

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

**BILL:** CS/SB 72

**SPONSOR:** Comprehensive Planning, Local and Military Affairs Committee and Senator Sebesta

**SUBJECT:** Ad Valorem Taxation

**DATE:** March 31, 2000                      **REVISED:** \_\_\_\_\_

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION              |
|----|-----------------|----------------|-----------|---------------------|
| 1. | <u>Cooper</u>   | <u>Yeatman</u> | <u>CA</u> | <u>Favorable/CS</u> |
| 2. | <u>Fournier</u> | <u>Wood</u>    | <u>FR</u> | <u>Favorable</u>    |
| 3. | _____           | _____          | _____     | _____               |
| 4. | _____           | _____          | _____     | _____               |
| 5. | _____           | _____          | _____     | _____               |

**I. Summary:**

The CS:

- provides an exception to the requirement to assess taxes against the current owner of property that has previously escaped taxation;
- provides a waiver of penalty and interest, under certain circumstances, when a taxpayer erroneously receives a homestead exemption;
- maintains a property tax exemption for property leased from a governmental agency if the agency continues to use the property exclusively for educational purposes.
- revises the procedure for correcting a minor error in TRIM notices.

This bill amends ss. 193.092, 196.161, 196.198, and 200.065 of the Florida Statutes.

**II. Present Situation:**

Ad Valorem Taxes

Section 4, Article VII, of the State Constitution requires that all property be assessed at just value for ad valorem tax purposes. Local governments annually levy the ad valorem tax, which is based on the “just” or market value of real and tangible property as of January 1 of each year, less any authorized exemptions.

Section 193.092, F.S., provides for the assessment of property for “back taxes,” or taxes on property that has escaped taxation because such property was not accounted for on the tax roll. The statute provides a mechanism for the collection of up to three years of back taxes. The tax arrears attach to the property regardless of who currently owns the property.

However, the state is exempt from the assessment of back taxes on any property it purchased unless the property is included in a list furnished by the Comptroller to the county property appraiser as provided by law. In addition, personal property acquired in good faith is not subject

to back assessments for any time prior to the time of the purchase; however, the individual or corporation which was liable for the tax remains personally liable for it.

### Homestead Exemption

Section 6, Article VII of the State Constitution authorizes a \$25,000 exemption from ad valorem taxation for homestead property owned and used by taxpayers as their permanent residence. Residents may only qualify for one exemption, and the exemption may not exceed the total assessed value of the property. Section 196.031, F.S., implements this constitutional provision.

Section 196.161, F.S., provides a mechanism for recovery of taxes from persons erroneously granted a homestead exemption. Subsection (b) provides that if the property appraiser determines that a person was not entitled to a homestead exemption for any time within the prior 10 years, then the property appraiser must record a tax lien against the property. In addition to the property being liable for all taxes exempt, there is a penalty of 50 percent of the unpaid taxes for each year, plus 15 percent interest per year. However, penalties and interest are not due when the exemption was improperly granted as a result of a clerical error or an omission by the property appraiser.

Section 193.155, F.S., implements the constitutional "Save Our Homes" property tax assessment limitation (Section 4(c), Article VII of the State Constitution). Generally, assessment increases of properties receiving a homestead exemption are limited to the lower of 3 percent of the assessment for the prior year or the percent change in the Consumer Price Index. However, if the property changes ownership, it is assessed at just value the following year. While a change in ownership is defined as any sale, foreclosure, or transfer of legal or beneficial title, the following transactions are not considered a change of ownership for purposes of reassessing the property at just value:

- prior to the change or transfer, the same person is entitled to the exemption as was previously entitled to and the title is transferred to correct an error or the transfer is between legal and equitable title;
- the transfer of property is between husband and wife, including the transfer of property to a surviving spouse or the transfer is due to a dissolution of marriage;
- the property was transferred pursuant to the Florida Probate Code; or
- the transfer occurred upon the death of the owner and is between the owner and a permanent resident who is dependent upon the owner.

Section 196.011, F.S., requires persons to file an application with the county property appraiser to receive a homestead exemption. Once an original application for tax exemption has been granted, a renewal application is mailed to the property owner on or before February 1 of each year.

The issue of whether a new application for homestead property is required when there is no change of ownership under section 193.155(3), F.S. was recently addressed in the Department of Revenue correspondence with the Brevard County Property Appraiser. The letter stated that if one of the conditions in subsection (3) was met, "it does not appear that the absence of an application would constitute a waiver of the exemption in every case." The reasoning behind this is that since the prior owner had previously filed the original application, and the use as homestead was established prior to the transfer, the transferee is then entitled to the exemption.

### Educational Property Tax Exemption

Section 3(a) of Article VII of the State Constitution specifies that portions of property “used predominantly for educational, literary, scientific, religious, or charitable purposes may be exempted by general law from taxation.” Chapter 196, F.S., implements these exemptions.

Section 196.192, F.S., requires property be “owned and used” by an exempt entity to qualify for an exemption from ad valorem taxes. (Prior to 1988, property need only be “used” for exempt purposes to qualify for the exemption. The State Constitution does not require ownership as a condition for the exemption.) This provision further qualifies that “each use to which the property is being put must be considered in granting an exemption from ad valorem taxation, including any economic use in addition to any physical use.”

To the extent that an exempt entity using property leased to them for an exempt purpose is the equitable owner of such property, holding “all the benefits and burdens of ownership” of the leased property, the property qualifies for an ad valorem tax exemption. *Leon County Educ. Facilities Auth. v. Hartsfield*, 698 So.2d 526, 530 (Fla. 1997) and *Robbins v. Mt. Sinai Medical Center, Inc.*, 1999 WL 1144791 (Fla. App. 3 Dist.)

Because exemptions from taxation results in an uneven distribution of the tax burden, statutes granting such tax relief are strictly construed against the exemption. *Miami Battlecreek v. Lummus* 192 So. 211 (Fla. 1939) and *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072 (Fla. 1994)

School districts have expressed an interest in entering into a long-term lease/leaseback agreement with private investors on property currently owned and used by the district for educational purposes. The investors will become eligible for federal income tax credits based upon the prepayment of business expenses associated with the lease transaction and other factors. The districts estimate a net benefit equal to 5 - 10% of the appraised value of the leased property. If this financial arrangement is agreed to, it is not clear if school districts would retain “all the benefits and burdens of ownership,” and thus remain eligible for the property tax exemption.

### Fixing Millage and the Notice of the Proposed Property Taxes

Chapter 200, F.S., governs the method of fixing millage by local taxing authorities (TRIM process). Section 200.065, F.S., provides for the method of fixing millage and for the notice of the proposed property taxes to property owners. Taxing authorities must comply with all aspects of the notice requirements or be required to repeat the hearing and notice process. Noncompliance may subject a taxing authority to forfeit state funds.

Subsection (13) provides a mechanism for correcting certain errors in the notice of proposed property taxes. In lieu of sending a corrected notice, upon the approval of the Department of Revenue, the property appraiser may send out a short form of the notice with the correct information. The short form is prepared and mailed at the expense of the taxing authority which caused the error.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 193.092(1), F.S., to provide an exception to the requirement for assessing taxes to the current owner of property that has previously escaped taxation. Back taxes are not due on property that escaped taxation when the property is owned by a subsequent bona fide purchaser who purchased the property with no actual or constructive notice that the property had escaped taxation.

**Section 2** amends s. 196.161(1)(b), F.S., to provide a waiver of assessed penalty and interest on improperly granted homestead exemptions when the exemption is granted as a result of transfer of ownership of that property under the circumstances identified in s. 193.155(3), F.S., which controls reassessment of property for a homestead exemption upon a transfer of ownership. However, the amendment to s. 196.161(1)(b), F.S., restricts the waiver to those persons who did not simultaneously receive a homestead exemption on additional property.

**Section 3** amends s. 196.198, F.S., to maintain a property tax exemption for property leased from a governmental agency if the agency continues to use the property, pursuant to a sublease or other contractual agreement with the lessee, exclusively for educational purposes.

**Section 4** amends s. 200.065(13)(a), F.S., to revise the procedure for correcting a minor error in TRIM notices. Property appraisers are allowed to correct a notice of public hearing error on the notice of proposed property taxes by advertising the correct information, with the permission by the affected taxing authority, in a newspaper of general circulation pursuant to s. 200.065(3), F.S.

**Section 5** provides an effective date of upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The bill may reduce the authority that counties or municipalities have to raise the revenue in the aggregate. In limited situations, local governments will no longer be able to collect previously collectable taxes on property that escaped taxation. In addition, the bill limits a local government's ability to collect penalties and interest from property owners when a homestead exemption was erroneously granted.

However, because these circumstances occur infrequently, the impact of this bill is likely to be insignificant. Therefore, it is exempt from the constitutional mandates restriction.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

In limited situations, local governments will no longer be able to collect previously collectable taxes on property that escaped taxation. In addition, the bill limits a local government's ability to collect penalties and interest from property owners when a homestead exemption was erroneously granted. However, because these circumstances occur infrequently, the impact of this bill is likely to be insignificant.

**B. Private Sector Impact:**

In limited situations, some property owners will no longer be obligated to pay property taxes, and subsequent penalties and interest, on property that escaped taxation.

**C. Government Sector Impact:**

The ability to correct an error on the notice of proposed taxes regarding the public hearing will result in a cost savings to local governments. Rather than having to send out short form notices, the error may be corrected by advertising the correct information in a newspaper of general circulation. The cost differential between sending out short form notices to all affected taxpayers and advertising the correction could be substantial.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.