

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/SB 1548

INTRODUCER: Finance and Tax Committee and Senator Saunders

SUBJECT: Property Appraisers

DATE: April 15, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Favorable
2.	Fournier	Johansen	FT	Fav/CS
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill revises the authority of the property appraiser to inspect property for assessment purposes by authorizing the use of image technology in lieu of physical inspection. The process for filing for a homestead exemption when an applicant misses the March 1 filing deadline is revised. A late applicant must first file with the property appraiser and may only appeal to the value adjustment board if the property appraiser denies the exemption. The factors to be considered by a property appraiser when determining permanent residency are amended. The bill also says that all property exempted from the annual application requirement of s. 196.011, F.S. is expressly exempted from taxation., unless it is rented or hired out for other than religious, educational, or other exempt purposes.

This bill substantially amends the following sections of the Florida Statutes: 193.023, 196.011, 196.015, and 196.193.

II. Present Situation:

Assessment of the value of real property

Section 193.023, F.S., requires that the property appraiser complete the assessment of the value of all property not later than July 1 of each year. When making assessments and to ensure that the tax roll meets all legal requirements, the appraiser is required to physically inspect the property at least once every 5 years. At his or her discretion, the appraiser may review image technology but is required to complete a physical inspection at the request of the taxpayer.

Annual application for homestead exemption

Section 196.011(1), F.S., requires that each person who is entitled by law to a homestead exemption shall file an application for such exemption by March 1 of each year. Once the original exemption has been granted, in each succeeding year, on or before February 1, the property appraiser sends a renewal application which is accepted as evidence of the exemption unless the appraiser makes a determination that the application should be denied. If the application or renewal is denied, by July 1, the appraiser must provide the applicant with a notice specifying the grounds for denial. Any applicant denied an exemption may appeal to the value adjustment board.

Subsection (8) provides that an applicant qualified to receive a homestead exemption but who misses the application deadline can file for the exemption and file a petition with the value adjustment board requesting that the exemption be granted. The petition must be filed at any time during the year but not later than 25 days after the Truth In Millage (TRIM) notice is mailed by the property appraiser pursuant to ss. 194.011(1)¹ and 200.069², F.S.

Permanent Resident – Factors to be considered by the Property Appraiser

Section 196.015, F.S., establishes the factors to be considered by the property appraiser in making a determination as to the intent of a person claiming a homestead exemption to establish a permanent residence in the state. The current factors are:

- Formal declarations and informal statements of the applicant.
- The applicant's place of employment.
- Previous permanent residency status in another state and the date of termination.
- The place where the applicant is registered to vote.
- The place of issuance of the applicant's driver's license and the license tag on the applicant's vehicle.
- The address as listed on federal income tax returned filed by the applicant.

Property Tax Exemptions

¹ Subsection (1) of s. 194.011, F.S., provides that "each taxpayer who is subject to real or tangible personal ad valorem taxes shall be notified of the assessment of each taxable item of such property, as provided in s. 200.069."

² Section 200.069, F.S., provides for notice of proposed property taxes and non-ad valorem assessments to taxpayers, better known as TRIM notices. Each property appraiser is required to prepare and mail to each taxpayer on the assessment roll a notice of proposed property taxes. The TRIM notice is very specific in what information is required and the form the information is to be presented in. The Department of Revenue is responsible for reviewing TRIM notices to ensure compliance with statutory requirements.

Section 196.001, F.S., begins with the statement: “Unless there is a specific or stated exemption, all Florida property is subject to tax.” Section 196.192, F.S., provides that, subject to the provisions of this chapter, all property owned by an exempt entity and used exclusively for exempt purposes shall be totally exempt from ad valorem taxation, and all property owned by an exempt entity and used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use. “Exempt use of property” is defined in s. 196.012, F.S., as predominant or exclusive use of property owned by an exempt entity for educational, literary, scientific, religious, charitable, or governmental purposes, as defined in this chapter. Section 196.196, FS., provides for determining whether property is entitled to charitable, religious, scientific, or literary exemption, and subsection (2) of that section says that only those portions of property used predominantly for charitable, religious, scientific, or literary purposes shall be exempt.

Section 196.011, F.S., requires owners of property that is entitled to an exemption to file an annual application for the exemption certifying the property’s ownership and use. Subsection (3) of that section makes exceptions to the annual application requirement for “houses of public worship, the lots on which they are located, personal property located therein or thereon, parsonages, burial grounds and tombs owned by houses of public worship, individually owned burial rights not held for speculation, or other such property not rented or hired out for other than religious or educational purposes at any time...” Section 196.193, F.S. says that all property exempted from the annual application requirement shall be granted tax exemption by the property appraiser.

A recent case in Bay County³ highlighted the apparent contradiction between these sections of Florida Statutes, when a church was denied an exemption for its parsonage. Section 196.011, F.S., suggests that parsonages are exempt from property tax, since it says they are not required to make an annual application for exemption, and s. 196.193, F.S., says they shall be granted exemption by the property appraiser. The Legislature, however, repealed the statutory exemption for parsonages in 1971, and left an exemption only for those portions of property used predominantly for charitable, religious, scientific, or literary purposes. In 1957, the Florida Supreme Court had found that “the primary purpose of a parsonage is secular, not religious.”⁴ The church’s motion for rehearing was denied and the judge reiterated that parsonages are secular, not religious.

III. Effect of Proposed Changes:

Section 1 amends subsection (2) of s. 193.023, F.S., to provide that in areas where it is geographically suitable and at the property appraiser's discretion, the property appraiser may use image technology in lieu of physical inspection to ensure the tax roll meets all the requirements of law.

Section 2 amends subsection (8) of s. 196.011, F.S., to provide that an applicant who misses the homestead exemption filing deadline must file an application with the property appraiser not later than the 25th day after the property appraiser mails the TRIM notice. The property appraiser

³ *Faith Christian Family Church of Panama City Beach, Inc v. Rick Barnett, as Property Appraiser of Bay County, et al*, 04-3963 Order/Motion for Rehearing

⁴ *Shipbaugh v. City of Sarasota*, 94 So.2d 728, 729 (Fla. 1957)

may grant the exemption if sufficient evidence exists, as determined by the property appraiser, to demonstrate that the applicant was unable to meet the filing deadline.

In cases where the property appraiser does not grant the exemption, the applicant is then eligible to file a petition with the value adjustment board requesting that the exemption be granted. The petition must be filed not later than the 25th day after the TRIM notice has been mailed and the exemption may be granted by the board if the applicant is deemed to have demonstrated particular extenuating circumstances.

Section 3 amends s. 196.015, F.S., to revise the factors to be considered by a property appraiser when determining permanent residency for a homestead exemption. New relevant factors to be considered are:

- An applicant's declaration of domicile must be a formal declaration recorded in the public records of the county where the exemption is being sought.
- Evidence of the location where the applicant's dependent children are registered for school.
- Proof of voter registration in the state and the voter-identification-card address must match the address of the physical location where the exemption is being sought.
- A valid Florida driver's license and evidence of relinquishment of driver's licenses from another state is a relevant factor.
- The location where the applicant's bank statements and checking accounts are registered.
- Proof of payment for utilities at the property for which permanent residency is being claimed.

Factors relating to the applicant's employment, federal tax returns, and previous permanent residence remain unchanged.

Section 4 amends s. 193.193, F.S., to provide that property exempted from the annual application requirement is expressly exempt from taxation. This has the effect of providing a statutory exemption for houses of public worship, the lots on which they are located, personal property located therein or thereon, parsonages, burial grounds and tombs owned by houses of public worship, individually owned burial rights not held for speculation, or other such property not rented or hired out for other than religious or educational purposes at any time, whether or not such property would meet the requirements of s. 196.192, F.S.

Section 5 provides that the act shall take effect July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The property tax exemption created in section 4 of the bill appears to go beyond the constitutional limitation on property tax exemptions. Article VII sec. 3(a) says:

Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

The Florida Supreme Court has long held that the Legislature is without authority to grant an exemption from taxes where the exemption does not have a constitutional basis.⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill creates a property tax exemption for parsonages, whether or not they are used predominantly for an exempt purpose..

B. Private Sector Impact:

The right of a resident to appeal directly to the value adjustment board to grant a homestead exemption when the applicant has missed the March 1 filing deadline is eliminated. The resident may only appeal to the value adjustment board after the property appraiser has denied the application.

C. Government Sector Impact:

The role of the value adjustment board in determining homestead exemptions is reduced. The board may only hear cases after the property appraiser has denied an exemption.

The Department of Revenue reports no impacts to the agency from the provisions of the bill and the Revenue Estimating Impact Conference adopted an indeterminate positive/negative impact to state and local government on February 15, 2008.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁵ *Archer v. Marshall*, 355 So.2d 781 (Fla. 1978)

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax Committee on April 15, 2008:

The committee substitute creates a property tax exemption for parsonages, and any other property that is exempted from the annual application requirement under s. 196.011, F.S.

- B. **Amendments:**

None.