

**MEMORANDUM**

Agenda Item No. 11(A)(13)

**TO:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

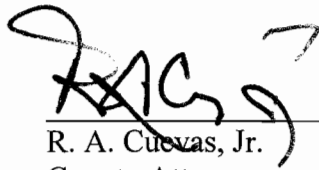
**DATE:** November 20, 2008

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Resolution urging the  
Florida Legislature to pass  
legislation closing the  
"Crescent Miami" loophole

**Resolution No. R-1251-08**

The accompanying resolution was prepared and placed on the agenda at the request of  
Prime Sponsor Commissioner Katy Sorenson.

  
\_\_\_\_\_  
R. A. Cuevas, Jr.  
County Attorney

RAC/bw



# MEMORANDUM

(Revised)

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and Members, Board of County Commissioners

**DATE:** November 20, 2008

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

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Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved \_\_\_\_\_ Mayor

Agenda Item No. 11(A)(13)

Veto \_\_\_\_\_

11-20-08

Override \_\_\_\_\_

RESOLUTION NO. R-1251-08

RESOLUTION URGING THE FLORIDA LEGISLATURE TO PASS LEGISLATION CLOSING THE “CRESCENT MIAMI” LOOPHOLE THAT CURRENTLY ALLOWS SOME COMMERCIAL REAL ESTATE TRANSFERS TO CIRCUMVENT THE MIAMI-DADE AFFORDABLE HOUSING SURTAX AND STATE DOCUMENTARY STAMP TAXES

**WHEREAS**, since 1984, the Miami-Dade Affordable Housing Surtax (“Surtax”) has provided over \$295 million for the construction, rehabilitation, and purchase of over 21,000 housing units that have helped a still larger number of low- and moderate-income families; and

**WHEREAS**, the funding source for the Surtax Program is 45¢ for each \$100 of commercial property transferred; and

**WHEREAS**, Surtax funds leverage \$4 in affordable housing investment for each \$1 in Surtax funds, leading to a substantial investment in this community and the creation of a significant number of jobs; and

**WHEREAS**, over the history of the Surtax, more than 14,000 rental units have been built using Surtax revenues as a subsidy, while more than \$165 million in Surtax funds have gone to homeownership loans; and

**WHEREAS**, in addition to the Miami-Dade Surtax, the State of Florida also imposes documentary stamp taxes of 60¢ for each \$100 of residential and commercial property transferred in Miami-Dade County and 70¢ for each \$100 of such property transferred elsewhere in Florida; and

**WHEREAS**, state documentary stamp taxes have generated more than a billion dollars annually for various state environmental programs, including Preservation 2000, Florida Forever and Everglades Restoration, state affordable housing programs and the state's general fund; and

**WHEREAS**, as a result of a 2005 Florida Supreme Court case, *Crescent Miami Center, LLC v. Florida Department of Revenue*, 903 So.2d 913 (Fla. 2005), and a 2007 opinion by the Florida Department of Revenue, *Technical Assistance Advisement No. 07B-004*, a legal loophole has developed that allows large multi-million dollar, typically commercial real properties to change hands while paying one dollar and five cent (\$1.05) in combined Miami-Dade Surtaxes and state environmental and affordable housing documentary stamp taxes ("the Crescent Miami Loophole"); and

**WHEREAS**, through the Crescent Miami Loophole, payment of the Miami-Dade Surtax and state documentary stamp taxes is almost entirely avoided by creating a corporation that holds a parcel of real property and then selling the shares of the corporation rather than selling the parcel of property via a deed transfer; and

**WHEREAS**, existence of the *Crescent Miami* Loophole has enabled sellers of multimillion dollar properties to advance the argument that the recent sale of their corporate stock does not represent a sale at fair market value of their property and thus should be wholly ignored in determining the tax assessment of such property; and

**WHEREAS**, structuring commercial real estate transactions as *Crescent Miami* transactions has resulted in thousands and in some cases millions of dollars being avoided that would have otherwise been generated if the actual value of the property was used to calculate the documentary stamp taxes due; and

**WHEREAS**, state documentary stamp tax revenues declined from approximately \$4 billion in the peak year of fiscal year 2005-06 to less than \$1.5 billion in fiscal year 2007-08; and

**WHEREAS**, while this revenue decline undoubtedly reflected weakness in the real estate market, state revenue estimators have concluded that the decline is also due in part to a significant number of real estate transactions being structured as *Crescent Miami* transactions to transfer real property without paying more than \$1.05 in total documentary stamp taxes; and

**WHEREAS**, the state Revenue Estimating Conference estimates that more than \$50 million in state revenue would be lost annually if the Crescent Miami Loophole is not closed, with millions more lost to Miami-Dade County through the commercial transfers that avoid payment of the Miami-Dade Surtax; and

**WHEREAS**, several recent real estate transactions in Miami-Dade County well exemplify how this legal loophole is being used to avoid paying documentary stamp taxes:

<b>Address:</b>	<b>2008 assessed value:</b>	<b>Total documentary stamp taxes paid:</b>	<b>Estimated loss in Miami-Dade Affordable Housing Surtax revenue:</b>	<b>Estimated loss in Surtax plus state doc. stamp revenue taxes:</b>
a. 200 S. Biscayne Boulevard:	\$305 million	one dollar, five cents (\$1.05)	\$1.37 million	\$3.2 million
b. 8400 N.W. 36 Street:	\$47.5 million	one dollar, five cents (\$1.05)	\$213,930	\$499,170
c. 11690 N.W. 105 Street:	\$33.3 million	one dollar, five cents (\$1.05)	\$149,968	\$349,925
d. 1677 Collins Avenue:	\$29.3 million	one dollar, five cents (\$1.05)	\$131,962	\$307,912

; and

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**WHEREAS**, these four transactions alone could have generated \$1.9 million in Surtax revenue that could have provided funding to leverage 205 additional units of housing for low-income families through the Surtax program; and

**WHEREAS**, SB 2040 and HB 599 were filed for the 2008 state legislative session and would have closed the Crescent Miami Loophole; and

**WHEREAS**, the Senate unanimously passed SB 2040, but the House did not take up the bill, resulting in it not passing,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board:

**Section 1.** Urges the Florida Legislature to pass legislation closing the *Crescent Miami* Loophole that currently allows real estate transfers to be structured so as to circumvent payment of the Miami-Dade Affordable Housing Surtax and other state documentary stamp taxes that support state environmental and affordable housing programs.

**Section 2.** Directs the Clerk of the Board to transmit copies of this resolution to the Governor, Senate President, House Speaker, and Chair and Members of the Miami-Dade State Legislative Delegation.

**Section 3.** Directs the County's state lobbying team to advocate for the passage of the legislation set forth in Section 1 above; and directs the Office of Intergovernmental Affairs to include this item in the 2009 State Legislative Package.

The Prime Sponsor of the foregoing resolution is Commissioner Katy Sorenson. It was offered by Commissioner **Barbara J. Jordan**, who moved its adoption. The motion was seconded by Commissioner **Jose "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	<b>aye</b>		
Barbara J. Jordan, Vice-Chairwoman	<b>aye</b>		
Jose "Pepe" Diaz	<b>aye</b>	Audrey M. Edmonson	<b>aye</b>
Carlos A. Gimenez	<b>aye</b>	Sally A. Heyman	<b>aye</b>
Joe A. Martinez	<b>aye</b>	Dennis C. Moss	<b>aye</b>
Dorrin D. Rolle	<b>aye</b>	Natacha Seijas	<b>aye</b>
Katy Sorenson	<b>aye</b>	Rebeca Sosa	<b>aye</b>
Sen. Javier D. Souto	<b>aye</b>		

The Chairperson thereupon declared the resolution duly passed and adopted this 20<sup>th</sup> day of November, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK



By: **Kay Sullivan**  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

Jess M. McCarty