

**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 Budget Subcommittee on Finance and Tax

BILL: SB 382

INTRODUCER: Senator Bogdanoff

SUBJECT: Tax Certificates

DATE: February 9, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Favorable</b>
2.	Babin	Diez-Arguelles	BFT	<b>Pre-meeting</b>
3.				
4.				
5.				
6.				

**I. Summary:**

This bill allows tax collectors to recover reimbursement for fees paid to vendors for providing electronic tax deed application services. The bill authorizes tax collectors to require the use of electronic tax deed application services.

The bill also states that a tax collector can accept an application for obtaining a tax deed on a part of a parcel of property only after the separation has been received from the property appraiser.

This bill substantially amends section 197.502, of the Florida Statutes.

**II. Present Situation:**

**Property Tax Assessments**

Chapters 193-195, Florida Statutes, address property assessment procedures. Local property appraisers assess all real and tangible personal property located within the county. The assessment process begins by determining the property's just value. Property appraisers are required to utilize the factors outlined in s. 193.011, F.S., to determine the property's just value as of January 1 of each year.

Article VII, section 4, of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's

length transaction.<sup>1</sup> The State Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial 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 may be totally exempted.<sup>2</sup>

Article VII, of the State Constitution, also limits the amount by which assessed value may increase in a given year for certain classes of property and permits a number of tax exemptions. These include exemptions for homesteads and charitable, religious, or literary properties, as well as tax limitations under the Save Our Homes provisions. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the taxable value.

The property appraiser's assessment roll must be completed and submitted to the executive director of the Department of Revenue for approval by July 1 of each year unless good cause is shown for extension.<sup>3</sup> As provided by ch. 195, F.S., the Department of Revenue has general supervision over the assessment and valuation of property. Taxpayers receive a Notice of Proposed Property Taxes (TRIM notice) in August of each year. This notice provides the taxable value of the property and the millage rate<sup>4</sup> necessary to fund each taxing authority's proposed budget based on the certified tax rolls submitted by the property appraiser.

Chapter 194, F.S., provides taxpayers the right to appeal the property appraiser's assessment by filing a petition with the Value Adjustment Board<sup>5</sup> (VAB) within 25 days after the TRIM notice is mailed, or to contest the assessment in circuit court.

The governing boards of local governments prepare a tentative budget for operating expenses following certification of the tax rolls by the tax collector. The millage rate is then set based on the amount of revenue needed to cover those expenses. The millage rate proposed by each taxing authority must be based on not less than 95 percent of the taxable value according to the certified tax rolls. The Department of Revenue is responsible for ensuring that millage rates are in compliance with the maximum millage rate requirements set forth by law as well as the constitutional millage limits. A public hearing on the proposed millage rate and tentative budget must be held within 65 to 80 days of the certification of the rolls, and a final budget and millage rate must be announced prior to end of said hearing.<sup>6</sup> The millage rate may be changed administratively without a public hearing if the aggregate change in value from the original

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<sup>1</sup> 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).

<sup>2</sup> Art. VII, Sec. 4(c), Fla. Const.; Section 196.185, F.S.

<sup>3</sup> Section 193.1142, F.S.

<sup>4</sup> The millage rate is the rate at which the property is taxed and is set by the governing board of each local government based on how much revenue is needed for operating expenses. See s. 200.069, F.S. See also Florida Department of Revenue website, *Local Government Property Tax Process*, available at <http://dor.myflorida.com/dor/property/taxpayers/pdf/ptoinfographic.pdf> (last visited on March 7, 2011).

<sup>5</sup> The Value Adjustment Board for each county consists of two members of the county commission, one of whom shall be elected chairperson, one member of the school board, and two citizen members (one, appointed by the county commission, who must own a homestead within the county, and one, appointed by the school board, who must own a business that occupies commercial space located within the school district). See s. 194.015, F.S.

<sup>6</sup> Section 200.065, F.S.

certification of value is more than 1% for municipalities, counties, school boards, and water management districts, or more than 3% for other taxing authorities.

### **Tax Collections, Sales and Liens**

Chapter 197, Florida Statutes, governs tax collections, sales and liens. Pursuant to s. 197.322, F.S., the tax collector will mail a tax notice to each taxpayer within 20 days of receipt of the certified ad valorem tax roll and the non-ad valorem assessment rolls. The notice states the amount due and advises the taxpayer of discounts provided for early payment.<sup>7</sup> This normally occurs around November 1. Taxes that are not paid by April 1 following the year in which they were assessed are considered delinquent.<sup>8</sup> On April 30, the tax collector sends an additional tax notice to taxpayers whose payment has not been received notifying these taxpayers that a tax certificate on the property will be sold for delinquent taxes that are not paid in full.<sup>9</sup>

On or before June 1 or 60 days after the date of delinquency, tax collectors are required to hold tax certificate auctions to sell tax certificates on properties with delinquent taxes which “shall be struck off to the person who will pay the taxes, interest, cost and charges and will demand the lowest rate of interest under the maximum rate of interest.”<sup>10</sup> Tax certificates that are not sold are issued to the county at the maximum interest rate (18%). The sale of the tax certificate acts as first lien on the property that is superior to all other liens; but it does not convey any property rights to the investor.<sup>11</sup>

In 2003, section 197.432, Florida Statutes, was amended to permit tax collectors to conduct tax certificate sales through electronic means.<sup>12</sup> Since that time, many tax collectors have begun conducting tax certificate sales “online” through Internet websites. To participate in an online tax certificate sale, bidders merely register with the county tax collector. At the time the sale begins, the bidder can use the Internet website to bid on available tax certificates.<sup>13</sup>

A property owner can redeem a tax certificate anytime before a tax deed is issued or the property is placed on the list of lands available for sale. The person redeeming or purchasing the tax certificate is required to pay the investor or county “all taxes, interest, costs, charges, and [any] omitted taxes” and a \$6.25 fee to the tax collector.<sup>14</sup>

The tax certificate holder is entitled to apply for a tax deed on the property on or after April 1 of the second year following the sale of the certificate and before the expiration of seven years from issuance. The tax certificate holder applies by filing the certificate with the county tax collector and paying all other tax certificates held on the same property, any current taxes that are due, and

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<sup>7</sup> Section 197.322 (1), F.S. *See also* s. 197.222, F.S., for taxpayers who elect to prepay their taxes by installment “based upon the estimated tax equal to the actual taxes levied upon the subject property in the prior year.”

<sup>8</sup> Section 197.333, F.S.

<sup>9</sup> Section 197.343, F.S.

<sup>10</sup> Section 197.432 (5), F.S.

<sup>11</sup> Section 197.122, F.S., *see also* s. 197.432, F.S.

<sup>12</sup> Chapter 2003-22, L.O.F.; HB 267 (2003)

<sup>13</sup> Although a bidder can log on from any computer with Internet access, section 197.432(16), F.S., requires that the tax collector provide computer terminals for use by the public.

<sup>14</sup> Section 197.472, F.S.

certain additional fees and costs. The tax collector is authorized to collect a tax application fee of \$75 at the time of application for the tax deed.<sup>15</sup>

If the property is not sold at the public tax deed auction held by the clerk of the circuit court, then it will be placed on the List of Lands available for taxes.<sup>16</sup> Property that is placed on the list of lands available for taxes, and is not sold three years after the public auction, escheats to the county in which the property is located, free and clear of all liens.<sup>17</sup> A tax certificate that is not redeemed or for which a tax deed has not been applied for after a period of seven years is considered to be null and void.

### III. Effect of Proposed Changes:

**Section 1** amends s. 197.502, F.S., to allow tax collectors to charge tax deed applicants for the reimbursement of fees charged by a vendor to the tax collector for providing electronic tax deed application services. The bill authorizes tax collectors offering electronic tax deed applications to require tax certificate holders to use such electronic tax deed application services.

The bill also states that the tax collector can accept an application for obtaining a tax deed on a part of a parcel of property only after the separation has been received from the property appraiser.

**Section 2** provides that this act shall take effect on July 1, 2011.

### 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.

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<sup>15</sup> Section 197.502(1), F.S.

<sup>16</sup> Section 197.542, F.S.

<sup>17</sup> Section 197.502(8), F.S.

**B. Private Sector Impact:**

Tax certificate holders that are applying for a tax deed with the county tax collector may be required to pay reimbursement charges for fees paid by the tax collector to vendors providing electronic tax deed application services.

Tax certificate holders that are applying for a tax deed with a county tax collector that offers electronic tax deed applications may be required to use such electronic tax deed application services.

**C. Government Sector Impact:**

County tax collectors that offer electronic tax deed application services will be able to charge applicants to recover reimbursement for fees paid to vendors providing electronic tax deed application services, and can require tax deed applicants to utilize the electronic tax deed application services that they provide.

The Department of Revenue indicated that this bill does not have a significant fiscal impact on their operations. The passage of this legislation may require the Department to amend Administrative Rules 12D-13.060 and 12D-13.064.<sup>18</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>18</sup> Department of Revenue, *Senate Bill 382 Fiscal Analysis* (Jan. 26, 2011) (on file with the Senate Committee on Community Affairs).