

CHAPTER 97-123

House Bill No. 1337

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. 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 title to 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 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.

Became a law without the Governor's approval May 24, 1997.

Filed in Office Secretary of State May 23, 1997.