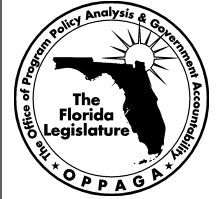




## Office of Program Policy Analysis And Government Accountability



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### Follow-Up Report on Administration of the Documentary Stamp Tax by the Department of Revenue

#### Abstract

As a result of the Legislature eliminating physical documentary stamps and the Department implementing many of our recommendations to reduce costs, the Department should realize an estimated \$146,000 in annual savings. However, the Department should continue its efforts to:

- improve audit productivity; and
- pursue a more cost-effective means to capture information from the "Return for Transfers of Interest in Florida Real Property" (DR219) in electronic form.

The Legislature can save approximately \$5 million annually by amending s. 201.022, F.S., to:

- require that Form DR219 be recorded as a public document as an additional page of the deed, thereby holding the document to a higher level of accountability and allowing the clerk to collect a recording fee; and
- eliminate the 1% commission paid to county clerks for handling the report.

#### Purpose

In accordance with s. 11.45(7)(f), F.S., this follow-up report informs the Legislature of actions taken by the

Department of Revenue in response to Report No. 95-47, issued April 1, 1996. This report presents our assessment of the extent to which the Department has addressed the findings and recommendations included in our report.

#### Background

State law requires that the public pay an excise tax in the form of a documentary stamp tax on certain documents specified by law. According to the Revenue Estimating Conference, the tax generated \$844.2 million during Fiscal Year 1996-97, of which \$394.4 million was deposited in the General Revenue Fund. The tax also provides funding for state environmental land purchasing programs, such as Preservation 2000, and is the primary funding source for state and local government housing programs.

Florida's tax is levied at different rates on different tax bases. Currently, the tax is imposed at the rate of 70 cents per \$100 of consideration (e.g., amount paid, fair market value) for deeds and other documents related to realty, and 35 cents per \$100 of consideration for all other taxable documents (e.g., promissory notes, stock certificates). The tax is due regarding whether the document is recorded with the Clerk of the Circuit Court (County Clerk). Recording a document provides notice to all persons as to the ownership of or encumbrance against a property.

At the time of our prior report, the tax could be paid in three ways: (1) by purchasing physical stamps, that are

affixed to the document, from a County Clerk or the Department; (2) by paying the tax, which is evidenced by the attachment of a meter tape to the document, at a County Clerk's office; or (3) by paying the tax, which is evidenced by a notation on the document, at a County Clerk's office or through an authorized business (registered taxpayer). State law allowed businesses or individuals to become registered taxpayers if, over a six-month period, they averaged at least \$150 worth of stamps purchases or at least 50 taxable transactions per month.

State law authorizes the County Clerks to retain 0.5% of the value of the tax collected as compensation for their costs to collect this state tax. In addition, state law requires that a report be provided to the County Clerk when a deed is recorded and authorizes the County Clerk to retain 1% of the value of the tax collected on the recording of deeds as compensation for handling these reports.

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## Prior Findings

**Eliminate Physical Stamps.** The Department of Revenue recommended eliminating the use of physical documentary stamps. As an alternative to the use of physical stamps, the Department proposed that any person averaging at least five taxable transactions a month be required to register and file a return to remit the tax to the Department. We concurred with the Department's recommendation and also recommended that the Legislature amend the Department's proposal to allow businesses to file returns less frequently based on the amount of tax owed. However, we recognized that the elimination of physical stamps would result in an increased number of registered taxpayers and returns requiring that the Department develop strategies to contain administrative costs. To ensure that the Department realized the potential savings from eliminating physical stamps, we recommended that the Department:

- mail a supply of tax returns to County Clerks and registered taxpayers annually rather than monthly;
- continue efforts to improve data entry accuracy to reduce the number of delinquency notices sent to taxpayers in error; and

- change its practice of automatically auditing all newly registered taxpayers and develop alternative strategies for educating taxpayers, such as developing and providing business-specific educational materials.

**Increase Taxpayer Registration.** We recommended that the Department use state regulatory agency information to identify businesses that process non-recorded documents and have not paid the tax.

**Increase Audit Productivity.** At the time of our report, the Department assigned documentary stamp tax audits when: (1) a business registered as a new documentary tax taxpayer (primarily an educational audit); (2) an auditor identified unpaid documentary stamp tax (on a non-recorded document) while conducting an audit of another tax (e.g. sales tax); or when (3) an auditor identified a recorded document with a possible error in the amount of tax paid. At the time of our review, we reported that collections from documentary stamp tax audits increased by \$3.3 million over the previous four years, but that audit productivity could be further enhanced.

To improve the productivity and efficiency of the audits of recorded documents, we recommended that the Department:

- clarify how staff identify audit time to more accurately reflect the time devoted to assigned audits of recorded documents and to improve the Department's ability to monitor audit productivity;
- use automated information available from the Property Tax Administration Program for audit selection, which could assist the Department in reducing existing backlogs and improve audit coverage in counties where recorded documents were not being reviewed; and
- revise the dollar threshold to consider the cost of audit and taxbase coverage to allow optimal use of audit resources.

**Reduce Tax Payment Errors.** Taxes on recorded documents are collected and remitted to the Department by the County Clerks. At the time of our report, 95% of the documents requiring the tax were filed by closing agents (e.g., attorneys, title companies), who record the documents and calculate

the tax owed for their clients. If the closing agent fails to ensure that the correct amount of tax is paid, the Department directly contacts the client to assess the owed tax, penalty, and interest rather than contacting the closing agent. Contacting closing agents who routinely make tax payment errors could prevent additional errors from occurring. To reduce tax payment errors, we recommended that the Department develop procedures advising auditors regarding authorized contact with closing agents who routinely make tax payment errors.

**Eliminate County Clerk Commissions.** The “Return for Transfers of Interest in Florida Real Property” form (DR219) provides information, such as parcel identification number and sales price, when property is transferred to new owners. The information is intended for use by the Property Tax Administration Program as an independent source of information on real property sales for use in its analysis of tax rolls. Florida law requires real property sellers, buyers, or agents to complete and provide the DR219 to County Clerks at the time the transfer is recorded. The County Clerks send the original form to the Department’s tax processing unit and retain a commission of approximately \$5 million each year (1% percent of documentary stamp taxes paid) for handling the DR219.

At the time of our analysis, the Department was manually entering information from the DR219 into an electronic database because of difficulties in using the existing scanning system. However, due to incomplete information (e.g., because DR219 information was not properly filled out or was not input into the database accurately) the information could not be used for analysis of tax rolls.

To provide an independent source of reliable information for the Department's analysis of county property tax rolls, at less cost to the state, we recommended that the Legislature amend the law to:

- require that the DR219 be recorded as a public document as an additional page of the deed, thereby holding the document to a higher level of accountability and allowing the clerk to collect a recording fee; and
- eliminate the 1% commission paid to county clerks for handling the report.

In addition, the Department could save additional money by pursuing a more cost-effective means of capturing information from the DR219 in electronic form (e.g., electronic filing by County Clerks, purchasing existing data from private vendors).

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## Current Status

**Eliminate Physical Stamps.** As recommended, the Legislature abolished the use of physical stamps effective April 1, 1997. In addition, businesses are allowed to file returns on a monthly, quarterly, semi-annual, or annual basis, depending on the amount of tax owed. The Department estimated a cost savings of \$146,000.

To realize the savings from eliminating the physical stamps the Department is implementing our recommendations to reduce costs by:

- mailing a supply of tax returns to county clerks as needed. However, registered taxpayers will continue to be mailed a return each month, which could incur unnecessary mailing costs for the Department. The Department plans to reevaluate the cost effectiveness of this process as the number of registered taxpayers increases;
- transferring the processing of the documentary stamp tax returns to an automated processing system which will reduce the need for manual handling; and
- discontinuing its practice of automatically auditing all newly registered taxpayers and developing alternative strategies for educating taxpayers.

Because these alternatives are in the process of being implemented, we are unable to identify the amount saved.

**Increase Taxpayer Registration.** In response to our recommendation that the Department use state regulatory agency information to identify businesses that process nonrecorded documents and have not paid the tax, the Department sampled businesses licensed with the Department of Banking and Finance to make loans, and sent letters of inquiry. The Department plans to evaluate the initial results this month.

**Increase Audit Productivity.** In response to our recommendations regarding the audit of recorded documents, the Department:

- clarified how auditing staff are to report hours to assigned audits;
- tested the use of automated information available from the Property Tax Administration Program for audit selection; and
- is establishing new approaches for identifying documentary stamp audits.

**Reduce Tax Payment Errors.** The Department has not developed procedures to advise auditors regarding appropriate contact with closing agents who routinely make tax payment errors.

**Eliminate County Clerk Commissions.** The Legislature did not amend the law to require that the DR219 be submitted and maintained as a public record, as a condition for recording a deed; nor did it eliminate the 1% commission paid to County Clerks for handling the report. The Legislature could save approximately \$5 million annually by amending s. 201.022, F.S., to reflect these recommendations.

While the quality of information on the DR219 appears to be improving, the Department continues to have the information from the DR219 manually entered into an electronic database. The Department is exploring alternative means for obtaining this information, including electronic filing by County Clerks, purchasing from private vendors, or using an image-based document management system.

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