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DATE: October 4, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 105

RELATING TO: Ad Valorem Taxation/Real Property

SPONSOR(S): Representative Murman

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS (RPC)
 - (2) FINANCE & TAXATION (FRC)
 - (3) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
 - (4)
 - (5)
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I. SUMMARY:

HB 105 provides an exception from the assessment of back taxes on property to those properties owned by a subsequent bona fide purchaser under certain circumstances.

The bill provides a waiver of the assessed penalty and interest on improperly granted homestead exemptions arising from a transfer of title of such property. This waiver is restricted to those property owners who did not receive a homestead exemption on additional property.

The bill authorizes the property appraiser to correct a notice of public hearing error on the notice of proposed property taxes by advertising the correct information in a newspaper of general circulation. This correction procedure may only be used by the property appraiser upon receiving the permission of the affected taxing authority.

The bill creates a new section which requires that the documentary stamps affixed to a deed or writing reflect the correct amount of the sales price or other consideration for the interest in the property. In addition, the seller or conveyor of the interest in the property is prohibited from deliberately affixing or causing to affix excess documentary stamps with the intent to imply a higher sale price than the actual sale price.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Ad Valorem Taxes

Section 4, Article VII, of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. The ad valorem tax is an annual tax levied by local governments based on the value of real and tangible property as of January 1 of each year. The taxable value of real and tangible property is the just or market value of the property. This value may be adjusted due to exemptions or exceptions. With certain exceptions for millage levies approved by the voters, the Constitution limits county, municipal and school district levies to 10 mills each.

Section 193.092, F.S., provides for the assessment of property for back taxes. The statute provides a mechanism for the collection of up to three years of escaped ad valorem taxes. If an ad valorem tax could have been legally assessed or levied, but it was not assessed or levied, then the property appraiser has the authority to assess the noncollected tax for any year within a period of three years preceding the year that it was ascertained that the taxes were not paid. The statute prohibits the assessment of more than three years of arrears. In addition, the tax arrears attach to the property regardless of who currently owns the property. 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. In the case of personal property, if it was acquired by a purchaser in good faith, the purchaser is not liable for the back taxes. However, the individual or corporation which was liable for the tax remains personally liable for it. Finally, section 193.092, F.S., provides that this section applies to all classes and kinds of property which ad valorem is assessable.

Homestead Exemption

Section 6, Article VII, of the Florida Constitution authorizes an exemption from ad valorem taxation for homestead property used by taxpayers as their permanent residence, as follows:

- Subsection (a) provides a basic \$5,000 exemption to all qualified homeowners.

- Subsection (b) prohibits the granting of more than one exemption to any one person or the granting of an exemption that is in excess of the total assessed value of the property.
- Subsection (c) increases the exemption to \$25,000 for school district levies for all qualified homestead owners and to \$10,000 for all other ad valorem tax levies if the homestead owner has attained age 65 or is totally and permanently disabled and is not entitled to the exemption provided in subsection (d).
- Subsection (d) increases the exemption to \$25,000 for non-school district levies. This subsection further provides that the increase is not applicable upon the effective date of any amendment to Article VII, Section 4 of the Florida Constitution that would authorize the assessment of homestead property at a specified percentage of its just value. A third provision of subsection (d) disallows the increased exemption in counties in which the tax roll has not been certified as in compliance with Section 4, Article VII, of the Florida Constitution.
- Subsection (e) authorizes the Legislature to give ad valorem tax relief to renters.

Section 196.031, F.S., primarily implements homestead exemption, although other statutory sections provide specific procedures and conditions, e.g., procedures for application for the exemption (s. 196.011, F.S.), the extent of the exemption (s. 196.041, F.S.), and the effect of renting homestead property. Additionally, three sections of Chapter 196, F.S., provide for additional homestead exemptions as follows:

- Section 196.081, F.S., exempts the homesteads of certain permanently and totally disabled veterans and surviving spouses of certain veterans;
- Section 196.091, F.S., exempts the homesteads of disabled veterans confined to wheelchairs; and
- Section 196.101, F.S., exempts the homestead of certain totally and permanently disabled persons.

Section 196.161, F.S., provides for the imposition of a tax lien on property of a person claiming homestead exemption, even though the person is not a permanent resident. If a deceased person owned property in Florida which was granted a homestead exemption and their estate is being probated in another state on the basis that such person was a resident of that state, than the property appraiser in that jurisdiction shall record a tax lien. 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. To avoid the lien, a circuit court having jurisdiction makes the determination that the decedent was a permanent resident during the years that the exemption was granted.

Subsection 1(b) of section 196.161, F.S., provides that if the property appraiser makes a determination that a person was not entitled to a homestead exemption for any year/s within the prior 10 years, then the property appraiser shall serve a notice of intent to record a tax lien. 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. An exception to the imposition of penalty and interest is provided in those situations where the homestead was improperly granted as a result of a clerical error or an omission by the property appraiser. Prior to the filing of the tax lien, the property owner is given thirty days to pay the taxes, penalties, and interest.

Section 193.155 provides that homestead property is assessed at just value as of January 1, 1994. Property receiving this designation after this date is assessed at just value as of January 1 of the year in which the property receives the exemption. In addition, effective January 1, 1994, subsection (c) of Section 4, Article VII, of the Florida Constitution provides a limitation to the extent that assessments for homesteads may be changed annually on January 1 of each year. Changes in assessment may not exceed the lower of 3 percent of the assessment for the prior year or the percent change in the Consumer Price Index (see section 193.155(1)). Pursuant to subsection (3), if homestead property changes ownership, then the property is assessed at just value as of January 1 of the year following a change of ownership. Although a change in ownership is defined as any sale, foreclosure, or transfer of legal or beneficial title, the following transactions are considered a change of ownership:

- prior to the change or transfer, the same person is entitled to the exemption as he 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;
- the transfer occurred upon the death of the owner and is between the owner and a permanent resident who is dependent upon the owner.

Every person who is entitled to the homestead exemption is required to file an application with the county property appraisers office pursuant to section 196.011, F.S. Once an original application for tax exemption has been granted, a renewal application is mailed to the property owner on or before February 1 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 Department of Revenue Opinion 99-0006. The opinion stated that if one of the conditions in subsection (3) was met, there is no requirement that a new application for homestead has to be filed. The reasoning behind this is 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. Basically, the new owner or transferee is considered to be the applicant under these conditions. In addition, if the only issue is the absence of a new application by a new owner/transferee and the other requirements for homestead exemption are present, then the absence of such application does not constitute a waiver of the homestead exemption in every case.

Millage

Millage applies to either a single or cumulative levy of taxes. Section 200.065, F.S., provides for the method of fixing millage and for the notice of the proposed property taxes to property owners. Subsection (13) provides a mechanism for correcting 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 which caused the error.

Documentary Stamps

The documentary stamp tax is actually two taxes imposed on different bases at different tax rates. The tax on deeds and other documents related to real property is at the rate of 70 cents per \$100. Corporate shares, certificates of indebtedness, promissory notes, and other specified items are taxed at 35 cents per \$100. Revenue from documentary stamps is divided between the General Revenue Fund and various trust funds. Provisions relating to the Excise Tax on Documents ("doc stamp tax") may be found in chapter 201, F.S.

Upon the execution, transfer, assignment, or conveyance, the seller files a return with the clerk of the circuit court. The return must state the actual consideration paid for the interest in the real property. In addition, the return must identify the location and identification number of the parcel. The filing of this return is a condition precedent to the recordation of any deed transferring an interest in property. Documentary stamp tax is paid based on the actual consideration paid.

C. EFFECT OF PROPOSED CHANGES:

HB 105 provides an exception from the assessment of back taxes on property to those properties owned by a subsequent bona fide purchaser under certain circumstances. To qualify for this exception, the bona fide purchaser must have purchased the property for value and must have had no actual or constructive notice of the escaped taxation.

The bill provides the waiver of assessed penalty and interest on improperly granted homestead exemptions arising from a transfer of title of such property. This waiver is restricted to those property owners who did not receive a homestead exemption on additional property.

The bill authorizes the property appraiser to correct a notice of public hearing error on the notice of proposed property taxes by advertising the correct information in a newspaper of general circulation. This correction procedure may only be used by the property appraiser upon receiving the permission of the affected taxing authority.

Section 201.205, Florida Statutes, is created by this bill. The newly created section requires that the documentary stamps affixed to a deed or writing reflect the correct amount of the sales price or other consideration for the interest in the property. In addition, the seller or conveyor of the interest in the property is prohibited from deliberately affixing or causing to affix excess documentary stamps with the intent to imply a higher sale price than the actual sale price. A violation of this section is a first degree misdemeanor, and punishable by either a maximum imprisonment of one year or up to a \$1000 fine.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends section 193.092(1), F.S.; provides an exception from the assessment of back taxes on property to those properties owned by a subsequent bona fide purchaser; the bona fide purchaser is required to have purchased the property for value with no actual or constructive notice of the escaped taxation.

Section 2: Amends section 196.161(1)(b), F.S.; provides a waiver of assessed penalty and interest on improperly granted homestead exemptions as a result of a transfer of title; restricts waiver to those persons who did not simultaneously receive a homestead exemption on additional property.

Section 3: Amends section 200.065(13)(a), F.S.; allows the property appraiser to correct a notice of public hearing error on the notice of proposed property taxes by advertising the correct information in a newspaper of general circulation pursuant to section 200.065(3); requires permission by the affected taxing authority for the advertising correction.

Section 4: Creates section 201.205, F.S., which requires that the documentary stamps affixed to a deed or writing reflect the correct amount of the sales price or other consideration for the interest in the property; prohibits the seller or conveyer of the interest in the property to deliberately affix or cause to affix excess documentary stamps with the intent to imply a higher sale price than the actual sale price; provides that a violation is a first degree misdemeanor; provides punishment.

Section 5: Provides effective date of upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Potentially. There may be a decrease in documentary stamp tax revenue due to the requirement that the documentary stamp tax must reflect the true and actual sales price of the interest in the property. Although it is unknown how widespread this practice is, revenues may decrease.

This bill has been referred to the Revenue Estimating Conference for review. At the time of publication, the impact is not determined.

2. Expenditures:

This bill does not require the State to spend additional revenues.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill potentially decreases local governments revenues. Section (1) of the bill provides an exception to the assessment of escaped taxation for bona fide purchasers.

Section (2) decreases local governments revenues by providing a waiver of penalty and interest when a homestead exemption is erroneously granted. Currently, local governments are able to collect the exempted taxes, and a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per year. Although local governments will still be able to collect the exempted taxes in specific situations, the penalty and interest are waived. Since the penalty and interest can be assessed for a period of 10 years, the value of the waiver may be substantial.

2. Expenditures:

The ability to correct an error on the notice of proposed taxes regarding the public hearing will save taxing authorities revenue. 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 may be substantial.

This bill has been referred to the Revenue Estimating Conference for review. At the time of publication, the impact is not determined.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The private sector benefits from this bill. The driving force behind this bill is an effort to make the outcome of certain tax problems more equitable. Under section (1) of this bill, bona fide purchasers of property that had previously escaped taxation will avoid being required to pay up to three years of back taxes when the purchaser had no actual or constructive knowledge of the back taxes. If the property was inadvertently not assessed, this information may not be revealed by a title search. This provision allows a new owner to avoid being burdened by up to three years of back taxes on property the new owner just purchased.

Section (2) of this bill protects innocent property owners who erroneously received a homestead from property taxation due to a transfer of title. Currently, a property appraiser is unable to waive the penalty and interest, even when the error was not the result of fraud or negligence on the part of the property owner. This provision will allow the property owner to avoid paying a 50 percent penalty and 15 percent interest.

Section (4) benefits the private sector by eliminating the ability of parties to inflate value of recent sales. Not only does this practice flaw the official records of the County property appraiser, it also is misleading to buyers, bankers, realtors, and private property appraisers who depend on such information. The incorrect recording of the actual price may also cause an over assessment of property taxes. Section (4) was taken from a proposal which was recommended by a 1990 statewide grand jury after it investigated a state land purchase on St. George Island. By using increased documentary stamps, the State purchased land whose value had been artificially inflated.

D. **FISCAL COMMENTS:**

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill may reduce the authority that counties or municipalities have to raise the revenue in the aggregate. This bill grants an exception to the imposition of escaped ad valorem taxes. Under this bill, counties will no longer be able to collect previously collectable escaped taxes. In addition, the bill limits counties ability to collect penalties and interest when a homestead exemption was erroneously granted.

However, this bill may have limited impact due to the minimal occurrence of the problems addressed in this bill.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the tax authority that counties or municipalities have to raise revenue in the aggregate.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Pursuant to Section 5, Article III, of the Constitution of the State of Florida, every law shall embrace one subject matter and such subject shall be expressed in the title. It appears as though this bill is a violation of the single-subject rule. This bill's title states that the bill is relating to ad valorem taxation. Although ad valorem and documentary stamp are similar in that they are both taxes levied in the state of Florida, the documentary stamp tax is not related to the levy of ad valorem taxation. Thus, this bill covers more than one subject. To rectify this violation, it is suggested that either the title be amended to reflect a bill relating to taxation or to amend section 4 by removing it from the bill.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The bill is unclear in two areas. First, the provision does not define bona fide purchaser. Generally, a bona fide purchaser is a purchaser for value in good faith. However, except for section 678.302, F.S. (Uniform Commercial Code: Investment Securities), bona fide purchaser is not statutorily defined. Bona fide purchaser should be defined to avoid any misinterpretations. Second, the bill does not define what is actual or constructive notice. It is also unclear what burden meets that criteria.

The force behind this bill is to correct many instances where property appraisers have no flex room to remedy an injustice. Although problems may not arise often, it will be useful to property appraisers to have some discretion in dealing with these matters. To get a perspective regarding the effect of this bill, the impact of these provisions on taxpayers was researched. Except for section 4, it appears as though this bill has limited impact due to the minimal occurrence of these problems. One property appraiser who was contacted estimated that 90 to 95 percent of taxpayers will not be affected.

The following organizations were contacted regarding any concerns or support for or against this bill:

The Florida League of Cities, the Florida Association of Property Appraisers, and the Property Appraiser Association of Florida. At the time of publication of this analysis, no comment was received from any of the above mentioned organizations.

The Florida Association of Counties has some concerns regarding the solution proposed in section (1). First, there is a concern that this provision might establish a new class of people. It is unclear whether the provision not only allows bona fide purchasers to avoid having to pay three years of escaped taxation, but that the payment of taxes on non-permitted improvements/additions which were discovered after the purchase may also be avoided. Second, similar to the traveling of tax liability, tax overpayments also travel with the property. If taxes were overpaid on a piece of property, the overpayment is refunded to the current property owner, not the person who actually overpaid. In effect, this bill allows parallel situations to be treated differently. Subsequent bona fide purchasers are benefitted in both situations: Avoidance of tax liability, as well as, receiving the benefit of any tax refunds. Although the Association feels that a solution is needed, it feels that requiring a disclosure of taxes as part of the property closing transaction is a better solution than simply removing the ability to assess escaped taxes.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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