

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: CS/SB 1324

INTRODUCER: Community Affairs Committee and Senator Altman

SUBJECT: Taxation

DATE: January 29, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.			FT	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1324 authorizes a property appraiser to contract for services to examine or audit homestead tax exemptions claimed on assessment rolls. The contractors are compensated solely from back taxes and penalties collected as a result of the examination or audit. The bill also provides that a tax lien based on a false homestead claim is collected in the same manner as, and in addition to, the current ad valorem taxes.

The bill further provides that the owner of nonhomestead property is granted a period of 30 days after the receipt of notice to pay the unpaid taxes and any applicable penalties and interest if the property owner received a property assessment limitation that the owner was not entitled to receive. The property appraiser may not file the tax lien before the conclusion of the 30 day period.

The bill also provides that the property owner improperly receiving the nonhomestead property assessment limitation may not be assessed penalties or interest if the property assessment limitation is improperly granted as a result of a clerical mistake or an omission by the property appraiser.

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

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁶ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes;⁷ land used for conservation purposes;⁸ historic properties when authorized by the county or municipality;⁹ and certain working waterfront property.¹⁰

Property Tax Exemptions for Homesteads

The Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.¹¹

Homestead Exemption

Article VII, section 6 of the Florida Constitution provides that every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including levies by school districts. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding ad valorem taxes levied by school districts.

¹ Both real property and tangible personal property can be 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); *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 Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ *Sebring Airport Auth. v. McIntyre*, 783 So.2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So.2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So.2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So.2d 431, 432 (Fla. 1952).

Fraudulent Homestead Exemption Claims

If delinquent ad valorem taxes are not paid by June 1 of the year after assessment, the county holds a tax certificate sale for real property located in the county on which the taxes became delinquent in that year.¹² A tax lien certificate is an interest bearing first lien representing unpaid delinquent real estate property taxes. However, it does not convey any property rights or ownership to the certificate holder.

The property owner has a period of 2 years from the date the taxes became delinquent to redeem the tax certificate by paying to the county the total due, including accrued interest.¹³ After the 2 year period, if the taxes remain unpaid, the lien holder may make an application for tax deed auction with the county.¹⁴ If tax deed auction proceedings begin, the property owner must pay all due and delinquent years, plus fees and interest to stop the sale of their property at public auction.¹⁵ If the tax certificate is not redeemed or sold at auction after 7 years, the tax certificate is cancelled and considered null and void.¹⁶

Current law provides that if a property owner was granted a homestead exemption, but was not entitled to it, the property appraiser will send the owner a notice of intent to file a tax lien on any property owned by the owner in that county.¹⁷ After receiving notice, the property owner has 30 days to pay the taxes owed, plus penalties and interest before the property appraiser may file the lien.¹⁸ Even if a tax lien is filed, the tax lien remains on the property until it is paid or expires after 20 years.¹⁹

Nonhomestead Property Assessment Limitations

Current law provides that if a property owner was granted a property assessment limitation for a nonhomestead property, but was not entitled to it, the property appraiser will send the owner a notice of intent to file a tax lien on any property owned by the owner in that county.²⁰ However, current law does not address the amount of time that a property owner has to pay the unpaid taxes, penalties, and interest before the tax lien may be filed.

III. Effect of Proposed Changes:

Section 1 amends s. 193.1554, F.S., to allow the owner of nonhomestead property a period of 30 days after the receipt of notice to pay the unpaid taxes and any applicable penalties and interest if the property owner received a property assessment limitation that the owner was not entitled to receive. The property appraiser may not file the tax lien before the conclusion of the 30 day period.

¹² Section 197.432(1), F.S.

¹³ Section 197.502(1) and (2), F.S.

¹⁴ Section 197.502, F.S.

¹⁵ Section 197.472, F.S.

¹⁶ Section 197.482, F.S.

¹⁷ Section 196.161(1)(b), F.S.

¹⁸ *Id.*

¹⁹ Section 95.091(1)(b), F.S.

²⁰ *See* Sections 193.1554 and 193.1555, F.S.

The bill also provides that the property owner improperly receiving the nonhomestead property assessment limitation may not be assessed penalties or interest if the property assessment limitation is improperly granted as a result of a clerical mistake or an omission by the property appraiser.

Section 2 amends s. 193.1555, F.S., to allow the owner of nonhomestead property a period of 30 days after the receipt of notice to pay the unpaid taxes and any applicable penalties and interest if the property owner received a property assessment limitation that the owner was not entitled to receive. The property appraiser may not file the tax lien before the conclusion of the 30 day period.

The bill also provides that the property owner improperly receiving the nonhomestead property assessment limitation may not be assessed penalties or interest if the property assessment limitation is improperly granted as a result of a clerical mistake or an omission by the property appraiser.

Section 3 amends s. 196.141, F.S., to allow the property appraiser to contract for services to examine or audit homestead tax exemptions claimed on assessment rolls. Agreements for such contracted services must provide that:

- The contractor may contact persons claiming a homestead exemption only with the written approval of, and in a manner prescribed by, the property appraiser. The contractor must notify the person claiming the homestead exemption that the contractor has been contracted by the property appraiser as a third party to examine or audit homestead tax exemptions. The contractor must provide the property appraiser's contact information to the person claiming the homestead exemption and provide notice that any questions related to the examination or audit should be directed to the property appraiser. The contractor may not:
 - Falsely personate a government official.
 - Communicate with the person between 9 p.m. and 8 a.m. in the person's time zone without the person's prior consent.
 - Suggest, communicate, or threaten that the person owes any money.
 - Disclose or threaten to disclose any information that is not a public record to a person other than the person claiming the homestead exemption, the person's authorized representative, an adult occupant of the property receiving the homestead exemption, the property appraiser, or the property appraiser's agents or employees.
 - Publish or post, threaten to publish or post, or cause to be published or posted to the general public any individual names or list of names.
- After the contractor completes the examination or audit, the contractor must disclose the results to the property appraiser. The property appraiser will make the determination whether the property owner is entitled to the homestead exemption, and initiate proceedings pursuant to ss. 196.151 and 196.161, F.S., if the property appraiser determines the person was not entitled to the homestead exemption.
- The contractor is solely responsible to the property appraiser for any claims arising from the contractor's performance.
- The contractor's compensation will consist solely of a portion, as specified in the agreement, of the back taxes and penalties collected on the assessments resulting from the examination or audit and the removal of homestead exemptions from previous and current year tax rolls.

- A property appraiser contracting for such services may receive the interest imposed pursuant to chapter 196, F.S., and collected on the previous and current year's assessment rolls. After distributing the compensation for such contracted services and the interest retained by the property appraiser, the tax collector shall distribute any back taxes collected under ch. 197, F.S.

Section 4 amends s. 196.161, F.S., to authorize unpaid taxes, interest, and penalties due from homestead fraud perpetrators to be added to the next tax assessment.

Section 5 amends s. 213.30, F.S., to authorize the collection of money pursuant to s. 196.141, F.S.

Section 6 provides that the Legislature finds that this act fulfills an important state interest.

Section 7 provides an effective date of July 1, 2016.

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:

Owners of nonhomestead property who improperly received a property assessment limitation due to a clerical mistake or an omission by the property appraiser no longer have to pay penalties or interest.

C. Government Sector Impact:

The ability of a property appraiser to contract for services to examine or audit homestead tax exemptions may result in fewer fraudulent homestead claims, resulting in the relinquishment of those homeowner's improper benefits and a higher ad valorem tax base for the local government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 196.141, 196.161, and 213.30 of the Florida Statutes.

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

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

CS by Community Affairs on February 1, 2016:

Provides the owner of nonhomestead property a period of 30 days after the receipt of notice to pay the unpaid taxes and any applicable penalties and interest if the property owner received a property assessment limitation that the owner was not entitled to receive. The property appraiser is prohibited from filing the tax lien before the conclusion of the 30 day period. In addition, the property owner improperly receiving the nonhomestead property assessment limitation may not be assessed penalties or interest if the property assessment limitation is improperly granted as a result of a clerical mistake or an omission by the property appraiser.

B. Amendments:

None.