

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 Finance and Tax

BILL: SPB 7060

INTRODUCER: For consideration by the Finance and Tax Committee

SUBJECT: Tax Administration

DATE: February 17, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Babin</u>	<u>Diez-Arguelles</u>	_____	Pre-meeting

I. Summary:

SPB 7060 makes changes to tax-related statutes, as recommended by the Department of Revenue. Specifically, the bill:

- Extends from 3 to 5 years the time for commencement of repairs to property damaged by Hurricane Michael without the property owner losing the prior assessment limitation.
- Updates real property classification language to classify apartments with more than nine units as commercial property.
- Updates the Department of Revenue's tax roll review requirements to delete the requirement that the department do in-depth reviews of tangible personal property and to delete the requirement that the department calculate a confidence interval for an entire property roll.
- Tolls the statute of limitations for refund claims to allow taxpayers to apply for refunds during the audit process.
- Increases the timeframes during which non-residents and dealers must provide documentation demonstrating that boats and aircraft purchased in Florida were removed from the State.
- Changes the penalty for not properly labeling dyed diesel fuel from \$10 per gallon to \$2,500 for every month that dyed diesel fuel is improperly labeled.

The Revenue Estimating Conference estimates that the provisions of the bill that toll the statute of limitations for refunds will reduce General Revenue Fund receipts by an indeterminate amount beginning in Fiscal Year 2020-2021. The remaining provisions of the bill do not have a fiscal impact.

The bill takes effect July 1, 2020.

II. Present Situation:

The present situation for each issue is explained below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Section 1 –Repairs to Property Damaged by Hurricane Michael

Present Situation

Under current law, changes, additions, or improvements to property are assessed at fair market value on the January 1 after the changes, additions, or improvements are substantially completed; however, Florida allows an owner of property that was damaged or destroyed by misfortune or calamity to make changes, additions, or improvements that repair or replace portions of the property without increasing the assessed value of the property above the value of the property before it was damaged or destroyed.¹ In order to receive this lower assessed value, the square footage of the property, as changed or improved, may not exceed 110 percent of the square footage of the property before it was damaged or destroyed, or 1500 square feet. And, the qualifying changes, additions, or improvements must commence within three years after the January 1 following the damage or destruction of the property.

Proposed change

The bill creates s. 193.1557, F.S., to extend from three years to five years the timeframe for commencing qualifying changes, additions or improvements that replace all or a portion of property damaged or destroyed by Hurricane Michael. This extension of time applies for tax years 2019-2023 and is repealed on December 31, 2023.

Section 2 – Property Classification of Apartments with more than Nine Units

Present Situation

Under current law all items that are required by law to be on the assessment rolls must receive a classification based upon the use of the property.² Real property must be classified according to the assessment basis of the land.³

Apartment property is generally assessed in a manner similar to other commercial property but must be classified as multifamily, regardless of the number of units.

Proposed change

The bill amends s. 195.073, F.S., to specify that apartment property with more than nine units should be classified as commercial property.

Section 3 – In-Depth Study Requirements and Confidence Interval Calculations

Present Situation

The DOR must conduct an in-depth review of the real property and tangible personal property assessment rolls of each county at least once every two years and report the results of its review

¹ See ss. 193.155(4)(b), 193.155(6)(b), and 193.155(6)(b), F.S.

² Section 195.073, F.S.

³ *Id.*

to specified legislative staff and county officials.⁴ As part of the in-depth review, the DOR conducts assessment ratio studies, which assist in determining whether property is being assessed fairly and equitably.⁵ In conducting the assessment ratio studies, the DOR must adhere to the standards to which the property appraisers are required to adhere to and use all practicable steps to maximize the representativeness or statistical reliability of the samples of properties reviewed.

The DOR must complete the review of the county assessment roll and publish the findings within 120 days after receiving the roll or within 10 days after the approval of the roll, whichever is later.⁶ During the review process, the DOR must compute a confidence interval for the overall property tax roll and include in its findings a statement of the confidence interval for the median and any other measures that may be appropriate for each classification or subclassification studied. The results should also include all related statistical and analytical details and measures for the real property assessment roll as a whole and the personal property assessment roll as a whole.⁷

A recently completed Auditor General's report contained findings noting that the DOR has not conducted in-depth reviews of tangible personal property and that the DOR has not met the requirement to compute a confidence interval for the overall property tax roll.

The DOR has not conducted in-depth reviews of the tangible personal property rolls in over a decade because, during the recession, the Legislature cut the staff positions that conducted these studies.

The DOR has not computed a confidence interval for the property tax roll as a whole because there is not a generally accepted statistical procedure for the calculation.

Proposed change

The bill amends s. 195.096, F.S., to specify that in-depth reviews are only required for real property rolls and to remove the requirement that the DOR compute a confidence interval for the overall property tax roll.

Section 4 – Reduce Penalties for Diesel Fuel Noticing Violations

Present Situation

Florida law allows consumers to purchase dyed diesel fuel free from state and local taxes under the following circumstances:

- When used on a farm for farming purposes;
- When used exclusively by a local government;
- When used in a vehicle owned by an aircraft museum;
- When used exclusively by the American Red Cross;

⁴ Section 195.096(2), and (3)(c), F.S.

⁵ International Association of Assessing Officers, *Standard On Ratio Studies*, p. 8, available at https://www.iaao.org/media/standards/Standard_on_Ratio_Studies.pdf (last visited Feb. 12, 2020).

⁶ Section 195.096(2)(f), F.S.

⁷ Section 195.096(3)(a), F.S.

- When used in a vessel employed in the business of commercial transportation or in commercial fishing;
- When used in a bus engaged in the transportation of students and employees of schools;
- When used in a local bus service open to the public and travels regular routes;
- When used exclusively by a nonprofit educational facility;
- When used in a motor vehicle owned by the US Government which is used off-highway;
- When used in a vessel of war;
- When used for home heating;
- When used in certain self-propelled off-road or stationary equipment; and
- When used by a non-commercial vessel.⁸

Each local government or mass transit system provider that intends to purchase dyed diesel must register with the DOR before making exempt purchases.⁹

Tax free dyed diesel fuel is marked with a red dye¹⁰ and invoices, shipping papers, bills of lading, pumps, and other related items associated with the sale are required to be marked with the statement: “DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE.”¹¹

Failure to include the required statement requires a mandatory penalty of \$10 for every gallon or \$1,000, whichever is greater.¹² The mandatory \$10 per gallon penalty requirement has resulted in very large penalty assessments, even when the dealer had paid all taxes due.

Proposed Change

The bill amends s. 206.8741, F.S., to revise the penalty to \$2,500 for each month that there is a failure to include the required notice.

Section 5 – Timeframe for Non-Residents to Remove Boats and Aircraft from the State

Present Situation

Non-residents¹³ who purchase a boat or aircraft in Florida for use outside Florida are not required to pay Florida sales tax on their purchase if the item is removed from the state within a statutory timeframe and documentation is provided to the DOR to show that the boat or aircraft was removed and titled or registered in another jurisdiction. Currently, the following time limits are in statute:

⁸ Section 206.874(3), F.S.

⁹ Section 206.874(4) and (5), F.S.

¹⁰ See Rule 12B-5.140(1), F.A.C., and 48.4082-1(b), Treasury Regulations (February 26, 2002), which specifies the dye “Solvent Red 164 (and no other dye) at a concentration spectrally equivalent to at least 3.9 pounds of the solid dye standard Solvent Red 26 per thousand barrels of diesel fuel.”

¹¹ Section 206.8741, F.S.

¹² Sections 206.8741(6) and 206.872(11), F.S.

¹³ Section 212.05(1)(a)2., F.S., provides that Florida sales tax does not apply to the purchase of a boat or aircraft if the purchaser is, at the time of delivery, (1) a non-resident of the state, (2) not engaged in carrying on a trade or business which would use the boat or aircraft in the state, and (3) not a corporation which has any Florida resident officers or directors.

- The purchaser has **10 days** from the date the boat or aircraft left Florida to provide the DOR with proof of the removal.
- The purchaser has **30 days** from the date of departure to provide the DOR with documentation that the boat or aircraft has been titled or registered in another jurisdiction. If proof of registration is not available within **30 days**, the purchaser must provide evidence that the registration was applied for in another jurisdiction within the timeframe and must send the registration to the DOR once it has been received.
- The selling dealer has **5 days** from the date of the sale to provide to the DOR a copy of the invoice (or other proof of sale) and a copy of the original affidavit from the purchaser attesting that he or she has read the statute on non-resident purchases.

Proposed Change

The bill amends s. 212.05, F.S., to extend each of the current statutory timeframes to allow additional time for the purchaser and dealer to provide information to the DOR, as follows:

- Proof of removal - **30 days**.
- Proof of titling or registration - **90 days**.
- Dealer provision of invoice - **30 days**.

Section 6 – Toll Statute of Limitations for Refund Claims during an audit

Present Situation

Under Florida law, taxpayers have the ability to file an application for a refund when they have paid tax in error, have made an overpayment of tax, or have paid tax when no tax was due.¹⁴ Generally, a taxpayer has three years from the time the tax was paid to apply for the refund.¹⁵

When a taxpayer has been audited and would like to dispute the outcome of the audit; or when the taxpayer has applied for a refund, been denied, and would like to dispute the refund denial; the taxpayer has the option to protest the case through the informal protest process.¹⁶ The informal protest process provides taxpayers a separate and independent forum to challenge audit assessments and refund denials.

The time for the DOR to make a tax assessment is tolled during an audit protest, thus protecting the state's interest;¹⁷ however, the time for a taxpayer to file a refund claim for overpayment of taxes is not tolled during these same protests.

Proposed Change

The bill amends s. 213.21, F.S., to toll the time for a taxpayer to file a refund claim during an audit protest.

¹⁴ Section 215.26(1), F.S.

¹⁵ Section 215.26(2), F.S.

¹⁶ Section 213.21(1)(a), F.S.

¹⁷ Section 213.21(1)(b), F.S.

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

The bill does not require counties or municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of state tax shared with them. Therefore, the mandates provisions of Article VII, section 18 of the Florida Constitution, do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

The Revenue Estimating Conference estimates that the provisions of the bill that toll the time for a taxpayer to apply for refunds during an audit protest will reduce General Revenue Fund receipts by an indeterminate amount beginning in Fiscal Year 2020-2021. The remaining provisions of the bill do not have a fiscal impact.

B. Private Sector Impact:

Property owners affected by Hurricane Michael may have more time to commence repairs to their property without losing their assessment limitation.

Taxpayers with refund claims found during an informal protest may be able to receive refunds that are currently time barred.

Non-residents who purchase boats and aircraft for use in another state will have more time to provide required documentation.

Sellers of dyed diesel fuel may pay less penalties.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 195.073; 195.096; 206.8741; 212.05; and 213.21.

The bill creates section 193.1557 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.