

STORAGE NAME: h1155.lgva.doc

DATE: January 31, 2002

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

BILL #: HB 1155

RELATING TO: Homestead Exemption/Persons 65 and Older

SPONSOR(S): Representative Needleman

TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
 - (2) FISCAL POLICY & RESOURCES (FRC)
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill revises requirements with respect to a taxpayer's statement of household income and supporting documentation in connection with the additional homestead exemption for persons 65 years or older which counties and municipalities may grant. The bill:

- Adds additional information to the list of supporting documentation;
- Changes the date the supporting documentation must be submitted to the property appraiser for inspection from June 1 to April 15;
- Requires the statement of household income to grant permission to allow review of the supporting documentation if requested by the property appraiser;
- Requires the documents to be returned to the taxpayer or otherwise destroyed;
- Authorizes random audits of sworn statements of household income;
- Provides requirements with respect to the release of tax information to the property appraiser;
- Provides that the property appraiser may not grant or renew the exemption if the required documentation requested is not provided.
- Provides procedures and requirements for property appraisers to serve notice of intent to record a tax lien on property the owner of which claimed and was granted the exemption without entitlement.
- Provides for penalties and interest.

The bill has no direct fiscal impact on state or local government.

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 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:

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 owned by a taxpayer and used as the owners permanent residence or the permanent residence of another legally or naturally dependent upon the owner. The value of the homestead exemption is currently \$25,000 of the assessed value of the real estate. 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.

Additional Homestead Exemption

In November 1998, the electors of Florida approved Amendment 3, to the Florida Constitution. This amendment created subsection (f), of Section 6, of Article VII, of the Florida Constitution, which provides:

"The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding twenty-five thousand dollars to any person who has the legal or equitable title to real estate . . . and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living."

Pursuant to the authority provided in Section 6(f), Article VII, of the Florida Constitution, subsection (2) of s. 196.075, F.S., allows both counties and municipalities, through adoption of an ordinance, to each grant an additional homestead tax exemption of up to \$25,000 to resident homeowners who have legal or equitable title to the real estate who are at least 65 years of age and whose household income does not exceed \$20,000.

Subsection (1) defines "household" to exclude persons boarding or renting a portion of a dwelling. Persons living together in a room or group of rooms as a housing unit meet the definition of "household." Marital or relational status is not a factor. Accordingly, all "household" members' income is considered. "Household income" is defined to mean the adjusted gross income, as defined in s. 62 of the U.S. Internal Revenue Code, of all members of a household.

Subsection (3) provides that beginning January 1, 2001, the \$20,000 income limitation must be adjusted annually on January 1, by the percentage change in the average cost-of-living index in the period January 1 through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is the average of the monthly consumer price index figures for the stated 12-month period, relative to the United States as a whole, issued by the United States Department of Labor.

Subsection (4) sets forth the requirements for counties and municipalities to follow when establishing, by ordinance, any additional homestead exemption. The ordinance must:

- be adopted pursuant to the procedures for adoption of a non-emergency ordinance;
- specify that the exemption applies only to taxes levied by the unit of government granting the exemption; and, unless otherwise specified, such exemption will apply to all tax levies of the county or municipality granting the exemption, including dependent special districts and municipal service taxing units.
- specify the amount of the exemption, which cannot exceed \$25,000, and if the unit of government granting the exemption specifies a different exemption amount for dependent special districts or municipal service taxing units, the exemption amount must be uniform in all dependent special districts or municipal service taxing units within the county or municipality;
- require a taxpayer claiming the exemption to annually submit to the property appraiser, not later than March 1, a sworn statement of household income on a form prescribed by the Department of Revenue.

Subsection (5) provides that the Department of Revenue must require by rule that the filing of such a sworn statement be supported by copies of federal income tax returns for the prior year, if any; wage and earnings statements (W-2 forms), if any; and other documents it deems necessary, for each member of the household by June 1. This gives an applicant taxpayer who submits his or her sworn statement of household income on March 1 two months (until June 1) to provide the necessary supporting documentation.

Subsection (6) requires that the board of county commissioners or municipal governing authority notify the property appraiser of the adoption of such an ordinance no later than December 1 of the year prior to the year the exemption takes effect. If the ordinance is repealed, the board of county commissioners or municipal governing authority must notify the property appraiser no later than December 1 of the year prior to the year the exemption expires.

Subsection (7) provides that persons entitled to the homestead exemption in 196.031, F.S., may apply for and receive an additional exemption as provided in this section, and that receipt of the additional exemption is subject to the provisions of ss. 196.131 and 196.161, F.S.

Subsection (8) provides that if title is held jointly with right of survivorship, the person residing on the property, and otherwise qualifying, may receive the entire amount of the additional homestead exemption.

C. EFFECT OF PROPOSED CHANGES:

This bill provides requirements with respect to the taxpayer's statement of household income and supporting documents required in connection with the additional homestead exemption for persons 65 and older which counties and municipalities may grant. Revises the submission date for such documents. The bill authorizes random audits of such statements and provides requirements with respect to release of tax information to the property appraiser. The bill also provides procedures and requirements for property appraisers to serve notice of intent to record a tax lien on property the owner of which claimed and was granted the exemption without entitlement. Provides for penalties and interest.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Subsection (5) of s. 196.075, F.S., is amended to revise requirements relating to a taxpayer's statement of household income and supporting documents. The subsection is amended

to change the due date for submitting supporting information relating to household income from June 1 to April 15, and to specify that the due date applies to the submission of documentation "for inspection by the property appraiser. The subsection is amended to add to the list of supporting documentation a copy of any request for an extension of time to file income tax returns. The subsection is amended to require a taxpayer's sworn statement to grant permission to allow review of the documents if requested by the property appraiser, and to provide that once the documents have been inspected by the property appraiser, they must be returned to the taxpayer or otherwise destroyed. The subsection is further amended to authorize the property appraiser to generate random audits of the taxpayers' sworn statements to ensure the accuracy of the household income reported and to provide that if selected for an audit, a taxpayer must execute IRS Form 8821 or 4506 to allow release of tax information to the property appraiser's office. The section is amended to require that all reviews conducted in accordance with this section be completed on or before June 1. Finally, current language prohibiting a property appraiser from granting an exemption without the required documentation is amended to prohibit a property appraiser from granting or renewing an exemption if the required documentation requested is not provided.

A new subsection (9) is added to s. 196.075, F.S., to provide that upon a determination by the property appraiser that, for any year within the immediately preceding 10 years, a person who was not entitled to the additional homestead exemption under this section claimed and was granted such exemption, the property appraiser shall serve upon such person a notice of intent to record in the public records of the county a notice of tax lien against any property owned by such person in the county. The property must be identified in the notice of tax lien and must be subject to all the taxes which would have otherwise been due on such property but for the operation of this section, plus a penalty of 50 percent of such unpaid taxes for each year and 15 percent interest per annum on such unpaid taxes. However, if such exemption is or was improperly granted as a result of a clerical mistake or omission by the property appraiser, the person improperly receiving the exemption shall not be assessed any penalty and interest. Before any such lien may be filed, the person notified under this subsection shall be given 30 days to pay the taxes, penalties, and interest. Such liens shall be subject to the procedures and provisions of s. 196.161(3), F.S.

Section 2. An effective date of January 1, 2003, 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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of countries and municipalities to raise total aggregate revenues.

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

This bill does not reduce the total aggregate percent of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Department of Revenue

The Department of Revenue submitted an analysis of HB 1155. The analysis states that many taxpayers may not have available the federal income tax information to document the income by April 15. Also, the property appraiser may not be able to conduct the reviews by June 1. The analysis also notes that the bill makes no provision for extension beyond April 15 even for those who get an extension from IRS to August 15. To address these concerns, the department recommends the bill be amended on page 2, line 1, to delete "by April 1". The department also recommends amending the bill on page 2, line 15, to delete "June" and insert "July".

Technical Concerns

The bill sponsor indicates part of the intent of HB 1155 is to not require an annual submission of supporting documentation with respect to statements of household income. The sponsor may wish to consider amending the bill to clarify that submission of supporting documentation is not required for the renewal of an exemption unless the property appraiser requests such documentation.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill sponsor has filed an amendment to clarify that submission of supporting documentation is not required for the renewal of an exemption unless the property appraiser requests such documentation.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

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