

By the Committee on Finance & Taxation and Representatives
Starks, Ogles, Arnall and Hill

1 A bill to be entitled
2 An act relating to ad valorem taxation;
3 amending s. 192.001, F.S.; defining "computer
4 software" for purposes of imposing ad valorem
5 taxes; specifying circumstances under which
6 computer software constitutes personal
7 property; providing application; amending s.
8 193.155, F.S.; removing provisions relating to
9 correction of erroneous assessments of
10 homestead property; providing for assessment of
11 homestead property for which back assessment is
12 authorized under s. 193.092, F.S.; providing
13 for retroactive application; amending s.
14 196.012, F.S.; redefining "educational
15 institution," for purposes of the exemption of
16 such institutions from ad valorem taxation, to
17 include certain schools providing postgraduate
18 dental education; amending s. 196.195, F.S.;
19 specifying that certain nonprofit corporations
20 are nonprofit for purposes of determining
21 eligibility for the religious, literary,
22 scientific, or charitable ad valorem tax
23 exemption and providing requirements for
24 establishing such status; amending s. 196.196,
25 F.S.; providing an additional criterion for use
26 in determining whether property is being used
27 for a charitable, religious, scientific, or
28 literary purpose; providing effective dates.

29
30 Be It Enacted by the Legislature of the State of Florida:
31

1 Section 1. (1) Subsection (19) is added to section
2 192.001, Florida Statutes, to read:

3 192.001 Definitions.--All definitions set out in
4 chapters 1 and 200 that are applicable to this part are
5 included herein. In addition, the following definitions shall
6 apply in the imposition of ad valorem taxes:

7 (19) "Computer software" means any information,
8 program, or routine, or any set of one or more programs,
9 routines, or collections of information used or intended for
10 use to convey information or to cause one or more computers or
11 pieces of computer-related peripheral equipment, or any
12 combination thereof, to perform a task or set of tasks.

13 Without limiting the generality of the definition provided in
14 this subsection, the term includes operating and applications
15 programs and all related documentation. Computer software
16 does not include embedded software which resides permanently
17 in the internal memory of a computer or computer-related
18 peripheral equipment and which is not removable without
19 terminating the operation of the computer or equipment.

20 Computer software constitutes personal property only to the
21 extent of the value of the unmounted or uninstalled medium on
22 or in which the information, program, or routine is stored or
23 transmitted, and, after installation or mounting by any
24 person, computer software does not increase the value of the
25 computer or computer-related peripheral equipment, or any
26 combination thereof.

27 (2) This section shall take effect upon this act
28 becoming a law, and shall apply to the 1997 tax rolls and
29 thereafter and to any assessment in an administrative or
30 judicial action pending on the effective date of this section.

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1 Section 2. (1) Subsections (8) and (9) of section
2 193.155, Florida Statutes, are amended to read:

3 193.155 Homestead assessments.--Homestead property
4 shall be assessed at just value as of January 1, 1994.
5 Property receiving the homestead exemption after January 1,
6 1994, shall be assessed at just value as of January 1 of the
7 year in which the property receives the exemption. Thereafter,
8 determination of the assessed value of the property is subject
9 to the following provisions:

10 (8) Any homestead property for which back assessment
11 is authorized under s. 193.092 shall be assessed as provided
12 for in s. 193.092.~~Erroneous assessments of homestead property~~
13 ~~assessed under this section may be corrected in the following~~
14 ~~manner:~~

15 (a) ~~If errors are made in arriving at any annual~~
16 ~~assessment under this section due to a material mistake of~~
17 ~~fact concerning an essential characteristic of the property,~~
18 ~~the assessment must be recalculated for every such year.~~

19 (b) ~~If changes, additions, or improvements are not~~
20 ~~assessed at just value as of the first January 1 after they~~
21 ~~were substantially completed, the property appraiser shall~~
22 ~~determine the just value for such changes, additions, or~~
23 ~~improvements for the year they were substantially completed.~~
24 ~~Assessments for subsequent years shall be corrected, applying~~
25 ~~this section if applicable.~~

26
27 ~~If back taxes are due pursuant to s. 193.092, the corrections~~
28 ~~made pursuant to this subsection shall be used to calculate~~
29 ~~such back taxes.~~

30 (9) If the property appraiser determines that for any
31 year or years within the prior 10 years a person who was not

1 entitled to the homestead property assessment limitation
2 granted under this section was granted the homestead property
3 assessment limitation, the property appraiser making such
4 determination shall record in the public records of the county
5 a notice of tax lien against any property owned by that person
6 in the county, and such property must be identified in the
7 notice of tax lien. Such property that is situated in this
8 state is subject to the unpaid taxes, plus a penalty of 50
9 percent of the unpaid taxes for each year and 15 percent
10 interest per annum. However, when a person entitled to
11 exemption pursuant to s. 196.031 inadvertently receives the
12 limitation pursuant to this section following a change of
13 ownership, the assessment of such property must be corrected
14 ~~as provided in paragraph (8)(a)~~, and the person need not pay
15 the unpaid taxes, penalties, or interest.

16 (2) This section shall take effect upon this act
17 becoming a law, and shall apply retroactively to all tax rolls
18 beginning January 1, 1995.

19 Section 3. Subsection (5) of section 196.012, Florida
20 Statutes, is amended to read:

21 196.012 Definitions.--For the purpose of this chapter,
22 the following terms are defined as follows, except where the
23 context clearly indicates otherwise:

24 (5) "Educational institution" means a federal, state,
25 parochial, church, or private school, college, or university
26 conducting regular classes and courses of study required for
27 eligibility to certification by, accreditation to, or
28 membership in the State Department of Education of Florida,
29 Southern Association of Colleges and Schools, or the Florida
30 Council of Independent Schools; a nonprofit private school the
31 principal activity of which is conducting regular classes and

1 courses of study accepted for continuing postgraduate dental
2 education credit by a board of the Division of Medical Quality
3 Assurance; educational direct-support organizations created
4 pursuant to ss. 229.8021, 240.299, and 240.331; and facilities
5 located on the property of eligible entities which will become
6 owned by those entities on a date certain.

7 Section 4. Section 196.195, Florida Statutes, is
8 amended to read:

9 196.195 Determining profit or nonprofit status of
10 applicant.--

11 (1) Applicants requesting exemption shall supply such
12 fiscal and other records showing in reasonable detail the
13 financial condition, record of operation, and exempt and
14 nonexempt uses of the property, where appropriate, for the
15 immediately preceding fiscal year as are requested by the
16 property appraiser or the value adjustment board.

17 (2) In determining whether an applicant for a
18 religious, literary, scientific, or charitable exemption under
19 this chapter is a nonprofit or profitmaking venture or whether
20 the property is used for a profitmaking purpose, the following
21 criteria shall be applied:

22 (a) The reasonableness of any advances or payment
23 directly or indirectly by way of salary, fee, loan, gift,
24 bonus, gratuity, drawing account, commission, or otherwise
25 (except for reimbursements of advances for reasonable
26 out-of-pocket expenses incurred on behalf of the applicant) to
27 any person, company, or other entity directly or indirectly
28 controlled by the applicant or any officer, director, trustee,
29 member, or stockholder of the applicant;

30 (b) The reasonableness of any guaranty of a loan to,
31 or an obligation of, any officer, director, trustee, member,

1 or stockholder of the applicant or any entity directly or
2 indirectly controlled by such person, or which pays any
3 compensation to its officers, directors, trustees, members, or
4 stockholders for services rendered to or on behalf of the
5 applicant;

6 (c) The reasonableness of any contractual arrangement
7 by the applicant or any officer, director, trustee, member, or
8 stockholder of the applicant regarding rendition of services,
9 the provision of goods or supplies, the management of the
10 applicant, the construction or renovation of the property of
11 the applicant, the procurement of the real, personal, or
12 intangible property of the applicant, or other similar
13 financial interest in the affairs of the applicant;

14 (d) The reasonableness of payments made for salaries
15 for the operation of the applicant or for services, supplies
16 and materials used by the applicant, reserves for repair,
17 replacement, and depreciation of the property of the
18 applicant, payment of mortgages, liens, and encumbrances upon
19 the property of the applicant, or other purposes; and

20 (e) The reasonableness of charges made by the
21 applicant for any services rendered by it in relation to the
22 value of those services, and, if such charges exceed the value
23 of the services rendered, whether the excess is used to pay
24 maintenance and operational expenses in furthering its exempt
25 purpose or to provide services to persons unable to pay for
26 the services.

27 (3) Each applicant must affirmatively show that no
28 part of the subject property, or the proceeds of the sale,
29 lease, or other disposition thereof, will inure to the benefit
30 of its members, directors, or officers or any person or firm
31 operating for profit or for a nonexempt purpose.

1 (4) Notwithstanding the provisions of subsections (2)
2 and (3), a corporation organized as nonprofit under chapter
3 617 which has a valid consumer certificate of exemption
4 pursuant to s. 212.08(7)(o) and which has a valid exemption
5 from federal income tax under s. 501(c)(3) of the Internal
6 Revenue Code is nonprofit. Proof provided by a corporation of
7 its status as described in this subsection shall be sufficient
8 to establish the organization's nonprofit status and any
9 corporation providing such proof is not required to provide
10 any other information in order to establish its nonprofit
11 status.

12 ~~(5)(4)~~ No application for exemption may be granted for
13 religious, literary, scientific, or charitable use of property
14 until the applicant has been found by the property appraiser
15 or, upon appeal, by the value adjustment board to be nonprofit
16 as defined in this section.

17 Section 5. Paragraph (c) is added to subsection (1) of
18 section 196.196, Florida Statutes, to read:

19 196.196 Determining whether property is entitled to
20 charitable, religious, scientific, or literary exemption.--

21 (1) In the determination of whether an applicant is
22 actually using all or a portion of its property predominantly
23 for a charitable, religious, scientific, or literary purpose,
24 the following criteria shall be applied:

25 (c) The extent to which the property is used to
26 conduct activities which cause a corporation to qualify for a
27 consumer certificate of exemption under s. 212.08(7)(o). Such
28 activities shall be considered as part of the exempt purposes
29 of the applicant.

30 Section 6. Except as otherwise provided herein, this
31 act shall take effect January 1, 1998.

HOUSE SUMMARY

Defines "computer software" for purposes of imposing ad valorem taxes and specifies circumstances under which computer software constitutes personal property.

Removes provisions relating to correction of erroneous assessments of homestead property and provides for assessment of homestead property for which back assessment is authorized under s. 193.092, F.S. Provides for retroactive application.

Redefines "educational institution," for purposes of exempting such institutions from ad valorem taxation, to include schools conducting classes and courses of study accepted for continuing postgraduate dental education by a board of the Division of Medical Quality Assurance.

Specifies that nonprofit corporations which have a valid certificate of exemption under s. 212.08(7)(o), F.S., and which are exempt under s. 501(c)(3) of the Internal Revenue Code, are nonprofit for purposes of determining eligibility for the religious, literary, scientific, or charitable ad valorem tax exemption, and provides an additional criterion for use in determining whether property is being used for such purposes.

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