

CHAPTER 97-294

Committee Substitute for Senate Bill No. 918

An act relating to ad valorem taxation; amending s. 192.001, F.S.; defining the term “computer software” for purposes of imposing ad valorem taxes; specifying circumstances under which computer software constitutes personal property; amending s. 196.012, F.S.; redefining the term “educational institution,” for purposes of the exemption of such institutions from ad valorem taxation, to include certain schools providing postgraduate dental education; providing for application of the act; amending s. 196.195, F.S.; providing that certain corporations are nonprofit; amending s. 196.196, F.S.; providing criteria for determining if an applicant is using its property for a charitable, religious, scientific, or literary purpose; providing an effective date.

WHEREAS, it is the intent of the Legislature to clarify that computer software, as defined in this act, is not tangible personal property under the ad valorem tax laws of this state, and

WHEREAS, it is the further intent of the Legislature that the provisions of this act are remedial, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (19) is added to section 192.001, Florida Statutes, to read:

192.001 Definitions.—All definitions set out in chapters 1 and 200 that are applicable to this part are included herein. In addition, the following definitions shall apply in the imposition of ad valorem taxes:

(19) “Computer software” means any information, program, or routine, or any set of one or more programs, routines, or collections of information used or intended for use to convey information or to cause one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. Without limiting the generality of the definition provided in this subsection, the term includes operating and applications programs and all related documentation. Computer software does not include embedded software that resides permanently in the internal memory of a computer or computer-related peripheral equipment and that is not removable without terminating the operation of the computer or equipment. Computer software constitutes personal property only to the extent of the value of the unmounted or uninstalled medium on or in which the information, program, or routine is stored or transmitted, and, after installation or mounting by any person, computer software does not increase the value of the computer or computer-related peripheral equipment, or any combination thereof.

Section 2. Subsection (5) of section 196.012, Florida Statutes, is amended to read:

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

(5) “Educational institution” means a federal, state, parochial, church, or private school, college, or university conducting regular classes and courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Schools, or the Florida Council of Independent Schools; a nonprofit private school the principal activity of which is conducting regular classes and courses of study accepted for continuing postgraduate dental education credit by a board of the Division of Medical Quality Assurance; educational direct-support organizations created pursuant to ss. 229.8021, 240.299, and 240.331; and facilities located on the property of eligible entities which will become owned by those entities on a date certain.

Section 3. Section 196.195, Florida Statutes, is amended to read:

196.195 Determining profit or nonprofit status of applicant.—

(1) Applicants requesting exemption shall supply such fiscal and other records showing in reasonable detail the financial condition, record of operation, and exempt and nonexempt uses of the property, where appropriate, for the immediately preceding fiscal year as are requested by the property appraiser or the value adjustment board.

(2) In determining whether an applicant for a religious, literary, scientific, or charitable exemption under this chapter is a nonprofit or profitmaking venture or whether the property is used for a profitmaking purpose, the following criteria shall be applied:

(a) The reasonableness of any advances or payment directly or indirectly by way of salary, fee, loan, gift, bonus, gratuity, drawing account, commission, or otherwise (except for reimbursements of advances for reasonable out-of-pocket expenses incurred on behalf of the applicant) to any person, company, or other entity directly or indirectly controlled by the applicant or any officer, director, trustee, member, or stockholder of the applicant;

(b) The reasonableness of any guaranty of a loan to, or an obligation of, any officer, director, trustee, member, or stockholder of the applicant or any entity directly or indirectly controlled by such person, or which pays any compensation to its officers, directors, trustees, members, or stockholders for services rendered to or on behalf of the applicant;

(c) The reasonableness of any contractual arrangement by the applicant or any officer, director, trustee, member, or stockholder of the applicant regarding rendition of services, the provision of goods or supplies, the management of the applicant, the construction or renovation of the property of the applicant, the procurement of the real, personal, or intangible property of the applicant, or other similar financial interest in the affairs of the applicant;

(d) The reasonableness of payments made for salaries for the operation of the applicant or for services, supplies and materials used by the applicant,

reserves for repair, replacement, and depreciation of the property of the applicant, payment of mortgages, liens, and encumbrances upon the property of the applicant, or other purposes; and

(e) The reasonableness of charges made by the applicant for any services rendered by it in relation to the value of those services, and, if such charges exceed the value of the services rendered, whether the excess is used to pay maintenance and operational expenses in furthering its exempt purpose or to provide services to persons unable to pay for the services.

(3) Each applicant must affirmatively show that no part of the subject property, or the proceeds of the sale, lease, or other disposition thereof, will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose.

(4) Notwithstanding the provisions of subsections (2) and (3), a corporation organized as nonprofit under chapter 617 which has a valid consumer certificate of exemption pursuant to s. 212.08(7)(o) and which has a valid exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code is nonprofit. Proof provided by a corporation of its status as described in this subsection shall be sufficient to establish the organization's nonprofit status and any corporation providing such proof is not required to provide any other information in order to establish its nonprofit status.

~~(5)~~(4) No application for exemption may be granted for religious, literary, scientific, or charitable use of property until the applicant has been found by the property appraiser or, upon appeal, by the value adjustment board to be nonprofit as defined in this section.

Section 4. Paragraph (c) is added to subsection (1) of section 196.196, Florida Statutes, to read:

196.196 Determining whether property is entitled to charitable, religious, scientific, or literary exemption.—

(1) In the determination of whether an applicant is actually using all or a portion of its property predominantly for a charitable, religious, scientific, or literary purpose, the following criteria shall be applied:

(c) The extent to which the property is used to conduct activities which cause a corporation to qualify for a consumer certificate of exemption under s. 212.08(7)(o). Such activities shall be considered as part of the exempt purposes of the applicant.

Section 5. This act shall take effect upon becoming a law and shall apply to all periods open for additional assessment or refund under applicable law.

Became a law without the Governor's approval June 1, 1997.

Filed in Office Secretary of State May 30, 1997.