

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 Community Affairs

BILL: CS/SB 1214

INTRODUCER: Community Affairs Committee and Senator Gruters

SUBJECT: Nonprofit Taxation

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Fav/CS
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1214 provides that a property's ad valorem tax exemption based on charitable, religious, scientific, or literary use is not affected so long as the predominant use of the property is for such charitable, religious, scientific, or literary purposes.

The provisions of the bill first apply to taxable years beginning on or after January 1, 2022.

The bill takes effect July 1, 2021.

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

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.

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

Ad Valorem Exemption for Literary, Scientific, Religious, or Charitable Organizations

When calculating ad valorem taxes, a property's value is reduced by any exemptions provided by law, including exemptions for literary, scientific, religious, or charitable purposes.¹¹ The State Constitution allows the Legislature to exempt from ad valorem taxation "such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes."¹² The Legislature implements these exemptions and set forth the criteria to determine whether property is entitled to an exemption.¹³

Section 196.196, F.S., gives tax assessors a guide to assessing and exempting property.¹⁴ In determining whether the use of a property qualifies the property for a literary, scientific, religious, or charitable exemption, the property appraiser must consider the nature and extent of the qualifying activity compared to other activities.¹⁵ The portions of the property used predominantly for qualified purposes are exempt from ad valorem taxation, and if the property owned by an exempt organization is used exclusively for exempt purposes, it is totally exempt from ad valorem taxation.¹⁶

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. 3.

¹² FLA. CONST. art. VII, s. 3(a).

¹³ Section 196.196, F.S.

¹⁴ *State ex rel. Cragor Co. v. Doss*, 150 Fla. 486, 8 So.2d 15 (1942).

¹⁵ Section 196.196(1), F.S.

¹⁶ Section 196.196(2), F.S.

Incidental use of otherwise exempt property for non-exempt purposes does not make the property non-exempt. Likewise, mere incidental literary, scientific, religious, or charitable use of property does not qualify the property for the exemption.¹⁷ For example, a nursing home which operated as a business, collecting fees for services and increasing in value, was not granted a charitable exemption even though, incidental to business operations, they allowed some residents to pay reduced or zero fees.¹⁸

By default, property used for profitmaking purposes is subject to ad valorem taxation.¹⁹ Profitmaking does not include uses not requiring a business or occupational license which produce revenue then used wholly for exempt purposes. For example, hosting bingo on exempt property, the profits from which being used for exempt purposes, does not impair the property's exempt status.²⁰

III. Effect of Proposed Changes:

The bill amends s. 196.196(2), F.S., to clarify that the portions of property that are not predominantly used for charitable, religious, scientific, or literary purposes are not exempt from ad valorem taxation. The bill further provides that an ad valorem exemption is not affected so long as the predominant use of the property is for charitable, religious, scientific, or literary purposes.

The provisions of the bill first apply to taxable years beginning on or after January 1, 2022.

The bill takes effect July 1, 2021.

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.

¹⁷ Section 196.196(2), F.S.

¹⁸ *Haines v. St. Petersburg Methodist Home, Inc.*, 173 So.2d 176 (Fla 2d DCA 1965).

¹⁹ Section 196.196(4), F.S.

²⁰ *Id.*

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

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

B. Private Sector Impact:

The bill appears to clarify current statutory provisions, as such, no or minimal fiscal impact is expected.

C. Government Sector Impact:

The bill appears to clarify current statutory provisions, as such, no or minimal fiscal impact is expected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.196 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Community Affairs on March 10, 2021:

The committee substitute removes the provisions of the underlying bill and provides that an ad valorem exemption for charitable, religious, scientific, or literary purposes is not affected so long as the predominant use of the property is for such exempt purpose. The committee substitute also provides that the provisions of the bill first apply to taxable years beginning on or after January 1, 2022.

B. Amendments:

None.