Briefings

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A report by the Center for a Competitive Florida

Modernizing Florida Taxes:
Capping the Documentary Stamp Tax on Unsecured Loans Would Limit the Practice of Closing Such Transactions Out of State

When Florida businesses are involved in a large loan -- say $3 million -- they have a choice to make. They can execute that loan in Florida and pay over $10,000 in documentary stamp taxes or travel to another state like Georgia and legally avoid paying the tax. Now what do you think these businesses usually do?

If you guessed "hit the road" you are right. Florida TaxWatch has heard from Florida businesses that routinely execute large loans outside of Florida -- particularly in Georgia to legally avoid paying the tax. This is a purely sound business decision where the cost of traveling outside the state is less than the added tax costs. Travel to another state is not even necessary. It is also common for the parties involved to take a boat far enough off the Florida coast to be in international waters and execute the loan there. This too makes the transaction free from the Florida documentary stamp tax.

The result is that Florida seldom receives any tax revenue from these loans and businesses have the added cost of travel and extra record-keeping.

Legislation before the 2001 Florida Legislature would help change this situation. House Bill 1009 and Senate 2140 would place a cap on documentary stamp taxes on certain obligations, removing an incentive for individuals and businesses to take their financial transactions out of Florida.

Florida has an excise tax called a documentary stamp tax on many financial instruments. It was first enacted in 1931. Currently, the tax on corporate shares, bonds, certificates of indebtedness, promissory notes, wage assignments and retail charge account agreements is 35 cents per $100 of consideration. There is a tax of 70 cents per $100 on deeds and other documents relating to realty. The tax raises $1.2 billion annually and funds land buying, housing and other environmental programs, as well as other General Revenue fund programs.

The legislation deals with the documentary stamp tax on promissory notes, nonnegotiable notes, written obligations to pay money and wage assignments. It would cap the tax on such documents at $2,450. This translates into a loan of $700,000. In other words, all such loans of $700,000 or more would have a tax liability of $2,450.

The Revenue Estimating Conference put a revenue neutral estimate on the bill, meaning it believes it will have no impact on tax collections. This is very important because in the current budget debate tax changes with significant fiscal impacts have the odds of passage stacked against them.

Florida TaxWatch agrees that the bill should not reduce state tax revenues. In fact, it is quite possible that this change could have a positive fiscal impact. For many large loans, the state will be receiving $2,450 more in taxes than it would have received if it had been executed outside of Florida. The Florida Department of Revenue reports that executing large unsecured loans outside of Florida is standard operating procedure for businesses. Instances where the state collects any documentary stamp tax revenues on large unsecured loans is rare. In addition to keeping transactions from leaving Florida, since 39 states have some form of documentary stamp taxation, financial transactions from other states could flow into Florida.

Our review of the bill raised one potential concern that we feel has be alleviated. The State of Florida has issued more than $2.6 billion of revenue bonds payable from and secured by documentary stamp taxes. These bonds do not pledge the state's credit, but they are additionally secured by bond insurance. If the proposed limit or "cap" on a portion of these taxes were held to legally impair the bond obligations, the state could be subject to legal action by either the bondholders, the insuror, or both.

For this reason, we recommended that the bill sponsor request from the Division of Bond Finance an opinion from the bond counsel for these bonds as to whether the bill would constitute an impairment of the bondholders' contractual rights or otherwise create legal problems for the state both as to the outstanding bonds and any future similar bond issues.

This is not to imply that we believed the bill would create such problems, but thought it would be prudent to get such an opinion to avoid potential future challenges or make appropriate adjustments to secure the public benefits intended by the legislation. We have been informed by the sponsor that Division has informed him the bill would not create any such problems.

In today's business world, there are fewer and fewer reasons to carry out transactions in your state of residence or situs. Florida tax law should not create further incentives for Floridians to take business elsewhere.

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