TAX: Documentary Stamp
ISSUE: EXEMPT TRANSFERS PURSUANT TO CERTAIN FORECLOSURES FROM TAX
BILL NUMBER(S): House PCB JO 01 04 / SB 1632
SPONSOR(S): HOUSE JUDICIAL OVERSIGHT
MONTH/YEAR COLLECTION IMPACT BEGINS: July 1, 2001
DATE OF ANALYSIS: March 20, 2001

SECTION 1: NARRATIVE

a. Current Law:

Doc stamp taxes are due when property is transferred pursuant to a foreclosure. Tax is based on bid price plus the value of any mortgages or liens on the property which survive the foreclosure. Since second mortgages do not survive the foreclosure of a first mortgage, tax on the foreclosure of first mortgages is paid only on the bid price. For foreclosed second mortgages, tax is due on the bid price plus the outstanding value of the first mortgage. A recent *qui tam* lawsuit identified a number of foreclosed second mortgages, most by condominium or homeowners associations, on which the documentary stamp tax had only been paid on the bid price. The lawsuit would require the remainder of the tax not paid on the value of the first mortgage to be paid to the state plus additional penalties to be paid to those bringing the suit.

b. Proposed Change:

The proposed language would state that in the case of foreclosures, the documentary stamp tax is due on the amount of the highest and best bid received at the foreclosure sale. For first mortgages, this would not change current law. For second mortgages, this would reduce the tax to the bid price and no longer include the value of outstanding mortgages or liens.

SECTION 2: DESCRIPTION OF DATA & SOURCES

The data available on this issue comes from the *qui tam* lawsuit. The suit identified approximately 1400 foreclosed second mortgages, including information on the year foreclosed and an estimate of additional tax due based on the first mortgage amount.

SECTION 3: ASSUMPTIONS & RATIONALE

See attached sheet.

SECTION 4: METHODOLOGY

See attached sheet. The sheet represents the middle estimate. The high estimate assumes that the percentage of mortgages on which tax will be received represented by the *qui tam* lawsuit (see step 4.) is 20%. The low estimate assumes 50%.

SECTION 5: IMPACT SUMMARY (DETAILS ATTACHED)

State Impact - All Funds	FY 2001-02 Annualized	FY 20001-02 Cash	FY 20002-03 Cash
High	-$1.0 m	-$1.7 m	-$1.0 m
Middle	-$.6 m	-$1.2 m	-$.6 m
Low	-$.4 m	-$1.0 m	-$.4 m

Consensus Estimate Adopted: 3/30/01	FY 2001-02 Annualized	FY 2001-02 Cash	FY 2002-03 Cash
General Revenue	(.4)	(.8)	(.4)
Various Trust	(.2)	(.4)	(.2)
Total State Impact	(.6)	(1.2)	(.6)
Total Local Impact			
Total Impact	(.6)	(.6)	(.6)

Proposed Bill to Exempt Amount of Primary Mortgages in Foreclosures of Second Mortgages

Estimate of Fiscal Impact

1	A qui tam lawsuit covers approximately 1400 mortgages in counties with a total population of 12.3 million. This is about one mortgage per 8,750 people.		
2	Extending this ratio to the state, there would be about 1,740 mortgages included.		1740
3	Based on a sample of the mortgages included in the lawsuit, they are from a total of 7 years. The distribution across years is:	1994	2.3%
		1995	16.8%
		1996	25.4%
		1997	28.9%
		1998	12.7%
		1999	10.4%
		2000	3.5%
4	The peak year of 1997 represents 503 mortgages.		
5	Assume that the mortgages identified in 4. above represented the following portion of the total number of such mortgages on which tax will be paid in the future:		
6	Total such foreclosed second mortgages in state:		1,524
7	The average tax due on mortgages from the suit was:	$	450
8	The identified tax was based on the full mortgage amount. Portion assumed paid off at time of foreclosure (and therefore not taxable):		
9	Taxes due on identified mortgages:	$	
10	Annual total tax due on such foreclosed mortgages:		$ 548,607
11	While tax was not collected on second mortgage foreclosures by a large number of condo and homeowner associations, the state had identified such mortgages as taxable and did collect tax from many. Additional portion assumed currently paying tax that would be exempted by the proposed bill:		10%
12	Estimated annual tax loss from proposed bill:	$	603,468
13	Non-recurring tax loss from foreclosed mortgages identified in lawsuit:	$	504,000
14	The wording of the proposed bill would require refunds to be paid for all exempt documents on which tax had been paid during the previous 5 years. It is assumed that refunds would be requested of half the taxes paid over the last 5 years. Non-recurring loss:	$	137,152