

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 Committee on Finance and Tax

BILL: SB 856

INTRODUCER: Senator Gruters

SUBJECT: Homestead Exemptions

DATE: April 3, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ryon</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 856 provides that a person receiving a homestead ad valorem tax exemption in Florida and simultaneously receiving, in another state, a similar exemption that requires permanent residency in that state is entitled to the Florida homestead exemption unless the person was *knowingly and intentionally* receiving the ad valorem exemption in the other state.

Current law provides that a property owner who is receiving or claiming an ad valorem tax exemption in another state that is conditioned upon permanent residency in that state may not receive the ad valorem homestead exemption in Florida.

The bill also attempts to establish a process for the circuit court to determine if a person was a permanent resident of this state during the year or years when a homestead exemption, as determined by a property appraiser, was improperly granted.

The bill takes effect July 1, 2019.

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of

January 1 of each year.¹ The property appraiser annually determines the assessed or “just value”² of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁶ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes;⁷ land used for conservation purposes;⁸ historic properties when authorized by the county or municipality;⁹ and certain working waterfront property.¹⁰

Statewide Homestead Exemption

Every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate (homestead property) is eligible for a \$25,000 tax exemption applicable to all ad valorem tax levies, including levies by school districts.¹¹ An additional \$25,000 exemption applies to homestead property value between \$50,000 and \$75,000.¹² This exemption does not apply to ad valorem taxes levied by school districts.

Section 196.031(5), F.S., provides that a person who is receiving or claiming an ad valorem tax exemption or a tax credit in another state where permanent residency is required as a basis for the granting of that exemption or tax credit is not entitled to a homestead exemption in Florida.

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ *See* s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ *See* FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ FLA. CONST. art VII, s. 6(a).

¹² *Id.*

Improperly Granted Homestead Exemptions

Florida provides several property tax exemptions for homestead property.¹³ Since Florida's homestead exemption requires that the property owner use the homestead property as a permanent residence, a property owner can only have one homestead exemption.

If a property appraiser determines that for any year or years within the prior 10 years a property owner was granted a homestead exemption, but was not entitled to it, the property appraiser must send the owner a notice of intent to file a tax lien on any property owned by the owner in that county.¹⁴ The property owner has 30 days to pay the taxes owed, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. If not paid within 30 days of notice, the property appraiser must file a tax lien.¹⁵ The tax lien remains on the property until it is paid or until it expires after 20 years.¹⁶ The lien process applies whether or not the taxpayer applied for the residency-based exemption in the other state.

If a homestead exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption shall not be assessed penalty and interest.¹⁷

The property appraiser may become aware of a property owner having a homestead within Florida and a homestead exemption in another state when the property owner dies and the estate of the decedent is administered in another state because it is alleged that the decedent was a resident of that other state.¹⁸ In such cases, property appraisers are required to use the lien process described above, unless the circuit court having jurisdiction over the ancillary administration in Florida determines that the decedent was a resident of Florida for the years in question.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 196.031, F.S., to specify that a person must *knowingly and intentionally* receive or claim an ad valorem tax exemption or tax credit in another state to be disqualified from the homestead tax exemption in Florida.

Section 2 amends s. 196.161, F.S., to provide a process for the circuit court to determine if a person was a permanent resident of this state during the year or years when a homestead exemption, as determined by a property appraiser, was improperly granted. However, as written, this process would apply during *ancillary estate administration* in Florida, and thus does not appear applicable to s. 196.161(1)(b), F.S. (*See* Section VI. Technical Deficiencies below.)

Section 3 provides an effective date of July 1, 2019.

¹³ *See, e.g.*, ss. 196.031, 196.071, 196.075, 196.081, and 196.091, F.S.

¹⁴ *See* ss. 196.011(9)(a), 196.075, and 196.161(1)(b), F.S.

¹⁵ *Id.*

¹⁶ Section 95.091(1)(b), F.S.

¹⁷ Section 196.161(1)(b), F.S.

¹⁸ *See* s. 196.161(1)(a), F.S.

¹⁹ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet determined the fiscal impact of the bill.

B. Private Sector Impact:

A property owner may qualify for the homestead exemption in Florida if he or she is *unknowingly and unintentionally* receiving an exemption in another state.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Section 196.161(1)(a), F.S., codifies the process for a property appraiser to record a tax lien on the estate of a decedent who was improperly granted a homestead exemption prior to death, and *allows a circuit court, during ancillary estate administration in Florida, to determine if a decedent was a Florida resident during the year(s) in question.* Section 196.161(1)(b), F.S., codifies the process to record a similar tax lien on property of living owners. Section 2 of the bill amends s. 196.161(1)(b), F.S., to insert the *ancillary administration* provision found in s. 196.161(1)(a), F.S.; however, the ancillary administration provision does not appear applicable to s. 196.161(1)(b), F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 196.031 and 196.161.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
