

TAX: Documentary Stamp Tax
ISSUE: TAX CAP ON UNSECURED LOANS
BILL NUMBER(S): HB 123, SB 462
SPONSOR(S): REP. BAXLEY, SEN. PRUITT
MONTH/YEAR COLLECTION IMPACT BEGINS: July, 2002
DATE OF ANALYSIS: 1/15/02

SECTION 1: NARRATIVE

a. **Current Law:** Subsection 201.08(1), F.S., states that promissory notes, nonnegotiable notes, written obligations to pay money which are made, executed, delivered, sold, transferred, or assigned in Florida are subject to a documentary stamp tax of 35 cents per \$100 of the indebtedness or obligation. This subsection also subjects mortgages, trust deeds, security agreements or other evidences of indebtedness filed or recorded in Florida to the 35 cents per \$100 tax. When there is both a mortgage, trust deed, security agreement or other evidence of indebtedness and a promissory note, tax is only paid on the mortgage, etc. Thus, both secured and unsecured promissory notes are currently subject to the documentary stamp tax.

Under current administration, if proper tax has been paid on an unsecured note executed in Florida and that note is later secured by a mortgage or lien recorded in the state, no additional documentary stamp tax is due.

b. **Proposed Change:** The proposed bill would place a cap on the amount of documentary stamp tax that would be due on promissory notes, etc., of \$2450. Such notes with tax due in excess of this cap would pay the \$2450. For notes, etc., secured by mortgages, trust deeds and other evidence of indebtedness, tax would still be paid on the indebtedness secured by the mortgage, trust deed or other evidence.

SECTION 2: DESCRIPTION OF DATA & SOURCES

Little data exists on the number of unsecured notes closed out-of-state or even on such notes closed in-state. One source of data is the DR-228 forms filed by unregistered taxpayers. Unregistered taxpayers cannot have more than four taxable transactions per month. While tax on stock certificates and some transfers of real property and unrecorded deeds is paid on this form, the great majority of tax is thought to be from unsecured notes. Tax on unsecured notes is also paid by registered taxpayers, but on a different form with insufficient detail to isolate the unsecured notes. In fiscal 1999-00, \$1.1 million was collected from unregistered taxpayers on 3,224 transactions. Of these forms, all but 80 were for tax amounts less than \$2,450. However, the 80 transactions paying over \$2,450 remitted just under \$500,000. In fiscal 2000-01, \$737,000 was collected from unregistered taxpayers on 1,920 transactions. Of these, all but 60 were for tax amounts less than \$2,450. These 60, however, remitted tax of \$337,000. As stated above, it is not certain all these monies came from unsecured loans.

The issue in this proposal was addressed by the REC in 1997. The analysis from that impact conference is attached. At that time, an attempt was made to make reasonable assumptions about possible numbers and amounts of unsecured loans greater than \$2,450 to arrive at an estimate. It was estimated that such loans totaled about \$800 million and numbered between 250 and 1,000. The worksheet proposed revenue estimates between a high revenue loss of \$2.5 million and a low revenue loss of \$0.3 million. The Conference adopted an estimate of negative indeterminate.

SECTION 3: ASSUMPTIONS & RATIONALE

The following should be considered:

1. One way to look at the proposed threshold is as representing the cost of avoiding the tax. Loans will remain instate until the tax due exceeds the cost of avoiding the tax.
2. What data is available indicates that there are at least some unsecured loans on which considerably more than \$2,450 in tax is due which are currently being closed in state. This information, however, is from unregistered taxpayers not making up a large portion of the revenue.
3. At the \$2,450 cap level, for each 40 loans that would no longer be closed out-of-state and would pay taxes in Florida equal to the \$2,450, \$100,000 in additional revenue would be raised.

A concern with the bill as currently drafted is that unsecured loans on which tax has been paid at the \$2,450 cap could subsequently have a mortgage or other evidence of indebtedness filed or recorded in Florida. Since the proper tax has already been paid on the unsecured loan, this may allow the transaction to avoid further taxation. While this interpretation is arguable under the wording of the current statute, it is possible that the law could be construed in such a way.

SECTION 4: METHODOLOGY

High Estimate: As discussed above, a potential interpretation of the bill exists that would require no additional tax to be due if the proper capped tax had been paid on unsecured notes that were later secured by liens or mortgages recorded in Florida. Based on this possibility, the high estimate assumes that approximately 25% of the current 35-cent/\$100 documentary stamp tax could be avoided. This would represent an approximately \$100 million negative revenue impact to the state.

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Low Estimate: With little data to go on, this estimate is based in large part on assumptions about the current extent of tax avoidance, assumptions about the threshold is for triggering avoidance, and considerations that the threshold is not the same for everyone and that some tax currently being paid would be lost even if the enacted cap applied to the majority of taxpayers. The low estimate below assumes that the tax cap in the proposed bill of \$2,450, or a \$700,000 loan amount at the current tax rate, approximates the avoidance threshold for a majority of the taxpayers. It further assumes that the positive revenue impact from \$2,450 worth of taxes being paid on those loans formerly closed out-of-state but closed in the state under the bill is approximately offset by the loss of revenue from taxpayers with higher thresholds than that set in the bill (i.e., those currently paying more than \$2,450) who would pay less tax under the bill.

SECTION 5: IMPACT SUMMARY (DETAILS ATTACHED)

State Impact - All Funds	FY 2002-03 Annualized	FY 2002-03 Cash	FY 2003-04 Cash
High	-\$100 million	-\$91.7 million	-\$105 million
Middle			
Low	+-	+-	+-

Consensus Estimate Adopted: 1/17/02	FY 2002-03 Annualized	FY 2002-03 Cash	FY 2003-04 Cash
General Revenue			
Total State Impact			
Total Local Impact			
Total Impact	0	0	0