SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL:	CS/SB 1738
SPONSOR:	Appropriations Committee and Senator Fasano
SUBJECT:	Limitations on Actions to Collect Taxes
DATE:	April 15, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	Fav/1 amendment
2.	Fournier	Johansen	FT	Favorable
3.			AGG	Withdrawn
4.	Blizzard	Coburn	AP	Fav/CS
5.				
6.				

I. Summary:

The committee substitute extends the statute of limitations from 5 years to 20 years for a tax lien imposed under s. 196.161, F.S., relating to the fraudulent receipt of homestead exemption.

This bill amends section 95.091of the Florida Statutes.

II. Present Situation:

Homestead Exemption

Article VII, s. 4 of the State Constitution, requires that all property be assessed at its just value for ad valorem tax purposes. The term “just value” has been interpreted to mean fair market value. Exceptions to this requirement include agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or totally exempted.

Article VII, s. 6 of the State Constitution, authorizes an exemption from ad valorem taxation for homestead property owned by a taxpayer and used as the owner's permanent residence or the permanent residence of another person who is legally or naturally dependent upon the owner. The value of the homestead exemption is currently $25,000 of the assessed value of the real estate.

Article VII, s. 4(c) of the State Constitution, provides for a homestead property assessment increase limitation. Annual increases in homestead property values are limited to 3 percent or the increase in the Consumer Price Index, whichever is lower, not to exceed just value. If there is a change in ownership, the property is assessed at its just value on the following January 1. The value of changes, additions, reductions or improvements to the homestead property is assessed as provided by general law.

The homestead exemption is implemented primarily by s. 196.031, F.S., although other statutory sections provide specific procedures and conditions, e.g., procedures for application for the exemption (s. 196.011, F.S.), the extent of the exemption (s. 196.041, F.S.), and the effect of renting homestead property. Section 196.031(4), F.S., requires all property appraisers to annually determine the classification of each parcel of property within their respective jurisdictions.

Additional Homestead Exemption
Pursuant to the authority provided in Art. VII, s. 6(f) of the State Constitution, s. 196.075(2), F.S., allows both counties and municipalities, through adoption of an ordinance, to grant an additional homestead tax exemption of up to $25,000 to resident homeowners who have legal or equitable title to the real estate who are at least 65 years of age and whose household income does not exceed $20,000.[1] The exemption is against the tax levy of the granting county or municipality only. Section 196.075(7), F.S., allows a person entitled to the homestead exemption under s. 196.031, F.S., to apply for and receive this additional exemption, as provided by ordinance, and receipt of the additional exemption is subject to the provisions of ss. 196.131 and 196.161, F.S. Further, s. 196.075(8), F.S., provides that if title is held jointly with right of survivorship, the person residing on the property, and otherwise qualifying, may receive the entire amount of the additional homestead exemption.

Tax Liens Imposed for Persons Improperly Claiming a Homestead Exemption
Section 196.161, F.S., requires a property appraiser to record a notice of tax lien against a property on which a person has claimed an unlawful homestead exemption under s. 196.031, F.S. Specifically, if the property appraiser has knowledge of the fact that a person's estate is being probated or administered in another state and the estate contains real property located in Florida upon which a homestead exemption has been granted for any year within 10 years prior to the person's death, the appraiser shall file a tax lien against the property which subjects the property to back taxes, a penalty of 50 percent of the unpaid taxes for each year, plus 15 percent interest per year.[2] However, if a circuit court having ancillary jurisdiction over the estate in Florida determines the deceased person was a resident of this state during the years when the exemption was claimed, the property appraiser is prohibited from filing the lien or, if filed, the lien must be canceled of record.[3]

In addition, if a property appraiser determines that a person who was not entitled to a homestead exemption was granted the exemption for any year within the prior 10 years, the property appraiser is required to serve on such person a notice of intent to record in the public records of the county a notice of tax lien.[4] The tax lien subjects the property to back taxes, a penalty of 50

[1] S. 196.075(1), F.S., defines "household" to exclude persons boarding or renting a portion of a dwelling. However, persons living together in a room or group of rooms as a housing unit meet the definition of "household." The term "household income" is defined to mean the adjusted gross income, as defined in s. 62 of the U.S. Internal Revenue Code, of all members of a household.
[2] S. 196.161(1)(a), F.S.
[3] S. 196.161(1)(a), F.S.
[4] S. 196.161(1)(b), F.S.

percent of the unpaid taxes for each year, plus 15 percent interest per year.[5] However, if the exemption was granted as the result of a clerical error, the person receiving the exemption may not be assessed penalties or interest. Also, before a lien is filed, the owner shall be given 30 days to pay the taxes, penalties, and interest.[6]

A lien pursuant to s. 196.161, F.S., attaches to the property when the notice of tax lien is filed in the public records of the county.[7] Prior to the filing of such notice, any purchaser for value shall take the property free and clear of such lien. Once filed, the lien attaches to any property identified in the notice of tax lien and owned by the person who illegally or improperly received the exemption. However, if the person no longer owns property in the county, but owns property elsewhere in the state, the property appraiser is required to record a notice of tax lien against such property in the other county or counties.[8]

Limitations on Actions to Collect Taxes

Section 95.091, F. S., imposes a five-year statute of limitations on any tax lien granted by law to the state or any of its political subdivisions, a municipality, a public corporation or body politic, or other entity with the authority to levy and collect taxes. However, this provision does not affect taxes for which certificates have been sold or taxes that are enumerated in s. 72.011, F.S.[9]

Those taxes specified in s. 72.011, F.S., have a twenty-year statute of limitations[10] and include the tourist development tax, s. 125.0104, F.S.; tourist impact tax, s. 125.0108, F.S.; estate taxes, chapter 198, F.S.; intangible personal property taxes, chapter 199, F.S.; excise tax on documents, chapter 201, F.S.; communications services tax, chapter 202, F.S.; gross receipts taxes, chapter 203, F.S.; motor and other fuel taxes, chapter 206, F.S.; tax on operation of commercial motor vehicles, chapter 207, F.S.; tax on cigarettes, chapter 210, F.S.; tax on severance and production of minerals, chapter 211, F.S.; tax on sales, use, and other transactions, chapter 212, F.S.; state revenue laws, chapter 213, F.S.; income tax, chapter 220, F.S.; tax on particular corporate income tax partners, chapter 221, F.S.; Apalachicola Bay oyster surcharge, s. 370.07(3), F.S.; waste tire fees, s. 403.718, F.S.; and lead-acid battery fees; s. 403.7185, F.S. The list also includes taxes and surcharges related to pollutant discharge prevention and removal, chapter 376, F.S.; waste tire and lead-acid battery requirements, s. 403.717, F.S.; registration of secondhand dealers, s. 538.09, F.S.; registration of secondary metals recyclers, s. 538.25, F.S.; pari-mutuel waging, chapter 550, F.S.; beverage law administration, chapter 561, F.S.; beverage law enforcement, chapter 562, F.S.; beer, chapter 563, F.S.; wine, chapter 564, F.S.; liquor, chapter 565, F.S.; insurance code, chapter 624, F.S.; and motor vehicle sales warranties, s. 681.117, F.S.

Because an action to collect any tax after the expiration of the lien securing payment of the tax is not permitted,[11] some property owners who have liens on their property under s. 196.161, F.S., resulting from the fraudulent receipt of homestead exemption, simply wait until the five-year statute of limitations expires and sell their property without the lien.

[5] S. 196.161(1)(b), F.S.
[6] S. 196.161(1)(b), F.S.
[7] S. 196.161(3), F.S.
[8] S. 196.161(3), F.S.
[9] S. 95.091(1)(a), F.S.
[10] S. 95.091(1)(b), F.S.
[11] S. 95.091((1)(a), F.S.

If a lien to secure the payment of a tax is not provided by law, then a five-year statute of limitations applies and any action to collect the taxes may not occur after 5 years from the date the tax is assessed or becomes delinquent, whichever is later.[12] Also, if a taxpayer initiates an administrative or judicial proceeding for review of the tax assessment or collection within the applicable period of limitation, the running of the period is tolled during the pendency of the proceeding.[13]

III. Effect of Proposed Changes:

Section 1 amends s. 95.091(1)(a), F.S., to exclude tax liens issued under s. 196.161, F.S., relating to the fraudulent receipt of homestead exemption, from those taxes that are subject to a five-year statute of limitations. Section 95.091(1)(b), F.S., is amended to add those tax liens imposed under s. 196.161, F.S., to the list of taxes that have a twenty-year statute of limitations.

Section 2 provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill extends the statute of limitations for tax liens imposed as the result of the fraudulent receipt of homestead exemption. Properties on which such a lien is imposed will remain subject to the lien for a period of 20 years unless the lien is satisfied at an earlier date.

[12] S. 95.091(2), F.S.
[13] S. 95.091(4), F.S.

C. Government Sector Impact:

The bill increases the potential for a local government to collect back taxes, penalties, and interest from property owners that received an unlawful homestead exemption. This would result in a positive fiscal impact, but the amount is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.