

FINAL BILL ANALYSIS

BILL #: CS/SB 478

FINAL HOUSE FLOOR ACTION:

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SPONSOR: Senator Thrasher (Rep. O'Toole)

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/HB 355

SUMMARY ANALYSIS

CS/SB 478 passed the House of Representatives on May 4, 2011. The bill was approved by the Governor on June 17, 2011, Chapter 2011-151, Laws of Florida, and becomes effective July 1, 2011.

The bill updates and consolidates provisions of the Florida Statutes regarding property taxation, including a statute of limitations; administrative and judicial review of property taxes; property tax exemptions; and tax collections, sales and liens. Specific changes made by the bill include the following:

- Authorizes tax collectors to remove certain uncollectible tax accounts from the tax roll;
- Increases by \$5 the amount of tax overpayments which may be retained by the tax collector;
- Authorizes the tax collector to send certain tax notices electronically, if the taxpayer agrees;
- Consolidates tax deferral provisions for homesteads, working waterfronts, and affordable housing;
- Changes the timeframe within which an appeal of a denied tax deferral must be filed with the value adjustment board;
- Reduces the maximum interest rate required to be paid by a taxpayer on deferred payment tax certificates from 9.5 to 7 percent;
- Requires that partial payment of deferred taxes must be in an amount of at least one year of deferred taxes, assessments and accrued interest;
- Authorizes the tax collector to establish branch offices to conduct state business;
- Increases the deadline from at least 15 to 45 days prior to a tax certificate sale for a request to pay a portion of a tax notice;
- Expands the availability of an implemented installment payment program;
- Increases from \$100 to \$250 the amount of delinquent taxes on homestead property for which a tax certificate cannot be sold at public auction and must be struck to the county;
- Shifts the disposition of unclaimed redemption moneys from the counties to the state; and
- Adds to the opening bid amount on tax deed property sales all tax certificates sold subsequent to the filing of the tax deed application plus any omitted taxes.

The bill provides legislative intent that property tax collection should be free from the influence or the appearance of influence of the governments that levy property taxes and receive property tax revenues.

The Revenue Estimating Conference has determined that the bill will have a positive, indeterminate impact on state government revenues and an indeterminate impact of unknown direction on local government revenues.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation- Tax Collections, Sales and Liens- Background

Chapter 197, F.S., governs tax collections, sales, and liens.

Tax Certificates

A tax certificate is a legal document, representing unpaid delinquent real property taxes, non-ad valorem assessments, including special assessments, interest, and related costs and charges, issued in accordance with Chapter 197, F.S., against a specific parcel of real property.¹ The tax certificate acts as a first lien on the property superior to all other liens, but it does not convey any property rights.²

Property taxes are due and payable on November 1 of each year or as soon thereafter as the certified tax roll is received by the tax collector and tax notices are mailed to taxpayers notifying them of the amount of taxes due and any discounts that are available to them.³ Taxes are considered delinquent if they are not paid by April 1 following the year in which they are assessed.⁴ By April 30, the tax collector mails an additional tax notice to each taxpayer whose payment has not been received, notifying the taxpayer that a tax certificate on the property will be sold for delinquent taxes that are not paid in full.⁵

Tax collectors are required to hold tax certificate sales on or before June 1, or 60 days after the date of delinquency, to sell tax certificates on properties with delinquent taxes.⁶ The tax collector is required to advertise the delinquent parcels in a local newspaper, once a week for three consecutive weeks, prior to the tax certificate sale.⁷ The interest on a tax certificate ranges from zero to 18 percent. Valid bids may be entered between zero and 18 percent interest in 0.25 percent increments. A tax certificate earns a minimum of five percent interest to the investor until the interest has accrued to greater than five percent, with the exception of “zero” interest bids, which always earn zero interest.⁸ Bids are entered and awarded to the buyer with the lowest interest rate bid. Tax certificates are “struck off to the person who will pay the taxes, interest, cost and charges and will demand the lowest rate of interest under the maximum rate of interest.”⁹ Unsold tax certificates are issued to the county at the maximum interest rate (18 percent).¹⁰

Simple interest accrues on the tax certificate on a monthly basis, starting on June 1 for those tax certificates awarded to bidders during the tax sale process. Interest is accrued at the rate of

¹ Section 197.102(3), F.S.

² Section 197.122(1), F.S., *see also* s. 197.432, F.S.

³ Sections 197.322 and 197.333, F.S.

⁴ *Id.*

⁵ Section 197.343(1), F.S.

⁶ *Id.*

⁷ Section 197.402(3), F.S.

⁸ Section 197.472(2), F.S.

⁹ Section 197.432(5), F.S.

¹⁰ *Id.*

the winning bid.¹¹ When a tax certificate is redeemed (paid by the property owner), the certificate holder will receive the amount of their investment (the tax certificate face amount) plus the interest accrued up to the date of redemption. A tax certificate can be redeemed anytime before a tax deed is issued or the property is placed on the list of lands available for sale either by redeeming a tax certificate from the investor or by purchasing a county held tax certificate. The person redeeming or purchasing the tax certificate is required to pay “all taxes, interest, costs, charges, and [any] omitted taxes” plus a \$6.25 fee to the tax collector.¹² The tax collector then pays the certificate holder the amount received by the tax collector, less certain service charges.¹³

Tax Deeds

If the property owner has not redeemed the tax certificate, a tax certificateholder may apply for a tax deed on the property on or after the second year following the sale of the certificate and before the expiration of seven years from issuance, by filing the certificate with the county tax collector and paying all amounts required for redemption or purchase of all other outstanding tax certificates, any omitted taxes or delinquent taxes, and any current taxes due, plus interest.¹⁴ The tax collector is authorized to collect a tax deed application fee of \$75 at the time of application for the tax deed.¹⁵ The property is then placed on the list of lands available for sale and sold to the highest bidder at a public auction held by the clerk of the circuit court.¹⁶ If property placed on the list of lands available for sale is not sold within three years after the public auction, the land escheats to the county in which the property is located free and clear of all liens.¹⁷ Tax certificates that are not redeemed or for which a tax deed has not been applied for after a period of seven years become null and void.¹⁸

Effect of Proposed Changes

The bill updates and consolidates provisions of chapter 197 of the Florida Statutes regarding property taxation including a statute of limitations; general provisions; administrative and judicial review of property taxes; property tax exemptions; and tax collections, sales and liens. The bill removes archaic language, deletes references to outdated laws, combines sections for consistency, and clarifies definitions. Specific changes made by the bill include the following:

Uncollectible Personal Property Taxes

Current Law

Current law does not specify procedures when delinquent tangible personal property tax accounts are determined to be uncollectible. This can result in instances where personal property tax accounts are carried on the tax roll, when there is no reasonable expectation that the tangible personal property will ever be found to seize and sell for the payment of delinquent taxes.

¹¹ See text accompanying footnote 8 for information on minimum interest amounts.

¹² Section 197.472(3), F.S.

¹³ Section 197.472(6), F.S.

¹⁴ Section 197.502(2), F.S.

¹⁵ Section 197.502(1), F.S.

¹⁶ Section 197.542(1), F.S.,

¹⁷ Section 197.502(8), F.S.

¹⁸ Section 197.482(1), F.S.

Proposed Changes

The bill authorizes a tax collector who determines that a tangible personal property account is uncollectible to issue a certificate of correction for the current tax roll and any prior tax rolls. The bill also requires the tax collector to notify the property appraiser that an account is invalid when the account is determined to be uncollectible, and the assessment may not be certified for a future tax roll. An uncollectible account includes, but is not limited to: an account on property that was originally assessed but cannot be found to seize and sell for the payment of taxes, and includes other personal property of the owner for which a tax warrant may be issued.

Refunds

Current Law

When payments have been made in error,¹⁹ before the taxpayer may apply for a refund from the tax collector, the taxpayer must make demand for reimbursement of the erroneous payment from the owner of the property on which the erroneous taxes were paid, within 24 months of the date of erroneous payment.²⁰

Overpayments of \$5 or less may be retained by the tax collector, unless the taxpayer files a written claim for refund. Overpayments of more than \$5 resulting from taxpayer error are automatically refunded by the tax collector if determined within four years of the overpayment.²¹

Certain refunds of \$400 or more require approval of the Department of Revenue (DOR) before they can be made.²²

Proposed Changes

When payments have been made in error, the bill reduces the timeframe within which the taxpayer must make demand for reimbursement of the erroneous payment from the owner of the property on which the erroneous taxes were paid from 24 months to 12 months for delinquent taxes paid and from 24 months to 18 months for non-delinquent taxes paid.

The bill raises the amount of overpayments that may be retained by the tax collector from \$5 or less to \$10 or less.

The bill increases the amount of certain refunds that require DOR approval from \$400 to \$2,500.

Property Tax Deferrals

Location in Statutes of Property Tax Deferral Provisions

Current Law

Chapter 197, F.S., provides certain instances in which a taxpayer can delay paying a portion of his or her combined taxes to a future date. Sections 197.252-3079, F.S., allow individual tax

¹⁹ The term "payment in error" includes payment by one taxpayer for a parcel which is erroneously applied to another taxpayer or parcel. See Rule 12D-13.009(2)(c), F.A.C.

²⁰ Section 197.182(1)(a)4., F.S.

²¹ Section 197.182(1)(c), F.S.

²² Section 197.182(1)(i), F.S.

deferrals for taxpayers who are entitled to exemptions for homestead, recreational and commercial working waterfront, and affordable rental housing property. To qualify for a tax deferral, these property owners are required to file an annual tax deferral application with the county tax collector on or before January 31, following the year the property was assessed. Property tax deferrals for homestead²³, recreational and commercial working waterfront²⁴ and affordable rental housing²⁵ properties are contained within separate sections of ch. 197, F.S.

Proposed Changes

Section 197.2421, F.S., is created and combines the tax deferral provisions for homestead, recreational and commercial working waterfront and affordable rental housing properties. Section 197.2423, F.S., is also created to prescribe the process for determining the approval or denial of a property tax deferral by the tax collector.

Appeal of Denied Tax Deferral

Current Law

Section 197.253, F.S., prescribes the procedure for applying for a homestead tax deferral. The application must be on a form prescribed by DOR. The tax collector must consider the application for homestead tax deferral within 30 days of the application. A denial of the tax deferral can be appealed to the value adjustment board. The decision of the value adjustment board may be appealed to the circuit court by a petition for a declaratory judgment or other appropriate proceeding.

Proposed Changes

The bill moves the application for a homestead tax deferral procedure to s. 197.2423, F.S., and provides new time requirements for the process. If the tax collector disapproves a tax deferral he or she must send notice of the disapproval within 45 days after the application is filed. Section 197.253, F.S., is renumbered to s. 197.2425, F.S., and prescribes the appeal process. The time for appeal changes from 20 days after receipt of the notice to 30 days after mailing of the notice. An appeal of the value adjustment board decision is by a de novo proceeding²⁶ for a declaratory judgment or other appropriate proceeding in circuit court.

Prepayment of Deferred Taxes

Current Law

Section 197.272, F.S., allows a property owner to pay all or part of deferred taxes and interest at any time. Partial payments are applied first to accrued interest.

Proposed Changes

Partial payments of deferred taxes must, at a minimum, be in the amount of one full year of deferred taxes, assessments and accrued interest.

²³ Section 197.252, F.S.

²⁴ Section 197.304, F.S.

²⁵ Section 197.307, F.S.

²⁶ A de novo proceeding is one where the matter is considered anew, as if the matter had not been heard before and as if no decision had been previously rendered.

Deferred Payment Tax Certificates

Current Law

Section 197.262, F.S., requires tax collectors to notify each local governing body of the amount of taxes and non ad-valorem assessments deferred which would otherwise have been collected by the governing body. When taxes are deferred, a tax certificate for the deferred taxes is struck to the county. Such certificates are exempt from the normal tax certificate public sale process. Taxpayers with deferrals are required to pay interest on the amounts deferred. The interest rate on tax certificates held by counties may not exceed 9.5 percent.

Proposed Changes

The bill removes the requirement for collectors to notify each local governing body of the amount of taxes and non ad-valorem assessments deferred which would otherwise have been collected by the governing body. The bill also reduces the maximum interest rate, required to be paid by the property owner, on deferred payment tax certificates to seven percent.

Electronic Sale of Tax Certificates

Current Law

Tax collectors are authorized to conduct electronic tax certificate sales under s. 197.432(16), F.S., which provides:

The county tax collector may conduct the sale of tax certificates for unpaid taxes pursuant to this section by electronic means. Such electronic sales shall comply with the procedures provided in this chapter. The tax collector shall provide access to such electronic sale by computer terminals open to the public at a designated location. A tax collector who chooses to conduct such electronic sales may receive electronic deposits and payments related to the tax certificate sale.

Proposed Changes

Several changes are made to ch. 197, F.S., to update statutory guidance to tax collectors wishing to conduct electronic sales of tax certificates. These include:

- Providing definitions for the terms “awarded,” “proxy bidding” and “random number generator.”
- Amending s. 197.432, F.S., updating the authority tax collectors have to conduct electronic tax sales certificates.
- Allowing for proxy bidding.
- Authorizing electronic deposits and payments related to the tax certificate sale.
- Allowing the use of a random-number generator to determine the winning bidder when multiple bidders offer the same lowest rate of interest.

Notice Sent to Taxpayers

Current Law

The tax collector is required to send various notices to taxpayers by mail. These include:

- Notices of refund denial.²⁷
- Tax notices sent to taxpayers stating the amount of current taxes due.²⁸
- Additional tax notices sent by April 30 to taxpayers whose payment has not been received.²⁹
- Tax notices authorized to be mailed to certain third parties, including mortgagees that are the trustee of a taxpayers escrow account for ad valorem taxes.³⁰

Proposed Changes

The bill authorizes the tax collector to send these notices electronically, with the express consent of the property owner, or by mail. However, if a notice sent electronically is returned as undeliverable, a second notice must be sent, but the original electronic notice is the official mailing. The bill also deletes requirements that certain information be provided or stored in the form prescribed by DOR.

Branch Offices

Current Law

Section 1(k), Art. VIII of the State Constitution, requires a resolution of the governing body of the county to establish a branch office for the conduct of county business outside of the county seat.

Proposed Changes

The bill authorizes the tax collector to establish branch offices to conduct state business or, if authorized to do so by resolution of the county governing body pursuant to s. 1(k), Art. VIII of the State Constitution, conduct county business.

The bill also authorizes a tax collector to perform collection duties through the use of contracted services or products or by electronic means and to collect the costs of contracted services.

Payment of a Portion of Taxes

Current Law

Section 197.373, F.S., provides that a tax collector is authorized to allow the payment of a part of a tax notice when the part can be ascertained by legal description, such part is under a

²⁷ Section 197.182(1)(k), F.S.

²⁸ Section 197.322(3), F.S.

²⁹ Section 197.343(1), F.S.

³⁰ Section 197.344(1), F.S.

contract for sale or has been transferred to a new owner, and the request is made by the person purchasing the property or the new owner or someone acting on behalf of the purchaser or owner. The request must be made at least 15 days prior to the tax certificate sale.

Proposed Changes

The bill changes the deadline for a request to pay a portion of a tax notice to 45 days before the tax certificate sale.

Installment Payment Program

Current Law

The tax collector may implement an installment payment program for the payment of delinquent tangible personal property taxes. If implemented, the program must be available to each delinquent tangible personal property taxpayer whose delinquent personal property taxes exceed \$1,000.

Proposed Changes

The bill deletes the mandatory availability of an implemented installment payment program to taxpayers whose delinquent tangible personal property taxes exceed \$1,000 and makes the program available to all delinquent tangible personal property taxpayers.

Tax Certificates on Homestead Property

Current Law

A tax certificate of less than \$100 in delinquent taxes on homestead property cannot be sold at public auction, but must be issued to the county and bear a maximum interest of 18 percent.³¹

Proposed Changes

The bill increases from \$100 to \$250 the amount of delinquent taxes on homestead property for which a tax certificate cannot be sold at public auction and must be struck to the county. The bill also reduces the maximum interest rate to the maximum rate allowed under s. 197.252(4), F.S., which is currently seven percent. The bill authorizes the use of proxy bidding for tax certificate sales and the use of a random number generator to determine a winner, where multiple bidders offer the same lowest rate of interest.

Sale of Tax Deeds at Public Auction

Current Law

- Once a certificateholder has filed an application for a tax deed, the real property against which the tax certificate was issued is advertised for sale to the highest bidder, specifying the time, date and location of the sale.³²
- For non-homestead property, the opening bid is the amount of delinquent taxes, accrued interest, plus costs and fees involved in the tax deed application.³³ For homestead

³¹ Sections 197.172 and 197.432(4), F.S.

³² Section 197.542(1), F.S.

³³ Id.

property, the opening bid is increased to include all amounts required for non-homestead property, plus an amount equal to one-half of the assessed value of the homestead property.³⁴ The property is struck off and sold to the highest bidder, who must make full payment of the final bid, plus any documentary stamp tax and recording fees due.

- The highest bidder must post with the clerk a nonrefundable cash deposit of \$200 at the time of the sale, to be applied to the sale price at the time of full payment. If there are no higher bids than the opening bid, the land is struck off and sold to the certificateholder, who must pay to the clerk the documentary stamp tax and recording fees due.
- Upon receipt of full payment, a tax deed is issued and recorded by the clerk of the circuit court. If full payment of the final bid and of documentary stamp tax and recording fees dues is not made within 24 hours, or if the sale is canceled for any reason, the clerk must readvertise the sale to be held within 30 days.

Proposed Changes

- The bill deletes outdated language regarding “sale to the highest bidder for cash at public outcry.”
- The bill requires all delinquent tax amounts accrued or tax certificates sold after the filing of an application for tax deed to be included in the opening bid at the tax deed property sale.
- The bill changes the highest bidder deposit amount from \$200 to the greater of \$200 or five percent of the bid amount.
- The bill clarifies that the sale process must be repeated until the property is sold and the clerk receives full payment or the clerk does not receive any bids other than that of the certificateholder.

Disposition of Unclaimed Redemption Moneys

Current Law

Certain moneys paid to the tax collector for the redemption of tax certificates that are payable to the holder of a redeemed tax certificate but for which no claim has been made are remitted to the board of county commissioners. Two years after the date the unclaimed redemption moneys were remitted to the board of county commissioners, all claims to such moneys are forever barred, and such moneys become the property of the county.³⁵

Proposed Changes

The bill adds moneys paid to the tax collector for a tax deed application that are payable to the holder of a redeemed tax certificate to the “disposition of unclaimed redemption moneys” statute. The bill provides that such moneys are considered unclaimed under the general disposition of unclaimed property law contained in ch. 717, F.S., and must be remitted to the state.

³⁴ Id.

³⁵ Section 197.473, F.S.

Legislative Intent

Current Law

Chapter 197, F.S., currently does not contain a statement of legislative intent.

Proposed Changes

The bill provides legislative intent that property tax collection should be free from the influence or the appearance of influence of the local governments who levy property taxes and receive property tax revenues.

Repealed Acts

- Section 197.202, F.S., dealing with destruction of 20-year-old tax receipts is repealed as obsolete.
- Section 197.242, F.S., providing short title “Homestead Property Tax Deferral Act” is repealed.
- Section 197.3042, F.S., dealing with notices to local governments regarding tax deferrals for recreational and commercial working waterfronts and s. 197.3074, F.S., dealing with notices to local governments regarding tax deferral for affordable rental housing properties are repealed.
- Section 197.307, F.S., dealing with procedures for adopting ordinance for tax deferrals for affordable rental housing is moved to s. 197.2524, F.S.
- Sections 197.304 and 197.3041, F.S., dealing with applying for tax deferral for recreational and commercial working waterfronts; and ss. 197.3072 and 197.3073, F.S., applying for tax deferral for affordable rental housing property are now contained within s. 197.2423, F.S.
- Sections 197.3043 and 197.3075, F.S., governing change in use or ownership of property is now covered by 197.263, F.S.
- Sections 197.3044 and 197.3076, F.S., governing prepayment of deferred taxes and non-ad valorem assessments is now governed by 197.272, F.S.
- Sections 197.3045 and 197.3077, F.S., governing distribution of payments is now governed by 197.282, F.S.
- Sections 197.3046 and 197.3078, F.S., providing for construction of the section dealing with the collection of personal property taxes is provided for in 197.292, F.S.
- Sections 197.3047 and 197.3079, F.S., providing for penalties is provided for in s. 197.301, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) estimates that this bill will have a positive indeterminate revenue impact on state government, because the distribution of certain unclaimed property will be shifted from county government to the state.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The REC estimates that this bill will have an indeterminate revenue impact on local governments. However, because various provisions of the bill would increase or decrease revenues, the REC was unable to determine whether the net effect of the bill would be positive or negative on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.