

## Florida closes *Crescent* Documentary Stamp Tax Loophole with Senate Bill 2430

Florida law imposes a documentary stamp tax on the sale or transfer for value of real property. A Florida Supreme Court decision in 2005, *Crescent Miami Center, LLC v. Florida Department of Revenue*<sup>1</sup>, confirmed the existence of a loophole in the documentary stamp tax statute which effectively allowed an owner to sell unencumbered real property to a purchaser without either party paying the documentary stamp tax.

The loophole operated as follows: a parent entity would set up a conduit entity wholly owned by members of the parent entity. The parent entity would then transfer title in the real property to the conduit entity. Following the transfer of title, the parent entity would sell its membership interests in the conduit entity to the third party purchaser. The “drop and swap,” as the procedure came to be known, gained in popularity after *Crescent*.

The Florida Legislature effectively closed the “drop and swap” loophole with the passage of Senate Bill 2430, which took effect on July 1, 2009. The bill specifically addresses the above example, and imposes a documentary stamp tax of \$0.70 per \$100.00 of consideration paid if the transfer of ownership interest takes place within three years of the property transfer.

Although the bill closes the “drop and swap” loophole, it outlines two exemptions to the documentary stamp tax: (1) a gift or ownership interest in the conduit entity to the extent there is no consideration or value paid, and (2) estate planning transfers by a natural person of an interest in a conduit entity to an irrevocable grantor trust.

The law became effective on July 1, 2009, however, it does not apply to the sale of a conduit entity sold after July 1, 2009 if the real property owned by such conduit entity was transferred by the parent entity prior to July 1, 2009.

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<sup>1</sup> 903 So.2d 913 (Fla. 2005)