

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 113 Tax Collections and Sales

**SPONSOR(S):** Maney and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	21 Y, 0 N	Berg	Aldridge
2) Local Administration, Federal Affairs & Special Districts Subcommittee	14 Y, 0 N	Roy	Darden
3) State Affairs Committee			

### SUMMARY ANALYSIS

At their own discretion, a tax collector may accept one or more partial payments of current year taxes and assessments on real or tangible personal property prior to the date of delinquency. Each partial payment is credited to the associated tax account, less a \$10 processing fee. Partial payments are not eligible for certain discounts, and do not affect the property owner's responsibility to pay taxes in full by their delinquency date.

If ad valorem taxes are not paid by the latter of June 1 or the 60th day after the tax becomes delinquent, the tax collector advertises and sells tax certificates to pay the delinquency. A tax certificate is a legal document that represents unpaid delinquent ad valorem taxes, non-ad valorem assessments, interest, and related costs and charges issued against a specific parcel of real property. Tax certificates must be sold to the person who will pay the taxes, interest, costs, and charges and demand the lowest rate of interest. The tax certificate sale process serves to reduce interest on unpaid taxes, from 18 percent to as low as .25 percent, in exchange for the local government collecting its expected tax roll. The tax certificate is held as a lien on the property in the amount of unpaid dues, and is fulfilled when the unpaid taxes, assessments, costs, charges, and interest are paid by the property owner.

Within 60 days after the tax certificate sale is adjourned, tax collectors are required to submit an errors and insolvencies report to the board of county commissioners. This report must show the discounts, errors, double assessments, and insolvencies relating to tax collections in which credit is to be given. This report serves to explain discrepancies between expected and actual tax revenue.

The bill makes three changes to local governments' tax collection administration:

- Removes a \$10 processing fee associated with partial payment of current year taxes;
- Requires that tax collectors revise their annual errors and insolvencies report on tax collections to include:
  - Properties subject to federal bankruptcies,
  - Properties in which the taxes are below the minimum tax bill, and
  - Properties assigned to the list of lands available for taxes; and
- Clarifies the applicable interest rate and status of a tax certificate following cancellation of a tax deed application.

The Revenue Estimating Conference estimated a recurring negative indeterminate impact on local government revenues for the repeal of the \$10 fee applied to partial payment of taxes.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Ad Valorem Taxation

Ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts.<sup>1</sup> The tax is based on the taxable value of property as of January 1 of each year.<sup>2</sup> The property appraiser annually determines the assessed or “just value”<sup>3</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>4</sup> The property appraiser then submits the certified assessment roll to the tax collector.<sup>5</sup> The tax collector sends out a tax notice to each taxpayer stating the amount of current taxes due within 20 business days after receiving the certified ad valorem tax roll.<sup>6</sup>

All taxes are due on November 1 of each year.<sup>7</sup> Taxes become delinquent on the latter of April 1 of the following year or 60 days from the date the original tax notice was mailed.<sup>8</sup> After receiving the tax roll, the tax collector publishes notice in the local newspaper stating the tax roll is open for collection and, within 20 working days of receipt of the tax roll, sends each taxpayer whose address is known a tax notice with the current taxes due and any delinquent taxes due.<sup>9</sup>

##### Partial Payment of Current Year Taxes

At their own discretion, a tax collector may accept one or more partial payments of current year taxes and assessments on real or tangible personal property prior to the date of delinquency.<sup>10</sup> Each partial payment is credited to the associated tax account, less a \$10 processing fee.<sup>11</sup> Partial payments are not eligible for certain discounts, and do not affect the property owner’s responsibility to pay taxes in full by their delinquency date.<sup>12</sup>

The Florida Tax Collectors Association has indicated that, following Hurricane Michael (October 2018) tax collectors began waiving the \$10 fee in an effort to help taxpayers affected by natural disasters.<sup>13</sup>

##### Tax Certificate Sales

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<sup>1</sup> The Florida Constitution prohibits the state from levying ad valorem taxes. Art. VII, s. 1(a), Fla. Const.

<sup>2</sup> Both real property and tangible personal property are subject to ad valorem tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. S. 192.001(11)(d), F.S., defines the term “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.

<sup>3</sup> Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. Art. VII, s. 4, Fla. Const. 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; *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973); *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965).

<sup>4</sup> See s. 192.001(2) and (16), F.S. The Florida Constitution limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized. Art. VII, s. 4, Fla. Const.

<sup>5</sup> S. 197.322(1), F.S.

<sup>6</sup> S. 197.322(3), F.S.

<sup>7</sup> S. 197.333, F.S.

<sup>8</sup> S. 197.333, F.S. If the delinquency date for ad valorem taxes is later than April 1st of the year following the year in which taxes are assessed, all dates or time periods relative to the collection of, or administrative procedures regarding, delinquent taxes are extended a like number of days.

<sup>9</sup> S. 197.322(2), F.S. If payment has not been received, the tax collector must send out an additional notice by April 30. S. 197.343, F.S.

<sup>10</sup> S. 197.374(2), F.S.

<sup>11</sup> S. 197.374(3), F.S.

<sup>12</sup> S. 197.374, F.S.

<sup>13</sup> Office of Economic & Demographic Research, *Revenue Estimating Conference Impact Conference (November 17, 2023)* 29-30, available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2024/\\_pdf/page29-30.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2024/_pdf/page29-30.pdf) (last visited Jan. 24, 2024).

If ad valorem taxes are not paid by the latter of June 1 or the 60th day after the tax becomes delinquent, the tax collector advertises and sells tax certificates to pay the delinquency.<sup>14</sup> A tax certificate is a legal document that represents unpaid delinquent ad valorem taxes, non-ad valorem assessments, interest, and related costs and charges issued against a specific parcel of real property.<sup>15</sup> Once sold, the tax certificate becomes a first lien on the property, superior to all other liens, except as provided by law, but can be enforced only through the remedies provided under ch. 197, F.S.

Once the tax has become delinquent, the tax collector must advertise notice of a tax certificate sale at least once a week for three weeks.<sup>16</sup> The tax sale continues until each certificate is sold to pay the taxes, interest, costs, and charges described in the certificate.<sup>17</sup> If all taxes due on a real property, as well as all interest, costs, and charges, are paid before a tax certificate is awarded to a buyer or struck to the county, a tax certificate is not issued, while payment after a certificate has been awarded is paid by a redemption of the certificate.<sup>18</sup> Tax certificates of less than \$250 in delinquent taxes on a homestead property may not be sold to the public, but must instead be issued to the county at the maximum rate of interest allowed.<sup>19</sup>

Tax certificates must be sold to the person who will pay the taxes, interest, costs, and charges and demand the lowest rate of interest.<sup>20</sup> Bids for certificates must be made in even increments and in fractional interest rate bids of one-quarter of one percent. If the certificate is not purchased, the certificate is issued to the county at the maximum rate of interest.

The tax certificate sale process serves to reduce interest on unpaid taxes, from 18 percent to as low as .25 percent, in exchange for the local government collecting its expected tax roll.<sup>21</sup> The tax certificate is held as a lien on the property in the amount of unpaid dues, and is fulfilled when the unpaid taxes, assessments, costs, charges, and interest are paid by the property owner.<sup>22</sup>

Two years after a tax certificate is sold, the certificate holder may apply for a tax deed.<sup>23</sup> This brings into motion a process through which the property will ultimately be sold by the county in order to cover unpaid taxes.<sup>24</sup> Applying for a tax deed requires the certificate holder to pay to the tax collector all amounts required for redemption or purchase of all outstanding tax certificates, as a new certificate can be produced for each year's unpaid taxes, alongside associate costs, taxes, and interest, and any outstanding delinquent or current year taxes.<sup>25</sup> This application therefore redeems or collects tax certificates other than the one on which the tax deed application was based, and the property comes subject to a single tax certificate lien.

After application for tax deed, the county clerk notifies the applicant of the costs required to bring the property to sale. These costs include property information searches, mailing and advertising costs, and resale costs. If the certificate holder-applicant fails to pay these costs within 30 days after notice from the clerk, the tax collector must cancel the tax deed application. All taxes and costs associated with the canceled tax deed application earn interest at the bid rate of the certificate on which the tax deed application was based.

### Errors and Insolvencies Report

Within 60 days after the tax certificate sale is adjourned, tax collectors are required to submit an errors and insolvencies report to the board of county commissioners.<sup>26</sup> This report must show the discounts,

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<sup>14</sup> Ss. 197.402(3) and 197.432(1), F.S.

<sup>15</sup> S. 197.102(1)(f), F.S.

<sup>16</sup> S. 197.402(3), F.S.

<sup>17</sup> S. 197.432(1), F.S.

<sup>18</sup> S. 197.432(3), F.S.

<sup>19</sup> S. 197.432(4), F.S.

<sup>20</sup> S. 197.432(6), F.S. Section 197.172(2), F.S. establishes 18 percent as the maximum rate of interest on a tax certificate.

<sup>21</sup> See generally ss. 197.172 and 197.432, F.S.

<sup>22</sup> *Id.*

<sup>23</sup> S. 197.502 (1), F.S.

<sup>24</sup> See generally s. 197.502, F.S.

<sup>25</sup> S. 197.502(2), F.S.

<sup>26</sup> S. 197.492, F.S.

errors, double assessments, and insolvencies relating to tax collections for which credit is to be given.<sup>27</sup> This report serves to explain discrepancies between expected and actual tax revenue.

## **Effect of Proposed Changes**

### Partial Payment of Current Year Taxes

The bill amends s. 197.374, F.S., to remove the \$10 processing fee associated with partial payment of current year taxes.

### Tax Certificate Sales

The bill amends s. 197.502, F.S., to clarify that, upon cancellation of a tax deed application due to failure to pay costs to bring the property to sale, the tax certificate on which the canceled tax deed application was based shall earn interest at the original bid rate of that certificate. It also clarifies that the certificate will include all other costs associated with the tax deed application, along with any other tax years that were paid as part of the application process and any costs associated with those years. In addition, it clarifies that the interest rate from the original certificate will also apply to those other taxes and costs. This should save distressed taxpayers from paying higher interest rates for portions of the costs included in the tax deed application if they later redeem the property, and will have no impact on the local governments as once a certificate is sold to an investor, all local government taxing authorities are made whole from those proceeds.

### Errors and Insolvencies Report

The bill amends s. 197.492, F.S., to require that tax collectors include properties subject to federal bankruptcies, properties in which the taxes are below the minimum tax bill, and properties assigned to the list of lands available for taxes in their report on tax collections submitted annually to the board of county commissioners.

## **B. SECTION DIRECTORY:**

Section 1: Amends s. 197.374, F.S., to remove a processing fee.

Section 2: Amends s. 197.492, F.S., to add three items to an annual report the tax collector provides to the Board of County Commissioners.

Section 3: Amends s. 197.502, F.S., to clarify provisions related to the tax deed application process.

Section 4: Provides an effective date of July 1, 2024.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

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<sup>27</sup> *Id.*

The Revenue Estimating Conference estimated a recurring negative indeterminate impact on local government revenues for the repeal of the \$10 fee applied to partial payment of taxes.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may assist property owners with making partial payments of property taxes without additional fees, and may reduce the total interest paid by distressed property owners as part of the tax deed application process.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because section 1 of this bill eliminates a \$10 fee that some county governments may be collecting; however, an exception may apply if the fiscal impact to local governments is insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.