

STORAGE NAME: h0305.lgva.doc

DATE: February 26, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS**

BILL #: HB 305

RELATING TO: Ad Valorem Tax/Resident in Another State

SPONSOR(S): Representative Littlefield

TIED BILL(S): None.

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS
 - (2) FISCAL POLICY & RESOURCES
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
-

I. SUMMARY:

This bill provides that a person who is receiving or claiming the benefit of an ad valorem tax exemption or a tax credit that requires permanent residency in another state for eligibility is not eligible for homestead exemption.

The bill has no fiscal impact on state government. To the extent the bill decreases the number of individuals qualifying for homestead exemption, the bill will increase local government revenues.

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 type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input 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 type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

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

Individuals not qualifying for homestead exemption due to bill's provisions will pay additional property taxes due to the loss of the homestead exemption. Individuals not qualifying for homestead exemption also will not enjoy the limitation placed on the extent that assessments for homesteads may be increased annually.

B. PRESENT SITUATION:

Ad Valorem Taxation/Background

Article VII, Section 1, of the Florida Constitution preempts to the state all forms of taxation other than ad valorem taxes levied upon real estate and tangible personal property, except as provided by general law. Article VII, Section 9 of the Florida Constitution provides that counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes, and limits these taxes to 10 mills for all county purposes, 10 mills for all municipal purposes, and 10 mills for all school purposes. Additional millage may be levied for the payment of bonds and taxes levied for a period not longer than two years when authorized by vote of the electors.

Article VII, Section 2, of the Florida Constitution requires:

"All ad valorem taxation shall be at a uniform rate within each taxing unit, except the taxes on intangible personal property may be at different rates but shall never exceed two mills on the dollar of assessed value; . . ."

Just Valuation

Article VII, Section 4, of the Florida Constitution requires:

"By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, . . ."

The Florida Supreme Court has interpreted "just valuation" to mean fair market value, i.e., the amount a purchaser, willing but not obliged to buy, would pay a seller who is willing but not obliged to sell. *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965).

Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes are exceptions that may be assessed solely

on the basis of their character or use. Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted. The legislature may also allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character of use, but such assessment may only apply to the jurisdiction adopting the ordinance.

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.

Homestead Exemptions

Article VII, Section 6 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.
- Subsection (f) authorizes the Legislature to allow, by general law, counties or municipalities, for the purposes of their respective levies, to grant an additional homestead tax exemption not exceeding \$25,000 to any person meeting specified criteria and having attained age sixty-five.

Section 196.031, F.S., primarily implements homestead exemption. Subsection (1) provides for the basic \$5,000 exemption and sets out the residency and ownership requirements.

Subsection (3) implements the constitutionally authorized increases in the exemption including the increase to \$25,000. In most cases, the increase to \$25,000 eliminates the need for other lesser increases. However, the increase to \$25,000 for levies other than school district levies is not effective until the assessment roll has been approved by the executive director of the Department of Revenue. In cases where the assessment roll has not been approved, levies other than school district levies authorized for state residents who are 65 and older [s. 196.031(3)(a), F.S.] or who are totally and permanently disabled [s. 196.031(3)(b), F.S.], the maximum combined exemption of \$10,000 for exemptions granted under the Florida Constitution is still authorized.

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.

Permanent Residency

Section 196.015, F.S., addresses the factual determination of permanent residency for homestead exemption. The section provides that intention to establish a permanent residence in Florida is a factual determination to be made, in the first instance, by the property appraiser. The section provides that although any one factor is not conclusive of the establishment or nonestablishment of permanent residence, the following are relevant factors that may be considered by the property appraiser in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence in this state:

- (1) Formal declarations of the applicant.
- (2) Informal statements of the applicant.
- (3) The place of employment of the applicant.
- (4) The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.
- (5) The place where the applicant is registered to vote.
- (6) The place of issuance of a driver's license to the applicant.
- (7) The place of issuance of a license tag on any motor vehicle owned by the applicant.
- (8) The address as listed on federal income tax returns filed by the applicant.
- (9) The previous filing of Florida intangible tax returns by the applicant.

Administrative Rule

The Florida Department of Revenue has promulgated Rule 12D-7.007, F.A.C., relating to residency requirements for homestead exemption. The rule provides:

- (1) For one to make a certain parcel of land his permanent home, he must reside thereon with a present intention of living there indefinitely and with no present intention of moving therefrom.
- (2) A property owner, who in good faith, makes real property in this state his permanent home is entitled to homestead tax exemption, notwithstanding he is not a citizen of the United States or of this State. (Smith v. Voight 28 So.2d 426 (Fla. 1946)).

(3) A person in this country under a temporary visa cannot meet the requirement of permanent residence or home and, therefore, cannot claim homestead exemption.

(4) A person not residing in a taxing unit but owning real property therein may claim such property as tax exempt under Section 6, Article VII of the State Constitution by reason of residence on the property of natural or legal dependents provided he can prove to the satisfaction of the property appraiser that he claims no other homestead tax exemption in Florida for himself or for others legally or naturally dependent upon him for support. It must also be affirmatively shown that the natural or legal dependents residing on the property, which is claimed to be exempt by reason of a homestead, are entirely or largely dependent upon the landowner for support and maintenance.

Recent Litigation

Recent litigation involving a claimed homestead exemption in Pasco County addressed the issue of whether the fact that property owners receive a residency-based property tax credit in another state may alone determine whether they were permanent residents of Florida and the county in which they claimed the homestead exemption. The Circuit Court of Pasco County issued a summary judgement finding that the property owners were entitled to a homestead tax exemption in spite of their receipt of a residency-based property tax credit in another state. The property appraiser appealed the final summary judgement to the Second District Court of Appeal. On rehearing, the trial court's grant of the property owners' motion for summary judgment was affirmed, because, even though they received a residency-based tax credit on their home in another state, that did not determine whether they were permanent residents of this state, and the evidence showing their permanent residence in Florida was overwhelming. *Wells v. Vallier*, 773 So.2d 1197 (Fla. 2nd DCA 2000).

C. EFFECT OF PROPOSED CHANGES:

This bill provides that a person who is receiving or claiming the benefit of an ad valorem tax exemption or a tax credit that requires permanent residency in another state for eligibility is not eligible for homestead exemption.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. A new subsection (6) is added to s. 196.031, F.S., to provide that a person who is receiving or claiming the benefit of an ad valorem tax exemption or a tax credit that requires permanent residency in another state for eligibility is not eligible for homestead exemption.

Section 2. An effective date of January 1, 2002, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

To the extent the bill decreases the number of individuals qualifying for homestead exemption, the bill will increase local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals not qualifying for homestead exemption due to the bill's provisions will pay additional property taxes due to the loss of the homestead exemption. Individuals not qualifying for homestead exemption also will not enjoy the constitutional limitation placed on the extent to which assessments for homesteads may be increased annually.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or to take action requiring the expenditure of funds.

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:

The Florida Supreme Court has held that the legislature cannot impose conditions on the availability of the basic homestead exemption as provided in Article VII, Section 6(a) of the Florida Constitution that are not present in the constitution.

Article VII, Section 6(a) of the Florida Constitution, reads in relevant part:

"Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon . . . upon establishment of right thereto in the manner prescribed by law."

In addition, Article VII, Section 6(b) of the Florida Constitution, reads in relevant part:

"Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit."

In *Sparkman v. State ex rel. Scott*, 58 So.2d 431 (Fla. 1952), the Florida Supreme Court invalidated a statute, chapter 26899, which required a one year residency in Florida before the homestead exemption guaranteed by the Constitution could be claimed. The law was found to be "an unlawful attempt by the Legislature to alter, contract, or enlarge . . . [the constitutional exemption] . . . by legislative enactment, contrary to the express pronouncements of this court that 'Express or implied provisions of the Constitution cannot be altered, contracted or enlarged by legislative enactments.'" See *State ex rel. West v. Butler*, 70 Fla. 102, 69 So. 771, 777, and *Amos v. Mathews*, 99 Fla. 1, 126 So. 208" at p. 432. The Court stated:

"It cannot be seriously questioned that the class or group entitled to homestead exemption under the constitution, and the class or group entitled to such right or privilege under the constitution as attempted to be restricted by legislative enactment, are quite materially different." *Sparkman* at 432.

This bill may be subject to the challenge that it restricts eligibility for homestead exemption to a class or group different from that provided in the Florida Constitution.

In addition to the Florida Supreme Court opinion, the Florida Attorney General has concluded (AGO 082-27) that under this constitutional provision, a person not residing in a taxing unit but owning real property therein may claim such property as tax exempt by reason of residence on the property of natural or legal dependents provided he or she can prove to the satisfaction of the property appraiser that he or she claims no other homestead tax exemption in Florida.

Contrary to Article VII, Section 6(a) of the Florida Constitution, under the provisions of this bill, a person residing in another state who is receiving or claiming the benefit of an ad valorem tax exemption or a tax credit that requires permanent residency in another state for eligibility would not be eligible to claim a homestead exemption on Florida property by reason of residence on the property of natural or legal dependents. The sponsor has requested an amendment to address this constitutional conflict.

B. RULE-MAKING AUTHORITY:

Enactment of this bill will require the Department of Revenue to revise Rule 12D-7.007, F.A.C., relating to residency requirements for homestead exemption.

C. OTHER COMMENTS:

The bill does not address how property appraisers or the Department of Revenue are to enforce the bill's provisions.

Proponents

A representative of the Property Appraisers' Association of Florida indicates the association supports HB 305

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor has requested an amendment to provide that the bill does not apply to a person who has the legal or equitable title to real estate in Florida and maintains thereon the permanent residence of another legally or naturally dependent upon the owner.

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VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

Joan Highsmith-Smith