

STORAGE NAME: h2297a.ca

DATE: April 19, 2000

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

BILL #: HB 2297

RELATING TO: Ad Valorem Tax/Overpayment

SPONSOR(S): Representative Morroni

TIED BILL(S): None

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

- (1) COMMUNITY AFFAIRS (PRC) YEAS 10 NAYS 0
 - (2) FINANCE & TAXATION (FRC)
 - (3) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
 - (4)
 - (5)
-

I. SUMMARY:

This bill extends the time limitation on a claim for a refund of ad valorem taxes from 4-years to 7-years.

The bill has no fiscal impact on state government revenues. The bill has an indeterminate negative fiscal impact on local government. The Revenue Estimating Conference has not considered this bill, and it is unknown if the bill has a significant fiscal impact. As discussed in Section IV of the analysis, it is unclear if this bill constitutes a Type A Mandate on counties and cities under Article VII, section 18(a) of the Florida Constitution. The bill includes a legislative finding that the act fulfills an important state interest, as required by Article VII, section 18(a) of the Florida Constitution.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

Background

Section 197.332, F.S., provides that the tax collector has the authority and obligation to collect all taxes, as listed on the county tax roll, by their delinquency date, April 1, (unless otherwise stated) or to collect delinquent taxes, interest, and costs, by sale of tax certificates on real property and by seizure and sale of personal property.

Section 193.023, F.S., requires the property appraiser to complete an assessment of the value of all property no later than July 1 of each year, unless the Department of Revenue grants an extension of time for good cause shown. Section 197.322, F.S., requires the property appraiser to deliver to the tax collector the certified assessment roll along with his or her warrant and recapitulation sheet. Within 20 working days after receipt of the certified ad valorem tax roll and the non-ad valorem assessment rolls, the tax collector is required to mail a tax notice to each taxpayer stating the amount of current taxes due from the taxpayer and, if applicable, the fact that back taxes remain unpaid and advising the taxpayer of the discounts allowed for early payment.

Section 197.333, F.S., provides that all taxes are due and payable on November 1 of each year or as soon thereafter as the certified tax roll is received by the tax collector. Taxes become delinquent on April 1 following the year in which they are assessed or immediately after 60 days have expired from the mailing of the original tax notice, whichever is later. If the delinquency date for ad valorem taxes is later than April 1 of the year following the year in which taxes are assessed, all dates or time periods relative to the collection of, or administrative procedures regarding delinquent taxes are extended a like number of days.

Assessment of Property for Back Taxes

Section 193.092, F.S., addresses assessment of property for back taxes. The section provides in part that when it appears that any ad valorem tax might have been lawfully assessed or collected upon any property in the state, but that such tax was not lawfully assessed or levied, and has not been collected for any year within a period of 3 years next preceding the year in which it is ascertained that such tax has not been assessed, or levied, or collected, then the officers authorized shall make the assessment of taxes upon such property in addition to the assessment of such property for the current year.

Refunds of Ad Valorem Taxes

Section 197.182, F.S., addresses refunds of ad valorem taxes. Subsection (1)(a) provides that except as provided in paragraph (b), the Department of Revenue (DOR) shall pass upon and order refunds when payment of taxes assessed on the county tax rolls has been made voluntarily or involuntarily under any of the following circumstances:

- When an overpayment has been made.
- When a payment has been made when no tax was due.
- When a bona fide controversy exists between the tax collector and the taxpayer as to the liability of the taxpayer for the payment of the tax claimed to be due, the taxpayer pays the amount claimed by the tax collector to be due, and it is finally adjudged by a court of competent jurisdiction that the taxpayer was not liable for the payment of the tax or any part thereof.
- When a payment has been made in error by a taxpayer to the tax collector, if, within 24 months of the date of the erroneous payment and prior to any transfer of the assessed property to a third party for consideration, the party seeking a refund makes demand for reimbursement of the erroneous payment upon the owner of the property on which the taxes were erroneously paid and reimbursement of the erroneous payment is not received within 45 days after such demand. The demand for reimbursement shall be sent by certified mail, return receipt requested, and a copy thereof shall be sent to the tax collector.
- When any payment has been made for tax certificates that are subsequently corrected or are subsequently determined to be void under s. 197.443.

Subsection (1)(b), F.S., provides for ad valorem tax refunds that have been ordered by a court and refunds that do not result from changes made in the assessed value on a tax roll certified to the tax collector to be made directly by the tax collector without order from the department. Such refunds are to be made from undistributed funds without approval of the various taxing authorities. The paragraph provides that overpayments in the amount of \$5 or less may be retained by the tax collector unless a written claim for a refund is received from the taxpayer. *Overpayments over \$5 resulting from taxpayer error, if determined within the 4-year period of limitation, are to be automatically refunded to the taxpayer. Such refunds do not require approval from the Department of Revenue (DOR).*

Subsection (c) provides that claims for refunds must be made in accordance with DOR rules, and prohibits any claim that is not made within 4 years of January 1 of the tax year for which the taxes were paid.

Subsection (2)(a) provides that when DOR orders a refund, it shall forward a copy of its order to the tax collector who shall then determine and certify to the county, the district school board, each municipality, and the governing body of each taxing district, their pro rata shares of such refund, the reason for the refund, and the date the refund was ordered by the department. Subsection (2)(b) requires the board of county commissioners, the district school board, each municipality, and the governing body of each taxing district to comply with the order of the department in the following manner:

- Authorize the tax collector to make refund from undistributed funds held for that taxing authority by the tax collector;

- Authorize the tax collector to make refund and forward to the tax collector its pro rata share of the refund from currently budgeted funds, if available; or
- Notify the tax collector that the taxing authority does not have funds currently available and provide in its budget for the ensuing year funds for the payment of the refund.

Subsection (3) provides that a refund ordered by DOR must be made by the tax collector in one aggregate amount composed of all the pro rata shares of the several taxing authorities concerned, except that a partial refund is allowed when one or more of the taxing authorities concerned do not have funds currently available to pay their pro rata shares of the refund and this would cause an unreasonable delay in the total refund. A statement by the tax collector explaining the refund must accompany the refund payment. When taxes become delinquent as a result of a refund pursuant to subparagraph (1)(a)4., the tax collector must notify the property owner that the taxes have become delinquent and that a tax certificate will be sold if the taxes are not paid within 30 days after the date of delinquency.

C. EFFECT OF PROPOSED CHANGES:

This bill extends the time limitation on a claim for a refund of ad valorem taxes from 4 years to 7 years.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Paragraphs (b) and (c) of subsection (1) of s. 197.182, F.S., are amended to extend the time limitation on a claim for a refund of ad valorem taxes from 4 years to 7 years.

Section 2. Subsection (10) of s. 197.432, F.S., is amended to conform the subsection to changes made in section 1.

Section 3. Subsection (4) of s. 197.443, F.S., is amended to conform the subsection to changes made in section 1.

Section 4. This section provides that pursuant to s. 18, Art. VII of the State Constitution, the Legislature finds that this act fulfills an important state interest.

Section 5. An effective date of upon becoming a law is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DOR has not submitted an analysis of this bill.

2. Expenditures:

This bill has no effect on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not affect local government revenues.

2. Expenditures:

This bill requires tax collectors to provide refunds for overpayments over \$5 resulting from taxpayer error if determined with a 7-year rather 4-year period of limitation. The bill has an indeterminate negative fiscal impact on local government. The bill increases the workload of tax collectors and requires local governments to expend funds for refunds they would not otherwise be required to make.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill increases the period of limitation from 4-years to 7-years under which a taxpayer who overpaid their ad valorem taxes may receive a refund.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has not addressed this bill.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill increases the workload of tax collectors and requires local governments to expend funds for refunds they would not otherwise be required to make. While these two effects trigger a mandate analysis, it is unclear if the bill constitutes a Type A Mandate under Article VII, section 18 of the Florida Constitution.

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

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; ***the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments;*** or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Article VII, section 18(d) of the Florida Constitution, exempts laws having insignificant fiscal impact from the requirements of Article VII, section 18 of the Florida Constitution.

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Although the Revenue Estimating Conference has not reviewed this bill, it appears that expenditures resulting from increased workload for property appraisers will not have a significant fiscal impact on counties. It is unknown if expenditures by counties and municipalities to make refunds required by this bill, will have a significant fiscal impact (> \$1.5 million).

Unless this bill is exempt under Article VII, section 18(d), the Legislature must determine that the bill fulfills an important state interest and the bill must meet one of the conditions specified in Article VII, section 18(a) in order to bind counties and cities to abide by the requirements of the bill. This bill appears to meet the condition specified in Article VII, section 18(a) that "the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments".

If the bill does not meet this condition, it must be approved by two-thirds of the membership in each house of the legislature to bind counties and municipalities.

Section 4 of this bill provides that pursuant to s. 18, Art. VII of the State Constitution, the Legislature finds that this act fulfills an important state interest.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

This bill does not necessitate additional rulemaking authority.

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

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VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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