , applies the nonrecurring tax to lines of credit and future advances secured by mortgages upon real property If the line of credit is secured by a mortgage on the residence of the borrower (primary home), the tax is applied to the maximum amount of the line of credit and no additional tax is due upon any future borrowing under the line of credit For example, a homeowner has a $100,000 line of credit with a bank secured by the primary residence of the homeowner. Although only $5000 is advanced at the time of the execution of the line of credit, the tax is applied to the maximum amount of the line of credit ($100,000)

If the line of credit is secured by a mortgage on any other property, the tax is applied to the original indebtedness and each time an additional amount is borrowed under the line of credit For example, a homeowner has a $100,000 line of credit with a bank secured by the homeowner's vacation home Again, only $5000 is advanced at the time of execution of the line of credit. The tax is applied to only the amount advanced ($5000) but is also applied to each future borrowing under the line of credit. After a series of borrowings and repayments, the tax on this type of line of credit may exceed the tax on the maximum amount of the line of credit.

Section 201 08, F S , imposes a tax on promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries, wages, or other compensation made, executed, delivered, sold, transferred, or assigned in the state and on each renewal of the same and on mortgages, trusts deeds, security agreements, or other evidences of indebtedness filed or recorded in this state, and for each renewal The tax is 35¢ per $100 of the indebtedness or obligation.

When there is both a mortgage, trust deed, or security agreement and a note, certificate of indebtedness, or obligation, the tax is due on the mortgage, trust deed, or security agreement at the time of recordation and a notation is made on the note, certificate of indebtedness, or obligation that the tax has been paid and the property stamps affixed on the mortgage, trust deed, or security agreement The Department of Revenue (department) also recognizes that there may be more than one document in a single transaction. Until recently, the department has taken the position that when multiple documents are involved taxability will be determined solely from the face of the document and any other document which is incorporated into the document. Recently, Computer Sales International v DOR, 666 So 2d 142 (Fla. 1st DCA 1995), was decided It held that multiple documents may be read together to form a single taxable contract An amendment or modification to one of the multiple documents could constitute a renewal. Such amendments can cause additional tax unless carefully structured or unless executed and delivered outside of the state

Currently, documentary stamp tax is imposed on multiple documents when a promissory note is made by one party and a mortgage for the promissory note is given by another party. This is because the documents evidence separate obligations. When related

borrowers cross-collateralize or cross-guaranty, then each borrower is a direct obligor on his or her own note and on the note of the related borrowers.

Section 201.09, F.S., provides exemption of renewal notes If a renewal note is executed by the same obligors and continues the identical contractual obligations without enlargement of the original obligation, it is exempt. For revolving lines of credit, one with floating principal balance, the balance is rarely fully funded on a renewal date In order to periodically renew such obligations, banking institutions either require their customers to repay documentary stamps or structure the transactions to avoid the tax. Typically, institutions require the line to be "funded up" to the original principal amount immediately before the renewal, renew the note tax free pursuant to s. 201.09, F.S., then require repayment of the amount funded Structuring the renewal in this way avoids the tax on the renewals; however, the method can result in unintended mistakes.

Currently, documents must qualify under s. 201.09, F.S., to be exempt renewals. Payment of documentary stamp tax is a prerequisite to qualify under the section There is no provision for correcting payment on a prior document, therefore, an error can have the effect of imposing tax on subsequent documents

B. EFFECT OF PROPOSED CHANGES.

Section 199.143, F.S., is amended. Lines of credit secured by mortgages on the secondary or vacation homes of the borrower will be taxed at the maximum amount of the line of credit without additional tax due at the time of each subsequent borrowing under the line of credit To receive this tax treatment, the secondary and vacation homes may not be used primarily as rental property.

Section 201 08, F.S , is amended to define a renewal to include only modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms. Other modifications to documents which do not modify the terms of the indebtedness evidenced are expressly determined not to be renewals and are not subject to the tax. These modifications include those given or recorded to correct error; modify covenants, conditions, or terms unrelated to the debt; sever a lien into separate liens; provide for additional, substitute, or further security for the indebtedness; consolidate indebtedness or collateral, add, change, or delete guarantors; or which substitute a new mortgagee or payee.

Subsection (6) is added to section 201.08, F.S., to statutorily overturn Computer Sales International v. DOR, supra The subsection provides that taxability of a document is determined solely from the face of the document and any separate document expressly incorporated into the document. This additional subsection substantially returns the determination of taxation to the law as interpreted by the department prior to Computer Sales International v. DOR, supra. Consequently, the provision is made effective July 1, 1997, and tax previously imposed but not actually collected on documents exempted by the provision is not due.

Multiple documentary stamp tax imposition is eliminated by the addition of subsection (7) which provides that a mortgage, trust deed or security agreement filed or recorded in this state which is given by a taxpayer different than or in addition to the taxpayer obligated upon the primary note or obligation, or which is given to secure a guaranty or surety of a primary note or obligation, is deemed to evidence and secure the primary note or obligation and not a separate obligation The tax paid on such obligation is to be paid once, even though more than one mortgage or other security agreement is recorded with respect to the obligation.

Section 201.09, F.S., is amended to exempt from taxation a renewal note evidencing a revolving obligation which is executed only by the original obligor and renewed or extended by no more than the original face amount of the original contract or obligation

A new s 201.091, F.S., is created to permit correcting payment of tax. If the only reason a document is not exempt from tax pursuant to s. 201 09, F.S., is the nonpayment or underpayment of tax, then correcting the error may be accomplished by payment of the correct tax plus interest and penalty.

C APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable

(2) what is the cost of such responsibility at the new level/agency?

Not applicable

(3) how is the new agency accountable to the people governed?

Not applicable

2 Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c Does the bill reduce total taxes, both rates and revenues?

The bill simplifies provisions regarding intangibles taxes and documentary stamp tax and permits individuals and organizations to correct underpayments and nonpayments of documentary stamp taxes of certain renewals. These modifications reduce taxation.

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility.

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill simplifies provisions regarding intangibles taxes and documentary stamp tax and permits individuals and organizations to correct underpayments and nonpayments of documentary stamp taxes of certain renewals. These modifications permit taxpayers additional options for transacting business in the state without incurring taxation.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5 Family Empowerment:

a. If the bill purports to provide services to families or children.

(1) Who evaluates the family's needs?

Not applicable

(2) Who makes the decisions?

Not applicable

(3) Are private alternatives permitted?

Not applicable

(4) Are families required to participate in a program?

Not applicable

(5) Are families penalized for not participating in a program?

Not applicable

b. Does the bill directly affect the legal rights and obligations between family members?

No

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable

(2) service providers?

Not applicable

(3) government employees/agencies?

Not applicable

D SECTION-BY-SECTION ANALYSIS.

Section 1 amends s. 199.143, F.S., to apply the nonrecurring tax on intangible personal property to lines of credit secured by a mortgage on a secondary or vacation home the same way such tax is applied to lines of credit secured by a mortgage on a primary home. Rather than paying the tax each time a sum certain is borrowed, the tax will be applied to the maximum amount of the line of credit, with no additional tax due each time an amount is borrowed

Section 2 amends s. 201.08, F.S., to define a renewal to include only modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms. Other modifications to documents which do not modify the terms of the indebtedness evidenced are expressly determined not to be renewals and are not subject to the tax.

Subsection (6) is added to s 201.08, F S., to statutorily overturn Computer Sales International v DOR, supra. The subsection provides that taxability of a document is determined solely from the face of the document and any separate document expressly incorporated into the document. This provision is made effective July 1, 1997, and tax previously imposed but not actually collected on documents exempted by the provision is not due.

Subsection (7) is added to s 201.08, F.S., to eliminate multiple documentary stamp tax when a mortgage, trust deed or security agreement filed or recorded in this state is given by a taxpayer different than or in addition to the taxpayer obligated upon the primary note or obligation.

Section 3 amends s. 201 09, F.S., to exempt from taxation a renewal note evidencing a revolving obligation which is executed only by the original obligor for no more than the original face amount of the original contract or obligation.

Section 4 creates a new section, s. 201.091, F S., to permit the correcting of errors in tax payments If the only reason a document is not exempt from tax pursuant to s. 201 09, F.S., is the nonpayment or underpayment of tax.

Section 5 provides an effective date of July 1, 1997.

III FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT·

A FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS·

1. Non-recurring Effects:

Revenues.	(ın millions)
General Revenue Fund	($0.16)
State Housing TF	($0.01)
Local Government Housing TF	($0.03)
CARL TF	($0.01)
Water Management TF	($0 01)
Land Acquisitıon TF	($0.02)
Total Impact	($0.24)

2 Recurring Effects·

Documentary Stamp Tax Impact:

		(in millions)	
Revenues:	Annualized	1997-98	1998-98
General Revenue Fund	($0.43)	($0.12)	($0 22)
State Housing TF	($0 03)	($0 01)	($0.02)
Local Government Housing TF	($0 06)	($0 02)	($0.04)
CARL TF	($0 04)	($0 01)	($0.02)
Water Management TF	($0.04)	($0.01)	($0.02)
Land Acquisition TF	($0.06)	($0.02)	($0.03)
Total Impact	($0.66)	($0.19)	($0.35)

Intangibles Tax Impact:

Revenues·	Annualized	1997-98	1997-98
General Revenue Fund	($1.03)	($0 87)	($0 91)

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

The bill will result in a negatıve fiscal impact of ($0.66) mıllıon annualized and negative cash impacts of ($0.43) mıllıon in FY 1997-98 and ($0.35) million in FY 1998-99 for the documentary stamp tax The bill will result in a negative fiscal impact of ($1.03) mıllıon annualized and negative cash impacts of ($0.85) mıllıon in FY 1997-98 and ($0.50) million in FY 1998-99 for the ıntangıbles tax.

Documentary Stamp Tax Impact

Revenues:	Annualized	(in millions) 1997-98	1998-98
General Revenue Fund	($0 43)	($0.28)	($0 22)
State Housing TF	($0 03)	($0.02)	($0 02)
Local Government Housing TF	($0 06)	($0.05)	($0.04)
CARL TF	($0.04)	($0 02)	($0.02)
Water Management TF	($0.04)	($0.02)	($0.02)
Land Acquisition TF	($0 06)	($0 04)	($0.03)
Total Impact	($0 66)	($0 43)	($0 35)

Intangibles Tax Impact

Revenues:	Annualized	1997-98	1997-98
General Revenue Fund	($1 03)	($0.87)	($0 91)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE·

1. Non-recurring Effects.

None

2. Recurring Effects·

Intangibles Tax Impact

Revenues:	Annualized	1997-98	1997-98
County Revenue Sharing TF	($0.57)	($0.47)	($0.50)

3. Long Run Effects Other Than Normal Growth:

Intangibles Tax Impact

Revenues:	Annualized	1997-98	1997-98
County Revenue Sharing TF	($0.57)	($0.47)	($0.50)

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits·

The bill simplifies provisions regarding intangibles taxes and documentary stamp tax and permits individuals and organizations to correct underpayments and nonpayments of documentary stamp taxes of certain renewals These modifications reduce taxation.

3. Effects on Competition, Private Enterprise and Employment Markets:

   None

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION

A APPLICABILITY OF THE MANDATES PROVISION.

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill reduces the amount of revenue of a state tax shared with counties or municipalities but does not reduce the percentage of such tax shared with counties or municipalities.

V COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES.

COMMITTEE ON FINANCE & TAXATION:

Prepared by:	Legislative Research Director.
Sharon A. Zahner	Keith G. Baker, Ph D.

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 1337 (PCB FT 97-01)

RELATING TO: Taxation

SPONSOR(S): Committee on Finance & Taxation and Representative Starks

STATUTE(S) AFFECTED: Sections 199.143, 201.08, 201.09, and 201.091, Florida Statutes

COMPANION BILL(S) SB 648 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCE & TAXATION YEAS 8 NAYS 0
(2) REAL PROPERTY & PROBATE YEAS 7 NAYS 0
(3) GENERAL GOVERNMENT APPROPRIATIONS (W/D)
(4)
(5)

I. SUMMARY:

The bill makes changes to the intangibles tax and documentary stamp tax provisions. It provides that lines of credit secured by mortgages on the secondary or vacation homes of the borrower will be taxed in the same manner as the primary home. It defines renewals as only those documents which change the terms of indebtedness by adding an obligor, increasing the principal amount balance, or changing the interest rate, maturity date, or payment terms. It provides that to determine the taxable status of a document, only the document and any document expressly incorporated therein may be used. It eliminates multiple taxation when a mortgage, trust deed, or security agreement is given by a taxpayer different than or in addition to the taxpayer obligated on the primary obligation. It exempts renewal notes evidencing a revolving line of credit which is executed only by the original obligor for no more than the original face amount of the obligation. Finally, it permits taxpayers to correct errors in tax payments if the only reason a document is not exempt is due to nonpayment or underpayment of tax.

The bill will reduce General Revenue receipts by ($0.9) million in FY 1997-98 and by ($1.1) million in FY 1998-99 State Trust funds will be reduced by ($0.1) million in both FY 1997-98 and FY 1998-99 Revenues to local governments will be reduced by ($0.5) million in FY 1997-98 and FY 1998-99

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 199.133, Florida Statutes, imposes a nonrecurring tax of 2 mills on each dollar of the just value of all notes, bonds, and other obligations for payment of money which are secured by mortgage, deed, or other lien upon real property in Florida.

Section 199.143, Florida Statutes, applies the nonrecurring tax to lines of credit and future advances secured by mortgages upon real property. If the line of credit is secured by a mortgage on the residence of the borrower (primary home), the tax is applied to the maximum amount of the line of credit and no additional tax is due upon any future borrowing under the line of credit. For example, a homeowner has a $100,000 line of credit with a bank secured by the primary residence of the homeowner. Although only $5,000 is advanced at the time of the execution of the line of credit, the tax is applied to the maximum amount of the line of credit ($100,000).

If the line of credit is secured by a mortgage on any other property, the tax is applied to the original indebtedness and each time an additional amount is borrowed under the line of credit. For example, a homeowner has a $100,000 line of credit with a bank secured by the homeowner's vacation home. Again, only $5,000 is advanced at the time of execution of the line of credit. The tax is applied to only the amount advanced ($5,000) but is also applied to each future borrowing under the line of credit After a series of borrowings and repayments, the tax on this type of line of credit may exceed the tax on the maximum amount of the line of credit.

Section 201.08, Florida Statutes, imposes a tax on promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries, wages, or other compensation made, executed, delivered, sold, transferred, or assigned in the state and on each renewal of the same and on mortgages, trusts deeds, security agreements, or other evidences of indebtedness filed or recorded in this state, and for each renewal. The tax is 35¢ per $100 of the indebtedness or obligation.

When there is both a mortgage, trust deed, or security agreement and a note, certificate of indebtedness, or obligation, the tax is due on the mortgage, trust deed, or security agreement at the time of recordation and a notation is made on the note, certificate of indebtedness, or obligation that the tax has been paid and the property stamps affixed on the mortgage, trust deed, or security agreement The Department of Revenue (department) also recognizes that there may be more than one document in a single transaction. Until recently, the department has taken the position that when multiple documents are involved taxability will be determined solely from the face of the document and any other document which is incorporated into the document. Recently, Computer Sales International v. DOR, 656 So.2d 1382 (Fla. 1st DCA 1995), rev. den. 666 So.2d 142 (Fla. 1995), was decided. It held that multiple documents may be read together to form a single taxable contract. An amendment or modification to one of the multiple documents could constitute a renewal. Such amendments can cause additional tax unless carefully structured or unless executed and delivered outside of the state.

Currently, documentary stamp tax is imposed on multiple documents when a promissory note is made by one party and a mortgage for the promissory note is given by another party This is because the documents evidence separate obligations. When related

borrowers cross-collateralize or cross-guaranty, then each borrower is a direct obligor on his or her own note and on the note of the related borrowers.

Section 201.09, Florida Statutes, provides an exemption of renewal notes. If a renewal note is executed by the same obligors and continues the identical contractual obligations without enlargement of the original obligation, it is exempt. For revolving lines of credit, one with floating principal balance, the balance is rarely fully funded on a renewal date. In order to periodically renew such obligations, banking institutions either require their customers to repay documentary stamps or structure the transactions to avoid the tax. Typically, institutions require the line to be "funded up" to the original principal amount immediately before the renewal, renew the note tax free pursuant to section 201.09, Florida Statutes, then require repayment of the amount funded. Structuring the renewal in this way avoids the tax on the renewals; however, the method can result in unintended mistakes.

Currently, documents must qualify under section 201.09, Florida Statutes, to be exempt renewals. Payment of documentary stamp tax is a prerequisite to qualify under the section. There is no provision for correcting payment on a prior document; therefore, an error can have the effect of imposing tax on subsequent documents.

B. EFFECT OF PROPOSED CHANGES:

Section 199.143, Florida Statutes, is amended. Lines of credit secured by mortgages on the secondary or vacation homes of the borrower will be taxed at the maximum amount of the line of credit without additional tax due at the time of each subsequent borrowing under the line of credit. To receive this tax treatment, the secondary and vacation homes may not be used primarily as rental property.

Section 201.08, Florida Statutes, is amended by adding a new subsection (5) to define a renewal to include only modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms Other modifications to documents which do not modify the terms of the indebtedness evidenced are expressly determined not to be renewals and are not subject to the tax. These modifications include those given or recorded to correct error; modify covenants, conditions, or terms unrelated to the debt; sever a lien into separate liens; provide for additional, substitute, or further security for the indebtedness; consolidate indebtedness or collateral; add, change, or delete guarantors; or which substitute a new mortgagee or payee.

Subsection (6) is added to section 201.08, Florida Statutes, to statutorily overturn Computer Sales International v. DOR, supra. The subsection provides that taxability of a document is determined solely from the face of the document and any separate document expressly incorporated into the document. This additional subsection substantially returns the determination of taxation to the law as interpreted by the department prior to Computer Sales International v. DOR, supra. The provision is made effective July 1, 1997, and tax previously imposed but not actually collected on documents exempted by the provision is not due.

Multiple documentary stamp tax imposition is eliminated by the addition of subsection (7) which provides that a mortgage, trust deed or security agreement filed or recorded in this state which is given by a taxpayer different than or in addition to the taxpayer obligated upon the primary note or obligation, or which is given to secure a guaranty or surety of a primary note or obligation, is deemed to evidence and secure the primary note or obligation and not a separate obligation. The tax paid on such obligation is to be paid once, even though more than one mortgage or other security agreement is recorded with respect to the obligation.

Section 201.09, Florida Statutes, is amended to exempt from taxation a renewal note evidencing a revolving obligation which is executed only by the original obligor and renewed or extended by no more than the original face amount of the original contract or obligation.

A new section 201 091, Florida Statutes, is created to permit correcting payment of tax. If the only reason a document is not exempt from tax pursuant to section 201.09, Florida Statutes, is the nonpayment or underpayment of tax, then correcting the error may be accomplished by payment of the correct tax plus interest and penalty.

C. APPLICATION OF PRINCIPLES:

1. Less Government.

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable

(2) what is the cost of such responsibility at the new level/agency?

Not applicable

(3) how is the new agency accountable to the people governed?

Not applicable

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

The bill simplifies provisions regarding intangibles taxes and documentary stamp tax and permits individuals and organizations to correct underpayments and nonpayments of documentary stamp taxes of certain renewals. These modifications reduce taxation.

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4 Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill simplifies provisions regarding intangibles taxes and documentary stamp tax and permits individuals and organizations to correct underpayments and nonpayments of documentary stamp taxes of certain renewals. These modifications permit taxpayers additional options for transacting business in the state without incurring taxation.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5 Family Empowerment:

a If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable

(2) Who makes the decisions?

Not applicable

(3) Are private alternatives permitted?

Not applicable

(4) Are families required to participate in a program?

Not applicable

(5) Are families penalized for not participating in a program?

Not applicable

b. Does the bill directly affect the legal rights and obligations between family members?

No

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable

(2) service providers?

Not applicable

(3) government employees/agencies?

Not applicable

D. SECTION-BY-SECTION ANALYSIS:

Section 1 amends section 199.143, Florida Statutes, to apply the nonrecurring tax on intangible personal property to lines of credit secured by a mortgage on a secondary or vacation home the same way such tax is applied to lines of credit secured by a mortgage on a primary home Rather than paying the tax each time a sum certain is borrowed, the tax will be applied to the maximum amount of the line of credit, with no additional tax due each time an amount is borrowed.

Section 2 amends section 201 08, Florida Statutes, adding a new subsection (5) to define a renewal to include only modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms. Other modifications to documents which do not modify the terms of the indebtedness evidenced are expressly determined not to be renewals and are not subject to the tax.

Subsection (6) is added to section 201.08, Florida Statutes, to statutorily overturn Computer Sales International v. DOR, supra. The subsection provides that taxability of a document is determined solely from the face of the document and any separate document expressly incorporated into the document. This provision is made effective July 1, 1997, and tax previously imposed but not actually collected on documents exempted by the provision is not due.

Subsection (7) is added to section 201.08, Florida Statutes, to eliminate multiple documentary stamp tax when a mortgage, trust deed or security agreement filed or recorded in this state is given by a taxpayer different than or in addition to the taxpayer obligated upon the primary note or obligation.

Section 3 amends section 201.09, Florida Statutes, to exempt from taxation a renewal note evidencing a revolving obligation which is executed only by the original obligor for no more than the original face amount of the original contract or obligation.

Section 4 creates section 201.091, Florida Statutes, to permit the correcting of errors in tax payments if the only reason a document is not exempt from tax pursuant to section 201.09, Florida Statutes, is the nonpayment or underpayment of tax.

Section 5 provides an effective date of July 1, 1997.

III FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Revenues:	(in millions)
Second Homes	
General Revenue	0.4
Renewal of lines of credit	
General Revenue	(0.2)

2. Recurring Effects:

	(in millions)	
Revenues	FY 1997-98	FY 1998-99
Second Homes		
General Revenue	$1.2	$1.0
Trust Fund	$0.4	$0.4
Local Government	$0.2	$0.2
Renewal of lines of credit		
General Revenue	($1.7)	($1.5)
Trust Fund	($0 1)	($0.1)
Local Government	($0.7)	($0.7)
Taxability determined by face of document		
General Revenue	(*)	(*)
Trust Fund	(*)	(*)
Cross collateralization		
General Revenue	($0.6)	($0.6)
Trust Fund	($0 4)	($0.4)

3. Long Run Effects Other Than Normal Growth:

   None

4. Total Revenues and Expenditures:

	FY 1997-98	FY 1998-99
General Revenue	($0.9)	($1.1)
Trust Fund	($0.1)	($0.1)
Local Government	($0.5)	($0.5)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None

2. Recurring Effects:

   See Section III. A. 2 and 4. above.

3. Long Run Effects Other Than Normal Growth:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   None

2. Direct Private Sector Benefits:

   The bill simplifies provisions regarding intangibles taxes and documentary stamp tax and permits individuals and organizations to correct underpayments and nonpayments of documentary stamp taxes of certain renewals. These modifications reduce taxation.

3. Effects on Competition, Private Enterprise and Employment Markets:

   None

D FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY·

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill reduces the amount of revenue of a state tax shared with counties or municipalities but does not reduce the percentage of such tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Real Property & Probate adopted an amendment which was later adopted by the House, conforming the bill to the SB 648. The amendment adds the words "title to" on page 3 line 20, to clarify that the trustee must have title to the dwelling unit

VII. SIGNATURES:

COMMITTEE ON FINANCE & TAXATION:

Prepared by:	Legislative Research Director:
Sharon A. Zahner	Keith G. Baker, Ph.D.

AS REVISED BY THE COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by: | Legislative Research Director:

P.K. Jameson | P.K. Jameson

FINAL RESEARCH PREPARED BY COMMITTEE ON FINANCE AND TAXATION:

Prepared by: | Legislative Research Director:

Sharon A. Zahner | Keith G. Baker, Ph.D.

STORAGE NAME: h1337.ft
DATE. March 27, 1997

HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCE & TAXATION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: PCB FT 97-01

RELATING TO: Taxation

SPONSOR(S): Finance and Taxation Committee

STATUTE(S) AFFECTED: Sections 199.143, 201.08, 209.09, and 201.091, Florida Statutes

COMPANION BILL(S): SB 648 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCE & TAXATION YEAS 8 NAYS 0
(2)
(3)
(4)
(5)

I SUMMARY:

The bill makes changes to the intangibles tax and documentary stamp tax provisions. It provides that lines of credit secured by mortgages on the secondary or vacation homes of the borrower will be taxed in the same manner as the primary home. It defines renewals as only those documents which change the terms of indebtedness by adding an obligor, increases the principal amount balance, or changes the interest rate, maturity date, or payment terms. It provides that to determine the taxable status of a document, only the document and any document expressly incorporated therein may be used. It eliminates multiple taxation when a mortgage, trust deed, or security agreement is given by a taxpayer different than or in addition to the taxpayer obligated on the primary obligation. It exempts renewal notes evidencing a revolving line of credit which is executed only by the original obligor for no more than the original face amount of the obligation. Finally, it permits taxpayers to correct errors in tax payments if the only reason a document is not exempt is due to nonpayment or underpayment of tax.

The state fiscal impact of the bill will be a negative ($0.66) million annualized for the documentary stamp tax. Negative cash impacts of ($0.43) million result in FY 1997-98 and ($0.35) million in FY 1998-99 The bill also results in a negative fiscal impact of ($1.03) million annualized and has negative cash impacts of ($0.87) million in FY 1997-98 and ($0.91) million in FY 1998-99 for the intangibles tax. The bill has a negative local impact on the County Revenue Sharing Trust Fund of ($0.57) million annualized and negative cash impacts of ($0.47) in FY 1997-98 and ($0.50) in FY 1998-99.

II. SUBSTANTIVE ANALYSIS:

A PRESENT SITUATION:

Section 199.133, F.S., imposes a nonrecurring tax of 2 mills on each dollar of the just value of all notes, bonds, and other obligations for payment of money which are secured by mortgage, deed, or other lien upon real property in Florida.

Section 199.143, F.S., applies the nonrecurring tax to lines of credit and future advances secured by mortgages upon real property. If the line of credit is secured by a mortgage on the residence of the borrower (primary home), the tax is applied to the maximum amount of the line of credit and no additional tax is due upon any future borrowing under the line of credit. For example, a homeowner has a $100,000 line of credit with a bank secured by the primary residence of the homeowner. Although only $5000 is advanced at the time of the execution of the line of credit, the tax is applied to the maximum amount of the line of credit ($100,000)

If the line of credit is secured by a mortgage on any other property, the tax is applied to the original indebtedness and each time an additional amount is borrowed under the line of credit For example, a homeowner has a $100,000 line of credit with a bank secured by the homeowner's vacation home. Again, only $5000 is advanced at the time of execution of the line of credit. The tax is applied to only the amount advanced ($5000) but is also applied to each future borrowing under the line of credit. After a series of borrowings and repayments, the tax on this type of line of credit may exceed the tax on the maximum amount of the line of credit

Section 201.08, F.S., imposes a tax on promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries, wages, or other compensation made, executed, delivered, sold, transferred, or assigned in the state and on each renewal of the same and on mortgages, trusts deeds, security agreements, or other evidences of indebtedness filed or recorded in this state, and for each renewal. The tax is 35¢ per $100 of the indebtedness or obligation.

When there is both a mortgage, trust deed, or security agreement and a note, certificate of indebtedness, or obligation, the tax is due on the mortgage, trust deed, or security agreement at the time of recordation and a notation is made on the note, certificate of indebtedness, or obligation that the tax has been paid and the property stamps affixed on the mortgage, trust deed, or security agreement The Department of Revenue (department) also recognizes that there may be more than one document in a single transaction. Until recently, the department has taken the position that when multiple documents are involved taxability will be determined solely from the face of the document and any other document which is incorporated into the document. Recently, Computer Sales International v. DOR, 666 So.2d 142 (Fla. 1st DCA 1995), was decided It held that multiple documents may be read together to form a single taxable contract. An amendment or modification to one of the multiple documents could constitute a renewal. Such amendments can cause additional tax unless carefully structured or unless executed and delivered outside of the state.

Currently, documentary stamp tax is imposed on multiple documents when a promissory note is made by one party and a mortgage for the promissory note is given by another party. This is because the documents evidence separate obligations. When related

borrowers cross-collateralize or cross-guaranty, then each borrower is a direct obligor on his or her own note and on the note of the related borrowers.

Section 201 09, F.S , provides exemption of renewal notes If a renewal note is executed by the same obligors and continues the identical contractual obligations without enlargement of the original obligation, it is exempt. For revolving lines of credit, one with floating principal balance, the balance is rarely fully funded on a renewal date. In order to periodically renew such obligations, banking institutions either require their customers to repay documentary stamps or structure the transactions to avoid the tax. Typically, institutions require the line to be "funded up" to the original principal amount immediately before the renewal, renew the note tax free pursuant to s 201.09, F.S., then require repayment of the amount funded. Structuring the renewal in this way avoids the tax on the renewals; however, the method can result in unintended mistakes.

Currently, documents must qualify under s. 201.09, F.S., to be exempt renewals. Payment of documentary stamp tax is a prerequisite to qualify under the section. There is no provision for correcting payment on a prior document; therefore, an error can have the effect of imposing tax on subsequent documents

B EFFECT OF PROPOSED CHANGES:

Section 199.143, F.S., is amended. Lines of credit secured by mortgages on the secondary or vacation homes of the borrower will be taxed at the maximum amount of the line of credit without additional tax due at the time of each subsequent borrowing under the line of credit. To receive this tax treatment, the secondary and vacation homes may not be used primarily as rental property.

Section 201.08, F.S., is amended to define a renewal to include only modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms. Other modifications to documents which do not modify the terms of the indebtedness evidenced are expressly determined not to be renewals and are not subject to the tax. These modifications include those given or recorded to correct error; modify covenants, conditions, or terms unrelated to the debt; sever a lien into separate liens; provide for additional, substitute, or further security for the indebtedness; consolidate indebtedness or collateral; add, change, or delete guarantors; or which substitute a new mortgagee or payee.

Subsection (6) is added to section 201.08, F.S., to statutorily overturn Computer Sales International v. DOR, supra. The subsection provides that taxability of a document is determined solely from the face of the document and any separate document expressly incorporated into the document. This additional subsection substantially returns the determination of taxation to the law as interpreted by the department prior to Computer Sales International v. DOR, supra. Consequently, the provision is made effective July 1, 1997, and tax previously imposed but not actually collected on documents exempted by the provision is not due.

Multiple documentary stamp tax imposition is eliminated by the addition of subsection (7) which provides that a mortgage, trust deed or security agreement filed or recorded in this state which is given by a taxpayer different than or in addition to the taxpayer obligated upon the primary note or obligation, or which is given to secure a guaranty or surety of a pnmary note or obligation, is deemed to evidence and secure the primary note or obligation and not a separate obligation. The tax paid on such obligation is to be paid once, even though more than one mortgage or other security agreement is recorded with respect to the obligation

Section 201.09, F S , is amended to exempt from taxation a renewal note evidencing a revolving obligation which is executed only by the original obligor and renewed or extended by no more than the original face amount of the original contract or obligation.

A new s. 201.091, F.S., is created to permit correcting payment of tax. If the only reason a document is not exempt from tax pursuant to s. 201.09, F S., is the nonpayment or underpayment of tax, then correcting the error may be accomplished by payment of the correct tax plus interest and penalty.

C. APPLICATION OF PRINCIPLES:

1. Less Government.

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable

(2) what is the cost of such responsibility at the new level/agency?

Not applicable

(3) how is the new agency accountable to the people governed?

Not applicable

2 Lower Taxes.

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

The bill simplifies provisions regarding intangibles taxes and documentary stamp tax and permits individuals and organizations to correct underpayments and nonpayments of documentary stamp taxes of certain renewals. These modifications reduce taxation.

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom.

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      The bill simplifies provisions regarding intangibles taxes and documentary stamp tax and permits individuals and organizations to correct underpayments and nonpayments of documentary stamp taxes of certain renewals. These modifications permit taxpayers additional options for transacting business in the state without incurring taxation.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      No

5. Family Empowerment.

   a. If the bill purports to provide services to families or children:

      (1) Who evaluates the family's needs?

          Not applicable

      (2) Who makes the decisions?

          Not applicable

      (3) Are private alternatives permitted?

          Not applicable

      (4) Are families required to participate in a program?

          Not applicable

      (5) Are families penalized for not participating in a program?

          Not applicable

   b. Does the bill directly affect the legal rights and obligations between family members?

      No

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable

(2) service providers?

Not applicable

(3) government employees/agencies?

Not applicable

D SECTION-BY-SECTION ANALYSIS

Section 1 amends s 199.143, F.S., to apply the nonrecurring tax on intangible personal property to lines of credit secured by a mortgage on a secondary or vacation home the same way such tax is applied to lines of credit secured by a mortgage on a primary home Rather than paying the tax each time a sum certain is borrowed, the tax will be applied to the maximum amount of the line of credit, with no additional tax due each time an amount is borrowed.

Section 2 amends s. 201.08, F.S., to define a renewal to include only modifications of an original document which change the terms of the indebtedness evidenced by the original document by adding one or more obligors, increasing the principal balance, or changing the interest rate, maturity date, or payment terms Other modifications to documents which do not modify the terms of the indebtedness evidenced are expressly determined not to be renewals and are not subject to the tax

Subsection (6) is added to s. 201.08, F.S., to statutorily overturn Computer Sales International v. DOR, supra. The subsection provides that taxability of a document is determined solely from the face of the document and any separate document expressly incorporated into the document. This provision is made effective July 1, 1997, and tax previously imposed but not actually collected on documents exempted by the provision is not due.

Subsection (7) is added to s. 201.08, F.S., to eliminate multiple documentary stamp tax when a mortgage, trust deed or security agreement filed or recorded in this state is given by a taxpayer different than or in addition to the taxpayer obligated upon the primary note or obligation.

Section 3 amends s. 201.09, F.S., to exempt from taxation a renewal note evidencing a revolving obligation which is executed only by the original obligor for no more than the original face amount of the original contract or obligation.

Section 4 creates a new section, s. 201.091, F.S., to permit the correcting of errors in tax payments If the only reason a document is not exempt from tax pursuant to s 201 09, F.S., is the nonpayment or underpayment of tax.

Section 5 provides an effective date of July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Revenues:	(in millions)
General Revenue Fund	($0.16)
State Housing TF	($0.01)
Local Government Housing TF	($0.03)
CARL TF	($0.01)
Water Management TF	($0 01)
Land Acquisition TF	($0.02)
Total Impact	($0.24)

2. Recurring Effects:

Documentary Stamp Tax Impact

		(in millions)	
Revenues:	Annualized	1997-98	1998-98
General Revenue Fund	($0.43)	($0.12)	($0.22)
State Housing TF	($0.03)	($0.01)	($0 02)
Local Government Housing TF	($0 06)	($0.02)	($0.04)
CARL TF	($0 04)	($0 01)	($0 02)
Water Management TF	($0 04)	($0.01)	($0 02)
Land Acquisition TF	($0 06)	($0.02)	($0.03)
Total Impact	($0.66)	($0.19)	($0.35)

Intangibles Tax Impact:

Revenues:	Annualized	1997-98	1997-98
General Revenue Fund	($1.03)	($0.87)	($0.91)

3 Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

The bill will result in a negative fiscal impact of ($0.66) million annualized and negative cash impacts of ($0.43) million in FY 1997-98 and ($0.35) million in FY 1998-99 for the documentary stamp tax. The bill will result in a negative fiscal impact of ($1.03) million annualized and negative cash impacts of ($0.85) million in FY 1997-98 and ($0.50) million in FY 1998-99 for the intangibles tax.

Documentary Stamp Tax Impact·

	(in millions)		
Revenues:	Annualized	1997-98	1998-98
General Revenue Fund	($0.43)	($0.28)	($0 22)
State Housing TF	($0 03)	($0 02)	($0.02)
Local Government Housing TF	($0 06)	($0.05)	($0.04)
CARL TF	($0.04)	($0.02)	($0.02)
Water Management TF	($0 04)	($0.02)	($0.02)
Land Acquisition TF	($0.06)	($0 04)	($0.03)
Total Impact	($0.66)	($0 43)	($0.35)

Intangibles Tax Impact

Revenues:	Annualized	1997-98	1997-98
General Revenue Fund	($1.03)	($0.87)	($0.91)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE.

1. Non-recurring Effects:

None

2. Recurring Effects·

Intangibles Tax Impact

Revenues:	Annualized	1997-98	1997-98
County Revenue Sharing TF	($0.57)	($0.47)	($0.50)

3. Long Run Effects Other Than Normal Growth.

Intangibles Tax Impact

Revenues.	Annualized	1997-98	1997-98
County Revenue Sharing TF	($0.57)	($0.47)	($0.50)

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

The bill simplifies provisions regarding intangibles taxes and documentary stamp tax and permits individuals and organizations to correct underpayments and nonpayments of documentary stamp taxes of certain renewals. These modifications reduce taxation

3 Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS.

IV CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill reduces the amount of revenue of a state tax shared with counties or municipalities but does not reduce the percentage of such tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON FINANCE & TAXATION:

Prepared by:	Legislative Research Director:
Sharon A. Zahner	Keith G. Baker, Ph D.

Amendment No. 1 (for drafter's use only)

COMMITTEE ACTION

	Y	N		Y	N
ADOPTED ___	___	___	FAILED TO ADOPT ___	___	___
ADOPTED AS AMENDED ___	___	___	WITHDRAWN ___		
ADOPTED w/o OBJECTION ___			OTHER ___		

Committee hearing bill: Real Property & Probate

Representative(s) Starks offered the following:

Amendment

On page .....3...., line(s) ...20....., of the bill after the word "that" insert: title to

19 2886

Florida Legislature On-Line Sunshine

Bill By Hundreds | Bill Text | Amendments | Staff Analysis/Bill Research | Vote History | Citations

S648: Taxation

S 648 GENERAL BILL by Ostalkiewicz; (CO-SPONSORS) Jenne; Grant; Harris; Lee; Gutman; Horne; Meadows; Dantzler; Diaz-Balart; Klein; Holzendorf; Williams; Cowin; Clary; Silver; Crist; Sullivan; McKay (Similar 1ST ENG/H 1337, Compare H 1427, 1ST ENG/H 2109, S 1544, S 1868)

Taxation; defines "residence" for purposes of provisions which specify when nonrecurring intangible personal property tax is paid when property subject to mortgage, deed of trust, or other lien which secures line of credit is borrower's residence; imposes excise tax on documents on notes & other obligations to pay money, & mortgages & other evidences of indebtedness, etc. Amends 199.143, 201.08,.09; creates 201.091.

EFFECTIVE DATE: 07/01/1997.

02/18/97	SENATE	Prefiled
03/04/97	SENATE	Introduced, referred to Commerce and Economic Opportunities; Ways and Means -SJ 00073
03/13/97	SENATE	On Committee agenda-- Commerce and Economic Opportunities, 03/17/97, 12:00 noon, Room-EL
03/17/97	SENATE	Comm. Action: Favorable with 1 amendment(s) by Commerce and Economic Opportunities -SJ 00235
03/18/97	SENATE	Now in Ways and Means -SJ 00235
04/18/97	SENATE	On Committee agenda-- Ways and Means, 04/23/97, 2:00 pm, Room-EL
04/23/97	SENATE	Comm. Action:-Favorable by Ways and Means -SJ 00584
04/24/97	SENATE	Placed on Calendar -SJ 00584
04/28/97	SENATE	Placed on Special Order Calendar -SJ 00709; Read second time -SJ 00699; Amendment(s) adopted -SJ 00699; House Bill substituted -SJ 00699; Laid on Table, Iden./Sim./Compare Bill(s) passed, refer to HB 1337 (Ch. 97-123)

BILL TEXT: (Top)

sb0648(HTML,As Printed)

AMENDMENTS: (Top)

NO AMENDMENTS AVAILABLE

STAFF ANALYSIS/BILL RESEARCH: (Top)

S0648 by cm (View As: As Printed)

S0648 by wm (View As: As Printed)

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date. March 14, 1997 Revised. 3/18/97 ______ ______ 18 2200

Subject: Taxation

	Analyst	Staff Director	Reference	Action
1.	Maclure	Austin	CM	Fav/1 amendment
2.			WM	
3.				
4				
5.				

I. Summary:

This bill amends provisions related to the imposition of nonrecurring intangible personal property taxes and excise taxes on documents in connection with certain secured lending transactions. The bill clarifies the definition of the term "residence," to include secondary and vacation homes as well as primary homes, for purposes of calculating the intangible personal property tax imposed on mortgages securing lines of credit. Three new subsections are added to the statutory section governing documentary stamp taxes on promissory notes and other similar documents: 1) describing what types of document modifications are subject to documentary stamp taxation as renewals, 2) specifying that taxability shall be determined solely from the face of the document and any documents expressly incorporated into the document, and 3) prohibiting multiple taxation of documents in those transactions in which one party is obligated under a promissory note and a different party is obligated under a mortgage for the promissory note. The provision on determining taxability based on the face of the document has the effect of overruling the decision in *Computer Sales International, Inc., v. Department of Revenue*, 656 So 2d 1382 (Fla. Dist. Ct. App. 1995), *rev. denied*, 666 So. 2d 142 (1995).

The bill provides that a renewal note evidencing a revolving line of credit may be exempt from the documentary stamp tax if it is executed by the original obligor only and if it renews no more than the original face amount of the original obligation. Lastly, the bill allows a taxpayer to pay a tax deficiency on a document evidencing an original obligation and thereafter claim the documentary stamp tax exemption available for renewals.

This bill amends the following sections of the Florida Statutes: 199.143, 201.08, and 201.09. The bill also creates s. 201.091, F.S.

II. Present Situation:

Section 199.143, F.S., imposes a nonrecurring intangible personal property tax on mortgages, deeds of trust, or other liens recorded and executed after Dec. 31, 1995, and that secure lines of credit or future advances The tax is paid on the initial indebtedness and on each subsequent advance under the line of credit. (*See* s 199.143(1), F S) If, however, the line of credit is secured by a mortgage on the borrower's residence, the tax is paid on the maximum amount of the line of credit, and no further nonrecurring tax is due on any borrowing under the line of credit (*See* s. 199.143(3), F.S)

Chapter 201, F S , provides for the imposition of an excise tax on certain documents. Specifically, this documentary stamp tax is levied on

- deeds and other documents relating to real property or interests in real property (*see* s. 201.02, F S.);
- stock certificates (*see* s. 201 05, F.S., 1996 Supplement),
- bonds, debentures, and certificates of indebtedness (*see* s. 201.07, F S.), and
- promissory or nonnegotiable notes, written obligations to pay money, or assignments of wages or other compensation (*see* s. 201 08, F.S , 1996 Supplement).

Under s. 201 08, F S., 1996 Supplement, the documentary stamp tax is imposed on promissory notes, nonnegotiable notes, written obligations to pay money, or wage assignments made, executed, delivered, sold, transferred, or assigned in the state. Tax is also imposed on the renewal of these documents. Similarly, tax is imposed on mortgages, trust deeds, security agreements, or other evidences of indebtedness that are filed or recorded in Florida, as well as on renewals of such documents. The tax rate is 35 cents on each $100 or fraction thereof of the indebtedness or obligation evidenced.

The statute provides that when there is both a mortgage, trust deed, or security agreement and a note, certificate of indebtedness, or obligation, the tax shall be paid on the mortgage, trust deed, or security agreement at the time it is recorded A notation shall be made on the note, debt certificate, or obligation that tax has been paid on the mortgage, trust deed, or security agreement. (*See* s 201.08(1), F.S., 1996 Supplement.) However, when a note is executed by one party and a mortgage on the note is given by a different party, the Department of Revenue, relying upon court decisions, imposes tax on each document.

In making a determination on the taxability of a document, the department traditionally has looked to the "four corners" of the document and any separate documents that are specifically incorporated into it. In a recent decision, however, the Florida Court of Appeals ruled that separate documents could be read together to constitute a single taxable contract. [*Computer Sales International, Inc , v Department of Revenue*, 656 So. 2d 1382 (Fla. Dist. Ct. App. 1995), *rev denied*, 666 So. 2d 142 (1995).] The decision has raised concerns in the banking community that a change to one of the documents in a multiple-document transaction could be considered a renewal and thereby subject to documentary stamp tax, even if the change does not alter the underlying obligation.

Under its administrative rules, the Department of Revenue defines a renewal as a written agreement that alters the obligation of an original note or other evidence of indebtedness, including extending, continuing, replacing, or assuming the terms of the original obligation [Rule 12B-4.052(12), F.A C.] Section 201 09, F S , 1996 Supplement, provides an exemption from the documentary stamp tax for renewals that extend or continue the identical contractual obligations, provided that: 1) documentary stamp tax was fully paid on the original note, 2) the renewal is executed only by the original obligor, and 3) the renewal renews only the current principal balance

According to representatives of the banking industry, satisfying the requirements for the renewal exemption poses logistical difficulties in the case of revolving lines of credit, for which the principal balance floats Generally, a revolving line of credit is not fully funded at the time the bank wants to renew In order to periodically renew such obligations, the bank either has to require customers to repay documentary taxes, or its has to structure the transaction in such a way as to avoid the tax. Some financial institutions have opted to temporarily "fund up" the line of credit to the original principal amount shortly before the renewal, renew tax free, and require the customer to repay the amount funded

III. Effect of Proposed Changes:

Section 199 143(3), F S , is amended to include secondary and vacation homes within the definition of a borrower's residence for the purposes of calculating the nonrecurring intangible personal property tax on mortgages and other liens securing lines of credit. The home must have been primarily occupied for residential or recreational purposes at any time during the preceding one-year period by the borrower or the borrower's spouse or children. Lines of credit secured by mortgages on such homes will be taxed on the maximum amount of the line of credit, and no further nonrecurring tax shall be due on borrowing under the line of credit. A dwelling unit held by a trustee may nonetheless be considered a borrower's residence and may be used to secure a line of credit, provided that the dwelling unit otherwise meets the section's definition of a residence Dwellings used primarily as rental units are specifically excluded from the definition of a residence.

This bill adds three new subsections to s. 201.08, F S., 1996 Supplement.

Subsection (5) is created to provide that renewals, for purposes of assessing documentary stamp taxes, shall only include modifications of an original document that change the terms of the original indebtedness by adding one or more obligors; increasing the principal balance; or changing the interest rate, maturity date, or payment terms This new subsection specifies that document modifications that do not change the terms of the indebtedness evidenced are not considered renewals and are not subject to tax Such non-renewal modifications include those to correct error; modify covenants, conditions, or terms not related to the debt; sever a lien into separate liens, provide for additional, substitute, or further security for the indebtedness; consolidate indebtedness or collateral; add, change, or delete guarantors, or which substitute a new mortgagee or payee The new subsection specifies that where a modification affects certain limitations in the original tax base, documentary stamp tax shall be due only to the extent that the modification increases the tax base

Subsection (6) is created to specify that the taxability of a document shall be determined based solely upon the face of the document and any separate document expressly incorporated into the document. This section has the effect of statutorily overruling the decision in *Computer Sales International*, 656 So. 2d at 1385, in which the court ruled that multiple documents could be read together to form a single taxable contract. The new subsection provides that documentary stamp tax shall be imposed only once in the case of multiple documents forming part of the same primary debt. The tax shall be imposed on the total indebtedness

The bill provides that taxes previously imposed but not actually collected on documents that would be exempted by subsection (6) effective July 1, 1997, shall no longer be due

Subsection (7) is created to specify that multiple documentary stamp taxation shall not be imposed on a transaction in which one obligor is subject to a mortgage, trust deed, or security agreement, and a different obligor is subject to a primary note, certificate of indebtedness, or obligation The mortgage, trust, deed, or security agreement is deemed to be evidence of and to secure the primary obligation, rather than being deemed a separate obligation. Tax paid on any document evidencing the primary obligation shall be paid once, even though more than one mortgage or other security agreement is recorded with respect to that primary obligation

Section 201.09(1), F.S., 1996 Supplement, is amended to exempt from taxation a renewal note on a revolving obligation if the renewal is not executed by anyone other than the original obligor and renews no more than the original face amount of the original obligation.

Section 201.091, F.S., is created to provide that if the sole reason that a document is not eligible for the renewal exemption in s 201.09, F.S., is because of the non-payment or under-payment of tax on the document evidencing the original obligation or the original primary debt, then payment of the tax deficiency plus interest and penalty, if any, shall enable the renewal document to qualify for the exemption. The bill provides that the application of this section shall not be limited by expiration of any applicable statute of limitations on assessment or collection of the omitted tax.

IV. Constitutional Issues:

A Municipality/County Mandates Restrictions:

None.

B Public Records/Open Meetings Issues.

None

C Trust Funds Restrictions.

None

V. Economic Impact and Fiscal Note:

A Tax/Fee Issues.

The Revenue Impact Conference estimates that the bill will result in the following revenue effects:

Doc. Stamp Tax	FY 1997-98 Cash	FY 1997-98 Annualized
State Impact (All Funds)	($0.43) million	($0 66) million

Intangibles Tax	FY 1997-98 Cash	FY 1997-98 Annualized
State Impact (General Rev)	($0.85) million	($1 0) million
Local Impact (County Rev. Sharing T.F.)	($0 57) million	($0 47) million

B Private Sector Impact:

The bill clarifies provisions related to intangibles taxes and documentary stamp taxes and, thereby, may provide lenders and borrowers with greater certainty about the potential tax implications of credit transaction and may simplify such transactions.

C Government Sector Impact.

The Department of Revenue does not anticipate the need for additional resources to administer the provisions of this bill.

VI. Technical Deficiencies:

See section VIII of this analysis for a technical amendment.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Commerce and Economic Opportunities
Makes a technical insertion of the words "title to" in a sentence in order to clarify that a trustee holds *title to* a dwelling unit, rather than holding the dwelling unit itself

Bill No. SB 648

Amendment No. 1 835248

CHAMBER ACTION

Senate		House
	:	

The Committee on Commerce and Economic Opportunities recommended the following amendment:

Senate Amendment

On page 3, line 20, after the word "that"

insert: title to

Bill No. SB 648

Amendment No. 1

CHAMBER ACTION

Senate | House

18 22cc

The Committee on Commerce and Economic Opportunities recommended the following amendment:

Senate Amendment

On page 3, line 20, after the word "that"

insert: title to

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

18 2278

Date: April 21, 1997 Revised: ________ ________ ________ ________

Subject: Taxation

	Analyst	Staff Director	Reference	Action
1	Maclure	Austin	CM	Fav/1 amendment
2	Fournier	Smith	WM	Favorable
3.				
4.				
5.				

I. Summary:

This bill amends provisions related to the imposition of nonrecurring intangible personal property taxes and excise taxes on documents in connection with certain secured lending transactions. The bill expands the definition of the term "residence," to include secondary and vacation homes as well as primary homes, for purposes of calculating the intangible personal property tax imposed on mortgages securing lines of credit. Three new subsections are added to the statutory section governing documentary stamp taxes on promissory notes and other similar documents: 1) describing what types of document modifications are subject to documentary stamp taxation as renewals, 2) specifying that taxability shall be determined solely from the face of the document and any documents expressly incorporated into the document, and 3) prohibiting multiple taxation of documents in those transactions in which one party is obligated under a promissory note and a different party is obligated under a mortgage for the promissory note. The provision on determining taxability based on the face of the document has the effect of overruling the decision in *Computer Sales International, Inc., v Department of Revenue*, 656 So. 2d 1382 (Fla. Dist. Ct. App. 1995), *rev denied*, 666 So. 2d 142 (1995).

The bill provides that a renewal note evidencing a revolving line of credit may be exempt from the documentary stamp tax if it is executed by the original obligor only and if it renews no more than the original face amount of the original obligation. Lastly, the bill allows a taxpayer to pay a tax deficiency on a document evidencing an original obligation and thereafter claim the documentary stamp tax exemption available for renewals.

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Chapter 201, F.S., provides for the imposition of an excise tax on certain documents Specifically, this documentary stamp tax is levied on:

- deeds and other documents relating to real property or interests in real property (*see* s 201.02, F.S.);
- stock certificates (*see* s. 201.05, F.S , 1996 Supplement);
- bonds, debentures, and certificates of indebtedness (*see* s. 201.07, F.S.), and
- promissory or nonnegotiable notes, written obligations to pay money, or assignments of wages or other compensation (*see* s. 201.08, F.S , 1996 Supplement).

Under s. 201.08, F.S., 1996 Supplement, the documentary stamp tax is imposed on promissory notes, nonnegotiable notes, written obligations to pay money, or wage assignments made, executed, delivered, sold, transferred, or assigned in the state. Tax is also imposed on the renewal of these documents. Similarly, tax is imposed on mortgages, trust deeds, security agreements, or other evidences of indebtedness that are filed or recorded in Florida, as well as on renewals of such documents. The tax rate is 35 cents on each $100 or fraction thereof of the indebtedness or obligation evidenced.

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In making a determination on the taxability of a document, the department traditionally has looked to the "four corners" of the document and any separate documents that are specifically incorporated into it. In a recent decision, however, the Florida Court of Appeals ruled that separate documents could be read together to constitute a single taxable contract. [*Computer Sales International, Inc., v Department of Revenue*, 656 So. 2d 1382 (Fla. Dist. Ct. App. 1995), *rev. denied*, 666 So. 2d 142 (1995).] The decision has raised concerns in the banking community that a change to one of the documents in a multiple-document transaction could be considered a renewal and thereby subject to documentary stamp tax, even if the change does not alter the underlying obligation

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III. Effect of Proposed Changes:

Section 199.143(3), F.S , is amended to include secondary and vacation homes within the definition of a borrower's residence for the purposes of calculating the nonrecurring intangible personal property tax on mortgages and other liens securing lines of credit. The home must have been primarily occupied for residential or recreational purposes at any time during the preceding one-year period by the borrower or the borrower's spouse or children. Lines of credit secured by mortgages on such homes will be taxed on the maximum amount of the line of credit, and no further nonrecurring tax shall be due on borrowing under the line of credit. A dwelling unit held by a trustee may nonetheless be considered a borrower's residence and may be used to secure a line of credit, provided that the dwelling unit otherwise meets the section's definition of a residence. Dwellings used primarily as rental units are specifically excluded from the definition of a residence.

This bill adds three new subsections to s. 201.08, F.S., 1996 Supplement.

Subsection (5) is created to provide that renewals, for purposes of assessing documentary stamp taxes, shall only include modifications of an original document that change the terms of the original indebtedness by adding one or more obligors; increasing the principal balance; or changing the interest rate, maturity date, or payment terms. This new subsection specifies that document modifications that do not change the terms of the indebtedness evidenced are not considered renewals and are not subject to tax. Such non-renewal modifications include those to correct error; modify covenants, conditions, or terms not related to the debt; sever a lien into separate liens; provide for additional, substitute, or further security for the indebtedness; consolidate indebtedness or collateral; add, change, or delete guarantors; or which substitute a new mortgagee or payee. The new subsection specifies that where a modification affects certain limitations in the original tax base, documentary stamp tax shall be due only to the extent that the modification increases the tax base.

Subsection (6) is created to specify that the taxability of a document shall be determined based solely upon the face of the document and any separate document expressly incorporated into the document. This section has the effect of statutorily overruling the decision in *Computer Sales International,* 656 So. 2d at 1385, in which the court ruled that multiple documents could be read together to form a single taxable contract. The new subsection provides that documentary stamp tax shall be imposed only once in the case of multiple documents forming part of the same primary debt. The tax shall be imposed on the total indebtedness.

The bill provides that taxes previously imposed but not actually collected on documents that would be exempted by subsection (6) effective July 1, 1997, shall no longer be due.

Subsection (7) is created to specify that multiple documentary stamp taxation shall not be imposed on a transaction in which one obligor is subject to a mortgage, trust deed, or security agreement, and a different obligor is subject to a primary note, certificate of indebtedness, or obligation. The mortgage, trust, deed, or security agreement is deemed to be evidence of and to secure the primary obligation, rather than being deemed a separate obligation Tax paid on any document evidencing the primary obligation shall be paid once, even though more than one mortgage or other security agreement is recorded with respect to that primary obligation.

Section 201.09(1), F S., 1996 Supplement, is amended to exempt from taxation a renewal note on a revolving obligation if the renewal is not executed by anyone other than the original obligor and renews no more than the original face amount of the original obligation.

Section 201.091, F.S., is created to provide that if the sole reason that a document is not eligible for the renewal exemption in s. 201.09, F.S., is because of the non-payment or under-payment of tax on the document evidencing the original obligation or the original primary debt, then payment of the tax deficiency plus interest and penalty, if any, shall enable the renewal document to qualify for the exemption. The bill provides that the application of this section shall not be limited by expiration of any applicable statute of limitations on assessment or collection of the omitted tax.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B Public Records/Open Meetings Issues.

None.

C. Trust Funds Restrictions.

None.

V. Economic Impact and Fiscal Note:

A Tax/Fee Issues:

The Revenue Impact Conference estimates that the bill will result in the following revenue effects.

	General Revenue		State Trust		Local		Total	
	1997-98	Recurring	1997-98	Recurring	1997-98	Recurring	1997-98	Recurring
Doc Stamp	(0 3)	(0 4)	(0 1)	(0 2)	0	0	(0 4)	(0.6)
Intangibles	(0 8)	(1 0)	0	0	(0 5)	(0 6)	(1 3)	(1 5)
Total	(1 1)	(1 4)	(0 1)	(0 2)	(0.5)	(0.6)	(1 7)	(2.1)

B. Private Sector Impact:

The bill clarifies provisions related to intangibles taxes and documentary stamp taxes and, thereby, may provide lenders and borrowers with greater certainty about the potential tax implications of credit transaction and may simplify such transactions.

C. Government Sector Impact:

The Department of Revenue does not anticipate the need for additional resources to administer the provisions of this bill.

VI. Technical Deficiencies:

See section VIII of this analysis for a technical amendment.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Commerce and Economic Opportunities:
Makes a technical insertion of the words "title to" in a sentence in order to clarify that a trustee holds *title to* a dwelling unit, rather than holding the dwelling unit itself.

Bill No. SB 648

Amendment No. 1 835248

CHAMBER ACTION

Senate		House
	:	

The Committee on Commerce and Economic Opportunities recommended the following amendment:

Senate Amendment

On page 3, line 20, after the word "that"

insert: title to

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 21, 1997 Revised. ______ ______ ______ ______

Subject: Taxation

	Analyst	Staff Director	Reference	Action
1	Maclure	Austin	CM	Fav/1 amendment
2.	Fournier	Smith	WM	Favorable
3				
4				
5				

I. Summary:

This bill amends provisions related to the imposition of nonrecurring intangible personal property taxes and excise taxes on documents in connection with certain secured lending transactions The bill expands the definition of the term "residence," to include secondary and vacation homes as well as primary homes, for purposes of calculating the intangible personal property tax imposed on mortgages securing lines of credit. Three new subsections are added to the statutory section governing documentary stamp taxes on promissory notes and other similar documents: 1) describing what types of document modifications are subject to documentary stamp taxation as renewals, 2) specifying that taxability shall be determined solely from the face of the document and any documents expressly incorporated into the document, and 3) prohibiting multiple taxation of documents in those transactions in which one party is obligated under a promissory note and a different party is obligated under a mortgage for the promissory note. The provision on determining taxability based on the face of the document has the effect of overruling the decision in *Computer Sales International, Inc., v. Department of Revenue*, 656 So. 2d 1382 (Fla. Dist. Ct. App. 1995), *rev. denied*, 666 So. 2d 142 (1995)

The bill provides that a renewal note evidencing a revolving line of credit may be exempt from the documentary stamp tax if it is executed by the original obligor only and if it renews no more than the original face amount of the original obligation Lastly, the bill allows a taxpayer to pay a tax deficiency on a document evidencing an original obligation and thereafter claim the documentary stamp tax exemption available for renewals.

This bill amends the following sections of the Florida Statutes: 199.143, 201.08, and 201 09. The bill also creates section 201.091, Florida Statutes.

II. Present Situation:

Section 199.143, F.S., imposes a nonrecurring intangible personal property tax on mortgages, deeds of trust, or other liens recorded and executed after Dec. 31, 1995, and that secure lines of credit or future advances. The tax is paid on the initial indebtedness and on each subsequent advance under the line of credit. (*See* s. 199 143(1), F.S.) If, however, the line of credit is secured by a mortgage on the borrower's residence, the tax is paid on the maximum amount of the line of credit, and no further nonrecurring tax is due on any borrowing under the line of credit. (*See* s. 199.143(3), F.S.)

Chapter 201, F.S., provides for the imposition of an excise tax on certain documents. Specifically, this documentary stamp tax is levied on:

- deeds and other documents relating to real property or interests in real property (*see* s. 201.02, F.S.);
- stock certificates (*see* s. 201.05, F.S., 1996 Supplement);
- bonds, debentures, and certificates of indebtedness (*see* s. 201.07, F.S.); and
- promissory or nonnegotiable notes, written obligations to pay money, or assignments of wages or other compensation (*see* s. 201 08, F.S., 1996 Supplement).

Under s 201 08, F S., 1996 Supplement, the documentary stamp tax is imposed on promissory notes, nonnegotiable notes, written obligations to pay money, or wage assignments made, executed, delivered, sold, transferred, or assigned in the state. Tax is also imposed on the renewal of these documents Similarly, tax is imposed on mortgages, trust deeds, security agreements, or other evidences of indebtedness that are filed or recorded in Florida, as well as on renewals of such documents. The tax rate is 35 cents on each $100 or fraction thereof of the indebtedness or obligation evidenced.

The statute provides that when there is both a mortgage, trust deed, or security agreement and a note, certificate of indebtedness, or obligation, the tax shall be paid on the mortgage, trust deed, or security agreement at the time it is recorded. A notation shall be made on the note, debt certificate, or obligation that tax has been paid on the mortgage, trust deed, or security agreement. (*See* s. 201.08(1), F.S., 1996 Supplement.) However, when a note is executed by one party and a mortgage on the note is given by a different party, the Department of Revenue, relying upon court decisions, imposes tax on each document.

In making a determination on the taxability of a document, the department traditionally has looked to the "four corners" of the document and any separate documents that are specifically incorporated into it In a recent decision, however, the Florida Court of Appeals ruled that separate documents could be read together to constitute a single taxable contract. [*Computer Sales International, Inc., v. Department of Revenue*, 656 So. 2d 1382 (Fla. Dist. Ct. App. 1995), *rev denied*, 666 So. 2d 142 (1995)] The decision has raised concerns in the banking community that a change to one of the documents in a multiple-document transaction could be considered a renewal and thereby subject to documentary stamp tax, even if the change does not alter the underlying obligation.

Under its administrative rules, the Department of Revenue defines a renewal as a written agreement that alters the obligation of an original note or other evidence of indebtedness, including extending, continuing, replacing, or assuming the terms of the original obligation. [Rule 12B-4.052(12), F.A.C.] Section 201.09, F.S., 1996 Supplement, provides an exemption from the documentary stamp tax for renewals that extend or continue the identical contractual obligations, provided that: 1) documentary stamp tax was fully paid on the original note, 2) the renewal is executed only by the original obligor, and 3) the renewal renews only the current principal balance.

According to representatives of the banking industry, satisfying the requirements for the renewal exemption poses logistical difficulties in the case of revolving lines of credit, for which the principal balance floats Generally, a revolving line of credit is not fully funded at the time the bank wants to renew. In order to periodically renew such obligations, the bank either has to require customers to repay documentary taxes, or its has to structure the transaction in such a way as to avoid the tax Some financial institutions have opted to temporarily "fund up" the line of credit to the original principal amount shortly before the renewal, renew tax free, and require the customer to repay the amount funded

III. Effect of Proposed Changes:

Section 199 143(3), F.S., is amended to include secondary and vacation homes within the definition of a borrower's residence for the purposes of calculating the nonrecurring intangible personal property tax on mortgages and other liens securing lines of credit. The home must have been primarily occupied for residential or recreational purposes at any time during the preceding one-year period by the borrower or the borrower's spouse or children. Lines of credit secured by mortgages on such homes will be taxed on the maximum amount of the line of credit, and no further nonrecurring tax shall be due on borrowing under the line of credit. A dwelling unit held by a trustee may nonetheless be considered a borrower's residence and may be used to secure a line of credit, provided that the dwelling unit otherwise meets the section's definition of a residence. Dwellings used primarily as rental units are specifically excluded from the definition of a residence.

This bill adds three new subsections to s. 201.08, F S , 1996 Supplement:

Subsection (5) is created to provide that renewals, for purposes of assessing documentary stamp taxes, shall only include modifications of an original document that change the terms of the original indebtedness by adding one or more obligors, increasing the principal balance; or changing the interest rate, maturity date, or payment terms. This new subsection specifies that document modifications that do not change the terms of the indebtedness evidenced are not considered renewals and are not subject to tax. Such non-renewal modifications include those to correct error; modify covenants, conditions, or terms not related to the debt; sever a lien into separate liens; provide for additional, substitute, or further security for the indebtedness; consolidate indebtedness or collateral; add, change, or delete guarantors; or which substitute a new mortgagee or payee The new subsection specifies that where a modification affects certain limitations in the original tax base, documentary stamp tax shall be due only to the extent that the modification increases the tax base.

Subsection (6) is created to specify that the taxability of a document shall be determined based solely upon the face of the document and any separate document expressly incorporated into the document This section has the effect of statutorily overruling the decision in *Computer Sales International,* 656 So 2d at 1385, in which the court ruled that multiple documents could be read together to form a single taxable contract. The new subsection provides that documentary stamp tax shall be imposed only once in the case of multiple documents forming part of the same primary debt. The tax shall be imposed on the total indebtedness

The bill provides that taxes previously imposed but not actually collected on documents that would be exempted by subsection (6) effective July 1, 1997, shall no longer be due.

Subsection (7) is created to specify that multiple documentary stamp taxation shall not be imposed on a transaction in which one obligor is subject to a mortgage, trust deed, or security agreement, and a different obligor is subject to a primary note, certificate of indebtedness, or obligation. The mortgage, trust, deed, or security agreement is deemed to be evidence of and to secure the primary obligation, rather than being deemed a separate obligation. Tax paid on any document evidencing the primary obligation shall be paid once, even though more than one mortgage or other security agreement is recorded with respect to that primary obligation.

Section 201 09(1), F.S., 1996 Supplement, is amended to exempt from taxation a renewal note on a revolving obligation if the renewal is not executed by anyone other than the original obligor and renews no more than the original face amount of the original obligation.

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IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None

C. Trust Funds Restrictions:

None

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Impact Conference estimates that the bill will result in the following revenue effects:

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VIII. Amendments:

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