

STORAGE NAME: h0829.frc.doc
DATE: February 23, 2002

HOUSE OF REPRESENTATIVES
FISCAL RESPONSIBILITY COUNCIL
ANALYSIS

BILL #: HJR 829
RELATING TO: Tangible Personal Property
SPONSOR(S): Representative Haridopolos
TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 7 NAYS 2
 - (2) FISCAL POLICY AND RESOURCES YEAS 13 NAYS 1
 - (3) FISCAL RESPONSIBILITY COUNCIL
 - (4)
 - (5)
-

I. SUMMARY:

HJR 829 proposes to amend Article VII, Section 3, of the Florida Constitution. The proposed amendment authorizes the Legislature to, by general law, exempt specific types of tangible personal property from ad valorem taxation when it determines that it is not economically cost-effective to administer, assess, and collect taxes on such property.

HJR 829 provides for the constitutional amendment to be submitted to the electors of Florida for approval or rejection at the general election to be held in November 2002. The constitutional amendment will be effective on January 1, 2003, if approved by the voters of Florida.

There is an estimated state fiscal impact of \$47,000 associated with advertising this amendment. If approved by the voters, and implemented by general law, the proposed constitutional amendment could reduce current expenditures by county property appraisers required to collect taxes on tangible personal property proposed for exemption. While the joint resolution has no fiscal impact on local government revenues, passage of the amendment and subsequent implementing legislation would have a negative fiscal impact on local government revenues.

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.

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 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:

*Lowers Taxes: Passage of the constitutional amendment proposed by this resolution and subsequent implementing legislation would decrease ad valorem taxes by exempting additional property. However, the overall effect may be to shift the tax burden to non-exempt property through increased millage rates.

B. PRESENT SITUATION:

Ad Valorem Taxation/Background

Section 1, Article VII 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. Section 9, Article VII 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.

Section 2, Article VII 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

Section 4, Article VII 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.

Exemptions from Ad Valorem Taxation

Section 3, Article VII of the Florida Constitution provides or allows for exemptions from ad valorem taxation. These include:

- property owned by a municipality and used exclusively by it for municipal purposes shall be exempt, and portions of property used predominantly for educational, literary, scientific, religious, or charitable purposes may be exempted by general law;
- household goods, to every head of a family, in an amount fixed by general law, and property, to every widow or widower or blind or totally and permanently disabled person, in an amount fixed by general law, shall be exempt;
- any county or municipality may grant community and economic development ad valorem tax exemptions, for the purpose of its respective tax levy, and subject to general law;
- by general law, an exemption is granted to a renewable energy source device and to the real property on which such device is installed; and
- any county or municipality may grant historic preservation tax exemptions for the purpose of its respective tax levy, subject to the limits of general law.

The Legislature is without authority to grant an exemption from taxes where the exemption does not have a constitutional basis. Archer v. Marshall, 355 So.2d 781 (Fla. 1978).

Taxation of Tangible Personal Property

Section 192.042, F.S., requires all tangible personal property to be assessed according to its just value as follows:

(2) Tangible personal property, on January 1, except construction work in progress shall have no value placed thereon until substantially completed as defined in s. 192.001(11)(d).

Section 192.001(11)(d), F.S., defines "Tangible personal property" to mean:

all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself. "Construction work in progress" consists of those items of tangible personal property commonly known as fixtures, machinery, and equipment when in the process of being installed in new or expanded improvements to real property and whose value is materially enhanced upon connection or use with a preexisting, taxable, operational system or facility. Construction work in progress shall be deemed substantially completed when connected with the preexisting, taxable, operational system or facility. Inventory and household goods are expressly excluded from this definition.

Section 193.052, F.S., provides for taxpayers to file returns for tangible personal property. Returns for tangible personal property must be filed by April 1 and must correctly reflect the owner's estimate of the value of the property. Section 193.073, F.S., addresses erroneous returns and assessments when no returns are filed. Subsection (2) provides that if no tangible personal property return is filed, the property appraiser may estimate from the best information available the assessment of the property. The subsection states that such an assessment shall be deemed to be prima facie correct.

As indicated, Section 3(b), Article VII of the Florida Constitution provides, in part:

There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars, . .

Section 196.181, F.S., implements this constitutional provision by providing:

There shall be exempt from taxation to every person residing and making his or her permanent home in this state household goods and personal effects. Title to such household goods and personal effects may be held individually, by the entireties, jointly or in common with others.

Minimum Tax Bill

Section 197.212, F.S., provides that on the recommendation of the county tax collector, the board of county commissioners may adopt a resolution instructing the collector not to mail tax notices to a taxpayer when the amount of taxes shown on the tax notice is less than an amount up to \$30. The resolution must instruct the property appraiser that he or she shall not make an extension on the tax roll for any parcel for which the tax would amount to less than an amount up to \$30. The minimum tax bill so established may not exceed an amount up to \$30.

Constitution Revision Commission

The Constitution Revision Commission placed the following language on the 1998 general election ballot as part of Revision #10 that proposed adding a new subsection (g) to Section 3, Article VII of the Florida Constitution:

(g) In addition to any other exemption granted to tangible personal property, a county may exempt all appurtenances and attachments to mobile home dwellings that are classified as tangible personal property and all appliances, furniture, and fixtures classified as tangible personal property which are included in single-family and multi-family residential rental facilities that have ten or fewer individual housing units, as provided by general law. The general law shall require the adoption of the exemption on a county-option basis and may specify conditions for its application.

In its published information regarding Revision #10, the Commission stated that the authorization for tangible personal property tax exemption would allow counties to grant exemptions where the cost of collecting the tax would exceed the actual amount collected. Revision #10 was not approved by the voters.

Constitutional Provision for Amending the Constitution

Section 1, Article XI of the Florida Constitution, provides the Legislature the authority to propose amendments to the Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election

held after the proposal has been filed with the Secretary of State's office or may be placed on the ballot at a special election held for that purpose.

C. EFFECT OF PROPOSED CHANGES:

HJR 829 proposes to amend Article VII, Section 3, of the Florida Constitution. The proposed amendment authorizes the Legislature to, by general law, exempt specific types of tangible personal property from ad valorem taxation when it determines that it is not economically cost-effective to administer, assess, and collect taxes on such property.

HJR 829 provides for the constitutional amendment to be submitted to the electors of Florida for approval or rejection at the general election to be held in November 2002. The constitutional amendment will be effective on January 1, 2003, if approved by the voters of Florida.

D. SECTION-BY-SECTION ANALYSIS:

See EFFECT OF PROPOSED CHANGES.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Section 5, Article XI of the Florida Constitution requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. It is estimated that the cost to the Division of Elections will be approximately \$47,000, statewide, for each amendment proposed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This joint resolution has no direct impact on local government revenues. (See Fiscal Comments below.)

2. Expenditures:

This joint resolution has no impact on local government expenditures. If approved by the voters, and implemented by general law, the proposed constitutional amendment could reduce current expenditures by property appraisers required to collect taxes on tangible personal property proposed for exemption.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This joint resolution has no direct impact on the private sector. (See Fiscal Comments below.)

D. FISCAL COMMENTS:

HJR 829 proposes an amendment to the Florida Constitution to be submitted to the electors of Florida for approval or rejection. While the joint resolution has no fiscal impact on local government revenues, passage of the amendment and subsequent implementing legislation would have a negative fiscal impact on local government revenues.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The provisions of Article VII, Section 18 do not apply to proposed amendments to the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The provisions of Article VII, Section 18 do not apply to proposed amendments to the Florida Constitution.

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

The provisions of Article VII, Section 18 do not apply to proposed amendments to the Florida Constitution.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

This joint resolution does not grant rule-making authority.

C. OTHER COMMENTS:

Proponents

A representative of the Brevard County Property Appraiser's Office indicates the Brevard County Property Appraiser supports HJR 829

Opponents

A representative of the Property Appraisers' Association of Florida indicates the association opposes HJR 829.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:

Staff Director:

Kama Monroe

Lynne Overton

AS FURTHER REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

Prepared by:

Staff Director:

Joe McVaney

David Coburn