

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: SB 1308
 SPONSOR: Senator Sebesta
 SUBJECT: Ad Valorem Taxation
 DATE: January 31, 2002

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable
2.	Fournier	Johansen	FT	Favorable
3.				
4.				
5.				
6.				

I. Summary:

The bill 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; and revises the procedure for correcting a minor error in TRIM notices.

This bill amends ss. 193.092, 196.161, 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 that 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 may be 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 (DOR) 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." DOR reasoned 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.

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 that caused the error.

III. Effect of Proposed Changes:

Section 1 amends s. 193.092, 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 in good faith without notice of any escaped taxation or adverse claim. As with personal property under current law, the individual or corporation that was liable for the tax remains personally liable for it.

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 waiver of penalties and interest is inapplicable if the intent of the transfer is to avoid the payment of penalties and interest.

Section 3 amends s. 200.065(13)(a), F.S., to revise the procedure for correcting a minor error in TRIM notices. If the error involves only the date and time of the public hearing specified on the TRIM notice, property appraisers are allowed to correct the notice 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 4 provides an effective date of upon becoming a law.

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

Article VII, section 18(b), of the Florida Constitution provides:

Except upon approval of each house of the Legislature by two-thirds of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect

of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

However, laws of insignificant fiscal impact (\$1.6 million) are exempt from this provision.

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 on property that escaped taxation. In addition, some property owners will no longer be obligated to pay property taxes, and subsequent penalties and interest on property erroneously granted a homestead exemption.

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.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
