

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 390

INTRODUCER: Senator Hutson

SUBJECT: Reimbursement of Certain Taxes

DATE: March 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Pre-meeting
2.			AFT	
3.			AP	

I. Summary:

SB 390 provides for the partial reimbursement of ad valorem taxes for residential structures that were granted a homestead exemption under s. 196.031, F.S., and rendered uninhabitable as a result of damage from a hurricane during 2016. The bill appropriates \$4 million for these reimbursements.

The bill also provides for the reimbursement of state sales taxes paid to replace mobile homes damaged by a hurricane during 2016 in certain circumstances. If a mobile home is purchased to replace a mobile home that experienced major damage, and the mobile home was the permanent residence of a permanent resident of Florida, the state sales tax paid on the purchase of the replacement mobile home shall be reimbursed to the mobile home owner. The bill appropriates \$2 million for these reimbursements. A person who receives the ad valorem tax reimbursement for residential structures that were granted a homestead exemption is not eligible to receive the state sales tax reimbursement for mobile homes.

The reimbursements for ad valorem taxes and state sales taxes may not exceed \$1,500.

The bill also creates criminal penalties for a person who knowingly and willfully gives false information for the purpose of claiming reimbursement.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of

January 1 of each year.¹ The property appraiser annually determines the “just value”² of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵

Ad Valorem Process

Each property appraiser must complete an assessment of the value of all property⁶ within the appraiser’s jurisdiction and certify to the taxing authorities the taxable value of such property no later than July 1 of each year, unless extended for good cause by the Department of Revenue (DOR or department).⁷ The taxable value of a residential parcel includes both the value of structures and other improvements on the parcel and the value of the land on which those structures and improvement sit.⁸ The property appraiser also ensures that all real property is listed on the real property assessment roll.⁹

The assessment roll must be submitted to DOR by July 1 of the assessment year to determine if the rolls meet all the appropriate requirements of law relating to form and just value.¹⁰ Assessment rolls include, in addition to taxable value, other information on the property located within the property appraiser’s jurisdiction, such as just value, assessed value, and the amount of each exemption or discount.¹¹

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ *See* s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ *See* FLA. CONST. art. VII, s. 4.

⁶ For purposes of clarity and administration of the tax credit, the bill distinguishes between a “residential parcel” and “residential improvement,” avoiding the broad term “property.” For appraisal purposes, a “residential parcel” includes the land and improvements. For readability, this analysis will use the broader term “property” unless the context requires otherwise.

⁷ Section 193.023(1), F.S.

⁸ *See* The Appraisal Process and Your Taxes, Hillsborough County Property Appraiser, available at <http://www.hcpafll.org/Property-Info/The-Appraisal-Process-Your-Taxes> (last visited Feb. 27, 2017) (process for calculating property tax values).

⁹ Section 193.085(1), F.S.

¹⁰ Section 193.1142(1)(a), F.S.

¹¹ Section 193.114, F.S.

The taxing authority uses the taxable value provided by the property appraiser to prepare a proposed millage rate (i.e., tax rate) that is levied on each property's taxable value.¹² Within 35 days of certification of the taxable value by the property appraiser (typically by August 4 of the assessment year), the taxing authority must advise the property appraiser of its proposed millage rates.¹³ The property appraiser uses the proposed millage rates provided by the taxing authorities to prepare the notice of proposed property taxes, commonly referred to as the Truth in Millage (TRIM) notice.¹⁴

Any property owner who disagrees with the assessment in the TRIM notice or who was denied an exemption or property classification may request an informal meeting with the property appraiser,¹⁵ appeal to the county value adjustment board (VAB),¹⁶ or challenge the assessment in circuit court.¹⁷

After challenges to assessed value of the property have concluded, the VAB submits the VAB-adjusted assessment roll to the property appraiser¹⁸ and to the DOR.¹⁹ After making any adjustments to the assessment rolls caused by the VAB hearings, the property appraiser will certify the tax roll to the tax collector (typically before November 1 of the assessment year or as soon thereafter as the tax collector receives the certified tax roll).²⁰

The tax collector will then send tax bills within twenty working days to the owners of all properties owing tax within his or her jurisdiction.²¹ Property taxes are due once a year, and can be paid beginning November 1 of the assessment year.²² Generally, taxes become delinquent if not paid in full as of April 1 of the year after assessment.²³ Delinquent taxes will accrue interest until paid,²⁴ and may accrue penalties in certain circumstances.²⁵

Overview of the Value Adjustment Board Process

Chapter 194, F.S., provides for administrative and judicial review of ad valorem tax assessments. Each county in Florida has a VAB composed of five members²⁶ that hears petitions pertaining to property assessments made by the county property appraiser.²⁷ The VAB hears evidence from

¹² Section 200.065(2)(a)1., F.S.

¹³ Section 200.065(2)(b), F.S.

¹⁴ Section 200.069, F.S.

¹⁵ Section 194.011(2), F.S.

¹⁶ Section 194.011(3), F.S.

¹⁷ Section 194.171, F.S.

¹⁸ Section 193.122(2), F.S.

¹⁹ Section 193.122(1), F.S.

²⁰ Section 193.122(2), F.S.

²¹ Section 197.322(2), (3), F.S.

²² Section 197.333, F.S.

²³ *Id.*

²⁴ Section 197.152, F.S.

²⁵ See s. 196.161, F.S. (penalties for properties granted homestead exemption when homeowner was no a permanent resident).

²⁶ Section 194.015, F.S.

²⁷ Section 194.011, F.S. The VAB also hears complaints about homestead exemptions and appeals exemption, deferral, or classification decisions. Section 194.032(1)(a), F.S.

both the petitioner and property appraiser as to whether a property is appraised at its fair market value, as well as issues related to tax exemptions, deferments, and portability.²⁸

The property owner may initiate a review by filing a petition with the clerk of the VAB.²⁹ A petitioner before the VAB may be represented by an attorney or agent.³⁰

Each county has a VAB, comprised of two members of the governing body of the county, one member of the school board and two citizen members appointed by the governing body of the county.³¹ The county clerk acts as the clerk of the VAB.³² A property owner may initiate a review by filing a petition with the clerk of the VAB within 25 days after the mailing of the TRIM notice.³³ The clerk of the VAB is responsible for receiving completed petitions, acknowledging receipt to the taxpayer, sending a copy of the petition to the property appraiser, and scheduling hearings.

Current law requires VABs to render a written decision within 20 calendar days after the last day the board is in session.³⁴ The decision of the VAB must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser.³⁵ If a special magistrate has been appointed, the VAB must consider the recommendations of the special magistrate.³⁶ The clerk of the VAB, upon issuance of a decision, must notify each taxpayer and the property appraiser of the decision of the VAB. If requested by the DOR, the clerk must provide to the DOR a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037, F.S., in the manner and form requested.

Statewide Homestead Exemption

Every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate (homestead property) is eligible for a \$25,000 tax exemption applicable to all ad valorem tax levies, including levies by school districts.³⁷ An additional \$25,000 exemption applies to homestead property value between \$50,000 and \$75,000. This exemption does not apply to ad valorem taxes levied by school districts.

Sales Tax

Florida's sales and use tax is a 6 percent levy on retail sales of a wide array of tangible personal property, admissions, transient lodgings, commercial real estate rentals, and motor vehicles,

²⁸ Additionally, VABs appoint special magistrates, who are qualified real estate appraisers, personal property appraisers or attorneys, to act as impartial agents in conducting hearings and making recommendations on all petitions. Section 194.035(1), F.S.

²⁹ Section 194.011(3)(b), F.S.

³⁰ Section 194.034(1)(a), F.S.

³¹ Section 194.015, F.S.

³² *Id.*

³³ Section 194.011(3)(d), F.S.

³⁴ Section 194.034(2), F.S.

³⁵ *Id.*; See also Rules 12D-9.030, 12D-9.032, and 12D-10.003(3), F.A.C.

³⁶ Section 194.034(2), F.S.

³⁷ FLA. CONST. art VII, s. 6(a) and s. 196.031, F.S.

unless expressly exempted. In addition, Florida authorizes several local option sales taxes that are levied at the county level on transactions that are subject to the state sales tax. Generally, the sales tax is added to the price of a taxable good and collected from the purchaser at the time of sale. Sales tax represents the majority of Florida's general revenue stream (77.0 percent for FY 2015-2016³⁸) and, it is administered by the DOR under ch. 212, F.S.

Tax Relief for Natural Disasters

The Legislature has provided tax relief for the victims of natural disasters on at least four occasions.³⁹

For example, ch. 88-101, Laws of Fla., created s. 196.295(3), F.S., providing an abatement of taxes for properties damaged by windstorms or tornadoes.⁴⁰ Chapter 98-185, Laws of Fla., also provided for the partial abatement of property taxes for properties destroyed or damaged by a tornado.

Chapter 2004-74 provided reimbursement for ad valorem taxes levied on residential property that was granted a homestead exemption under s. 196.031, F.S., and rendered uninhabitable due to a named tropical system in 2004.⁴¹ To receive the reimbursement, the property owner was required to file an application with the property appraiser by March 1, 2005. After making a determination on the validity of the application, the Legislature directed the property appraiser to calculate the reimbursement. The property appraiser totaled the number of the days the property was uninhabitable due to the damage or destruction; multiplied such number by the ad valorem taxes levied on the homestead property for that year; and divided the number by 366 to calculate the reimbursement. The property appraiser would then send a list of property owners entitled to a partial reimbursement to the DOR. The bill also provided procedures for reimbursement, an appeals process to the VABs, and penalties for any person who knowingly and willfully gave false information for the purpose of claiming reimbursement. The reimbursement was limited to \$1,500. The Legislature provided a similar procedure for the reimbursement of state sales tax paid on replacement mobile homes.⁴²

Similarly, ch. 2007-106, Laws of Fla., provided reimbursement of ad valorem taxes levied on residential property rendered uninhabitable due to tornadoes and reimbursement for sales taxes paid on mobile homes purchased to replace mobile homes damaged by a tornado.

III. Effect of Proposed Changes:

Section 1 provides for the partial reimbursement of ad valorem taxes for residential structures that were granted a homestead exemption under s. 196.031, F.S., and rendered uninhabitable as a result of damage from a hurricane during 2016. The term "uninhabitable" means a residential

³⁸ Florida Revenue Estimating Conference, 2016 Florida Tax Handbook, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2016.pdf> (last visited Feb. 27, 2017).

³⁹ Chapters 88-101, 98-185, 2004-474, and 2007-106, Laws of Fla.

⁴⁰ Section 196.295(3), F.S, repealed by ch. 92-173, s. 8, Laws of Fla.

⁴¹ Chapter 2004-74, s. 1, Laws of Fla., available at <http://laws.flrules.org/2004/474> (last visited Feb. 27, 2017).

⁴² *Id.* at s. 6

structure that cannot be used for 60 days or more for the purpose for which it was constructed due to damage from a 2016 hurricane.

If a property owner continues to live in an uninhabitable structure because alternative living quarters are unavailable, the owner is eligible for a partial reimbursement.

In order to be eligible for a reimbursement, the owner must file a notarized application on or before March 1, 2018, with the property appraiser. Failure to file an application by this date constitutes a waiver of any claim for reimbursement. The application must be filed in the manner and form prescribed by the property appraiser and must identify the uninhabitable structure, the date the damage occurred, and the number of days the property was uninhabitable.

Documentation supporting the claim that the property was uninhabitable must accompany the application. Documentation may include utility bills, insurance information, contractors' statements, building permit applications, and building code inspections or certificates of occupancy.

The property appraiser must review the documentation and determine whether the owner is entitled to a partial reimbursement. If the property appraiser determines that the owner is entitled to reimbursement, the property appraiser must calculate the reimbursement amount using the following formula: an amount equal to the total ad valorem taxes paid on the homestead property for the 2016 tax year, multiplied by a ratio equal to the number of days the property was uninhabitable after the damage during 2016, and divided by 366. However, the amount of reimbursement may not exceed \$1,500.

The property appraiser must compile a list of property owners entitled to the reimbursement and specify the amount each property owner shall receive. The list must be submitted to the DOR by April 1, 2018, through an online application provided by the department.

The property appraiser must notify the property owner by mail if the property owner is not entitled to receive the reimbursement by April 1, 2018. If a property owner's application for reimbursement is not fully granted, the owner may file a petition with the VAB for review of that decision within 30 days after the mailing of the notice by the property appraiser.

The VAB must review the petitions as expeditiously as possible at the same time it is considering denials of homestead exemptions pursuant to ss. 194.032 and 196.151, F.S.

By May 10, 2018, the property appraiser must notify the DOR of the total dollar amounts of reimbursements denied for which petitions with the VAB have been filed.

After receiving the reimbursement lists from the property appraisers, but before dispersing any reimbursement checks, the DOR must set aside a dollar amount equal to the total amount of money requested in petitions that were filed with the VABs, or \$700,000, whichever is less. After the set aside, the department must calculate the total dollar value of all approved reimbursement requests submitted by the property appraisers and distribute reimbursement checks to property owners whose applications for reimbursement were approved by the property appraiser. If the total amount of reimbursements requested exceeds the amount available for that purpose, the department must reduce all reimbursement checks by a percentage sufficient to

reduce the total reimbursement payments to an amount equal to the appropriation, less any amount retained to pay for requests made in petitions that were filed with the VABs.

The retained amount set aside must be used to pay claims that the property appraiser denied but which the VABs granted. The DOR may not pay claims for reimbursement from this set aside until all appeals to the VABs are final. If the department reduced the reimbursements made to owners who did not require an appeal to the VABs, reimbursements granted by the VABs shall be reduced by the same percentage. If the total adjusted reimbursements approved by the VABs exceed the amount retained by the DOR for paying these reimbursements, the department shall further reduce these reimbursement checks by a percentage sufficient to reduce total reimbursement payments to an amount equal to the amount retained.

The DOR shall disburse reimbursement checks from its Administrative Trust Fund and shall forward all undeliverable reimbursement checks to the certifying property appraiser for subsequent delivery attempts.

The bill also creates criminal penalties for a person who knowingly and willfully gives false information for the purpose of claiming reimbursement. Such person commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or by a fine not exceeding \$5,000, or both.

Section 2 provides for the reimbursement of state sales taxes paid to replace mobile homes damaged by a hurricane during 2016 in certain circumstances. If a mobile home is purchased to replace a mobile home that experienced major damage, and the mobile home was the permanent resident of a permanent resident of Florida, the state sales tax paid on the purchase of the replacement mobile home must be reimbursed.

For the purposes of this section:

- “Major damage” means a mobile home that, as a result of damage from a hurricane during 2016, is more than 50 percent destroyed and cannot be repaired or made habitable for less than the amount of its value before the 2016 hurricane.
- “Mobile home” means a mobile home as defined in s. 320.01(2)(a), F.S., a manufactured home as defined in s. 320.01(2)(b), F.S., or a trailer as defined in s. 320.08(10), F.S.
- “Permanent residence” and “permanent resident” have the same meanings as in s. 196.012, F.S.⁴³

In order to be eligible for reimbursement, the mobile home owner must file a notarized application with the property appraiser, in the form and manner prescribed by him or her, on or before May 1, 2018, in the county in which the damaged home was located. Failure to file an application by this time constitutes waiver of any claim for reimbursement.

⁴³ Section 196.012(17) defines “permanent residence” as the place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she had the intention of returning. A person may have only one permanent resident at a time; and, once a permanent residence is established in a foreign estate or country, it is presumed to continue until the person shows that a change has occurred.

The application must identify the mobile home that experienced the damage and the date the damage occurred. The mobile home owner must include documentation attesting to major damage of the mobile home, a copy of the invoice for the replacement mobile home, and a copy of the invoice for the installation of the replacement mobile home in Florida. Documentation may include insurance information, information from the Federal Emergency Management Agency, and information from the American Red Cross.

After receiving the application, the property appraiser must investigate the documentation to verify that the mobile home experienced major damage and must calculate the reimbursement amount. The amount shall be equal to the state sales tax paid on the purchase price of the replacement mobile home. However, the amount of reimbursement may not exceed \$1,500 for any individual mobile home.

The property appraiser must compile a list of owners entitled to reimbursement and submit the list to the DOR by June 1, 2018, through an online application provided by the department.

If the property appraiser determines that the owner is not entitled to receive the reimbursement, he or she shall notify the mobile home owner by mail on or before June 1, 2018. The owner may file a petition for review with the VAB. The owner must file the petition within 30 days after the mailing of the notice by the property appraiser. The VAB must consider these petitions as quickly as possible at the same time the board considers denials of homestead exemptions pursuant to ss. 194.032 and 196.151, F.S.

The property appraiser must notify the DOR of the total number of applications that he or she denied but for which owners filed petitions with the VAB by July 10, 2018. The department shall determine the total dollar amount of all petitions, which owners filed with the VABs.

After receiving the reimbursements list from the property appraisers, but before disbursing any reimbursement checks, the department must set aside a dollar amount equal to the total amount requested in the petitioners that were filed the VAB, or \$500,000, whichever is less. The department must then calculate the total value of all approved reimbursement requests submitted by the property appraisers and distribute checks to owners whose applications were granted by the property appraiser. If the total amount of reimbursements requested exceeds the amount available for that purpose, the department shall reduce all reimbursement checks by a percentage sufficient to reduce total reimbursement payments to an amount equal to the appropriation, less any amount retained to pay for requests made in petitions that were filed with the VABs.

The retained amount set aside must be used to pay those claims that were denied by the property appraiser but which the VABs granted. The department may not pay any claims from this retained amount until all appeals to the VABs are final. If the department reduced the reimbursements made to owners who did not require an appeal to the VABs, reimbursements granted by the VABs shall be reduced by the same percentage. If the total adjustment reimbursements approved by the department exceed the amount retained by the department for paying these reimbursements, the department must further reduce all reimbursement checks by a percentage sufficient to an amount equal to the amount retained.

The department shall disburse reimbursement checks from its Administrative Trust Fund to the appropriate persons and shall forward all undeliverable reimbursement checks to the certifying property appraiser for subsequent delivery attempts.

A person who receives ad valorem reimbursement is not eligible for state sales tax reimbursement.

A person who knowingly and willfully gives false information for claiming reimbursement commits a misdemeanor of the first degree, punishable as provided s. 775.082, F.S., or by a fine not exceeding \$5,000, or both.

Section 3 appropriates \$4 million from the General Revenue Fund to the Administrative Trust Fund of the DOR for purposes of providing reimbursements under section 1.

Section 4 appropriates \$2 million from the General Revenue Fund to the Administrative Trust Fund of the DOR for purposes of providing state sales tax reimbursements under section 2.

Section 5 appropriates \$60,000 from the General Revenue Fund to the Administrative Trust Fund to the DOR for purposes of administering this act.

Section 6 requires the Executive Office of the Governor to certify forward all unexpected funds appropriated pursuant to this act on July 1 in accordance with s. 216.351, F.S., and notwithstanding s. 216.301, F.S.

Section 7 provides that it is the intent of the Legislature that payments made to residents under this act be considered disaster-relief assistance within the meaning of s. 139 of the Internal Revenue Code.

Section 8 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Homeowners who experienced damage to their homestead property due to a hurricane in 2016 may receive a partial reimbursement of ad valorem taxes. Mobile homeowners who replaced their mobile home due to a hurricane in 2016 may receive a sales tax reimbursement for the purchase of their new mobile home.

C. Government Sector Impact:

The bill requires the DOR to establish an online application for property appraisers to use when submitting information about approved or protested applications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In its analysis of the bill, the DOR recommends various technical and clarifying changes.⁴⁴ The recommended changes include requiring the property appraiser to notify the DOR of the dollar amounts requested for pending appeals and approved applicants; revising the date by which the property appraiser shall submit the reimbursement list from Sunday April 1, 2018, to Monday, April 2, 2018; and setting dates by which the VABs must complete the review of all petitions.⁴⁵ The DOR also notes that there is no requirement that the individual receiving the reimbursement is the same individual who originally paid the property or sales tax.⁴⁶

VIII. Statutes Affected:

This bill does not amend the Florida Statutes. Time-limited provisions such as those found in this act are published only in the Laws of Florida.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

⁴⁴ Department of Revenue, *Senate Bill 390 Legislative Bill Analysis*, p. 6, (Feb. 13, 2017).

⁴⁵ *Id.*

⁴⁶ *Id.* at 7.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
