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## Doc Stamp Tax Loophole to Close July 1, 2009

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**S**ection 201.02(1) has been amended to close what the Legislature perceives to be a documentary stamp tax loophole that was created by the Florida Supreme Court's decision in *Crescent Miami Center, LLC v. Florida Department of Revenue*, 903 So. 2d 913 (Fla. 2005). In that case, the Court held that the transfer of real property to an entity whose ownership is identical to the ownership of the real property (a so-called "conduit entity") is subject to documentary stamp tax only to the extent of the consideration that was paid by the conduit entity for the property, other than interests in the entity itself. Consequently, where no cash or other property was paid by the conduit entity, the consideration for documentary stamp tax purposes is limited to the amount of any indebtedness to which the property is subject. Because current law does not tax the subsequent transfer of the interests in the conduit entity, the owner could minimize or avoid the documentary stamp tax on the sale of the property by simply transferring it to a conduit entity, such as a limited liability company, and then selling the interests in the conduit entity to the purchaser.

The new law imposes documentary stamp tax on so much of the consideration that is paid on the sale of interests in the conduit entity as is attributable to the value of any Florida real property that was transferred to the conduit entity within the preceding three-year period. However, the tax applies only if the property was transferred to the conduit entity for consideration that was less than its full value at the time. As under current law, there are exemptions from documentary stamp tax for gratuitous transfers. The tax incurred on the transfer of an interest in a conduit entity must be paid pursuant to the procedure described in section 201.133. **The new law becomes effective July 1, 2009.**

If you have questions regarding this topic contact Carolyn Kershner at 954-761-2929 or [carolyn.kershner@ruden.com](mailto:carolyn.kershner@ruden.com), or Glen Stankee at 954-761-2907 or [glen.stankee@ruden.com](mailto:glen.stankee@ruden.com), or any Ruden McClosky real estate attorney. Glen Stankee is a partner and Carolyn Kershner is an associate in Ruden McClosky's Tax Practice Group, in Fort Lauderdale, Florida. For more information about Ruden McClosky please visit [www.ruden.com](http://www.ruden.com).

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