HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 175 Limitations on Actions to Collect Taxes
SPONSOR(S): Rep. Littlefield
TIED BILLS: **IDEN./SIM. BILLS:** SB 1738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		Thomas	Havlicak
2) Finance & Tax			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill extends the statute of limitations for a tax lien relating to the fraudulent receipt of homestead exemption from five years to twenty years. The bill amends s. 95.091(1)(a), F.S., to exclude tax liens issued under s. 196.161, F.S., relating to the fraudulent receipt of homestead exemption, from those taxes that are subject to a five-year statute of limitations. The bill amends s. 95.091(1)(b), F.S., to add those tax liens imposed under s. 196.161, F.S., to the list of taxes that have a twenty-year statute of limitations.

The bill does not appear to have a fiscal impact on state or local government expenditures, but it should lead to an indeterminate increase in local government revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[X]
2. Lower taxes?	Yes[]	No[]	N/A[X]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[X]	No[]	N/A[]
5. Empower families?	Yes[]	No[]	N/A[X]

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

B. EFFECT OF PROPOSED CHANGES:

The bill extends the statute of limitations for a tax lien relating to the fraudulent receipt of homestead exemption from five years to twenty years. The bill amends s. 95.091(1)(a), F.S., to exclude tax liens issued under s. 196.161, F.S., relating to the fraudulent receipt of homestead exemption, from those taxes that are subject to a five-year statute of limitations. The bill amends s. 95.091(1)(b), F.S., to add those tax liens imposed under s. 196.161, F.S., to the list of taxes that have a twenty-year statute of limitations.

Homestead Exemption

Florida's Constitution requires that all property be assessed at its just value for ad valorem tax purposes.[1] The term "just value" has been interpreted to mean fair market value.[2] Exceptions to this requirement include agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes, all of which may be assessed solely on the basis of their character or use.[3] Tangible personal property that is held as inventory may be assessed at a specified percentage of its value or totally exempted as provided by general law.[4]

Florida's Constitution authorizes an exemption from ad valorem taxation for homestead property owned by a taxpayer and used as the owner's permanent residence or the permanent residence of another person who is legally or naturally dependent upon the owner.[5] The value of the homestead exemption for permanent residents of the Florida as set by general law is currently $25,000 of the assessed value of the real estate.[6] Annual increases in homestead property values are limited to three percent or the Consumer Price Index percentage, whichever is lower, not to exceed just value.[7] If there is a change in ownership, the property is to be assessed at its just value on the following January 1.[8]

---

[1] ART. VII, S. 4, FLA. CONST. Section 192.001(1), F.S., defines "ad valorem tax" as "a tax based upon the assessed value of property. The term "property tax" may be used interchangeably with the term "ad valorem tax."

[2] *District School Board of Lee County v. Askew*, 278 So.2d 272 (Fla. 1973); *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965).

[3] ART. VII, S. 4(a), FLA. CONST.

[4] ART. VII, S. 4(b), FLA. CONST. This provision has been implemented by general law in s. 196.185, F.S., and provides that "[a]ll items of inventory are exempt from ad valorem taxation."

[5] ART. VII, S. 6, FLA. CONST.

[6] Section 196.031(3)(d), F.S. 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 (s. 196.061, F.S.). Section 196.031(4), F.S., requires all property appraisers to annually determine the classification of each parcel of property within their respective jurisdictions.

[7] ART. VII, S. 4(c)(1) AND (2), FLA. CONST.

[8] ART. VII, S. 4(c)(3), FLA. CONST.

Additional Homestead Exemption

Florida's Constitution 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.[9] Section 196.075(7), F.S., allows a person entitled to the homestead exemption under s. 196.031, F.S., to apply for and receive this additional exemption, as provided by ordinance, and receipt of the additional exemption is subject to the provisions of ss. 196.131 and 196.161, F.S. Further, s. 196.075(8), F.S., 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.

Tax Liens Imposed for Persons Improperly Claiming a Homestead Exemption

Section 196.161, F.S., requires a property appraiser to record a notice of tax lien against a property on which a person has claimed an unlawful homestead exemption under s. 196.031, F.S. Specifically, if the property appraiser has knowledge of the fact that a person's estate is being probated or administered in another state under an allegation that such person was a resident of that state and the estate contains real property located in Florida upon which a homestead exemption has been granted for any year within 10 years prior to the person's death, the appraiser shall file a tax lien against the property which subjects the property to back taxes, a penalty of 50 percent of the unpaid taxes for each year, plus 15 percent interest per year.[10] However, if a circuit court having ancillary jurisdiction over the estate in Florida determines the deceased person was a resident of this state during the years when the exemption was claimed, the property appraiser is prohibited from filing the lien or, if filed, the lien must be canceled.[11]

If a property appraiser determines that a person who was not entitled to a homestead exemption was granted the exemption for any year within the prior 10 years, the property appraiser is required to serve such person a notice of intent to record in the public records of the county a notice of tax lien.[12] The tax lien subjects the property to back taxes, a penalty of 50 percent of the unpaid taxes for each year, plus 15 percent interest per year.[13] However, if the exemption was granted as the result of a clerical error, the person receiving the exemption may not be assessed penalties or interest.[14] Before a lien is filed, the owner shall be given 30 days to pay the taxes, penalties, and interest.[15]

A lien attaches to the property when the notice of tax lien is filed in the public records of the county.[16] Prior to the filing of such notice, any purchaser for value shall take the property free and clear of such lien.[17] Once filed, the lien attaches to any property identified in the notice of tax lien and owned by the person who illegally or improperly received the exemption.[18] If the person no longer owns property in the county, but owns property elsewhere in the state, the property appraiser is required to record a notice of tax lien against such property in the other county or counties.[19]

---

[9] ART. VII, S. 6(f), FLA. CONST. This constitutional provision has been implemented by general law in s. 196.075, F.S. Section 196.075(1), F.S., defines "household" to exclude persons boarding or renting a portion of a dwelling. The term "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.
[10] Section 196.161(1)(a), F.S.
[11] *Id.*
[12] Section 196.161(1)(b), F.S.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] Section 196.161(3), F.S.
[17] *Id.*
[18] *Id.*
[19] *Id.*

Limitations on Actions to Collect Taxes

Section 95.091, F. S., imposes a five-year statute of limitations on any tax lien granted by law to the state or any of its political subdivisions, a municipality, a public corporation or body politic, or other entity with the authority to levy and collect taxes. This provision does not affect taxes for which certificates have been sold or taxes that are enumerated in s. 72.011, F.S.[20] The taxes specified in s. 72.011, F.S., have a twenty-year statute of limitations.[21]

An action to collect any tax after the expiration of the lien securing payment of the tax is not permitted[22] and may lead a property owner who has a lien on their property resulting from the fraudulent receipt of homestead exemption, to simply wait until the five-year statute of limitations expires and sell their property without the lien. If a lien to secure the payment of a tax is not provided by law, then a five-year statute of limitations applies and any action to collect the taxes may not occur after 5 years from the date the tax is assessed or becomes delinquent, whichever is later.[23] If a taxpayer initiates an administrative or judicial proceeding for review of the tax assessment or collection within the applicable period of limitation, the running of the period is tolled during the pendency of the proceeding.[24]

C. SECTION DIRECTORY:

Section 1: Amends s. 95.091(1)(a), F.S., relating to limitation on actions to collect taxes to exclude tax liens issued under s. 196.161, F.S., relating to the fraudulent receipt of homestead exemption, from those taxes that are subject to a five-year statute of limitations.

Section 2: Provides that the bill will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

---

[20] Section 95.091(1)(a), F.S. These taxes are the tourist development tax, s. 125.0104, F.S.; tourist impact tax, s. 125.0108, F.S.; estate taxes, ch. 198, F.S.; intangible personal property taxes, ch. 199, F.S.; excise tax on documents, ch. 201, F.S.; communications services tax, ch. 202, F.S.; gross receipts taxes, ch. 203, F.S.; motor and other fuel taxes, ch. 206, F.S.; tax on operation of commercial motor vehicles, ch. 207, F.S.; tax on cigarettes, ch. 210, F.S.; tax on severance and production of minerals, ch. 211, F.S.; tax on sales, use, and other transactions, ch. 212, F.S.; state revenue laws, ch. 213, F.S.; income tax, ch. 220, F.S.; tax on particular corporate income tax partners, ch. 221, F.S.; Apalachicola Bay oyster surcharge, s. 370.07(3), F.S.; waste tire fees, s. 403.718, F.S.; and lead-acid battery fees; s. 403.7185, F.S. The list also includes taxes and surcharges related to pollutant discharge prevention and removal, ch. 376, F.S.; waste tire and lead-acid battery requirements, s. 403.717, F.S.; registration of secondhand dealers, s. 538.09, F.S.; registration of secondary metals recyclers, s. 538.25, F.S.; pari-mutuel waging, ch. 550, F.S.; beverage law administration, ch. 561, F.S.; beverage law enforcement, ch. 562, F.S.; beer, ch. 563, F.S.; wine, ch. 564, F.S.; liquor, ch. 565, F.S.; insurance code, ch. 624, F.S.; and motor vehicle sales warranties, s. 681.117, F.S.
[21] Section 95.091(1)(b), F.S.
[22] Section 95.091((1)(a), F.S.
[23] Section 95.091(2), F.S.
[24] Section 95.091(4), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill increases the potential for a local government to collect back taxes, penalties, and interest from property owners that received an unlawful homestead exemption. This would result in a positive fiscal impact, but the amount is indeterminate.

2. Expenditures:

The bill does not appear to have any impact on local governments' expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill extends the statute of limitations for tax liens imposed as the result of the fraudulent receipt of homestead exemption. Properties on which such a lien is imposed will remain subject to the lien for a period of 20 years unless the lien is satisfied at an earlier date.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raises revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create the need for rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A technical amendment is needed to correct the directory to Section 1 of the bill. Lines 10 and 11 should read:

"Section 1. Subsection (1) of section 95.091, Florida Statutes, is amended to read:"

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A