

Council Substitute for House Bill No. 909

An act relating to ad valorem taxation; amending s. 193.011, F.S.; clarifying factors that a property appraiser must consider in deriving just valuation; amending s. 193.461, F.S.; revising criteria for classifying agricultural lands; amending s. 194.011, F.S.; requiring the Department of Revenue to develop a uniform policies and procedures manual for use in proceedings before value adjustment boards; specifying availability requirements for such manual; amending s. 194.035, F.S.; requiring certain persons in certain counties to attend special magistrate training under certain circumstances; providing a fee exemption; requiring value adjustment boards to verify the qualifications of special magistrates prior to appointment; providing selection criteria; requiring the department to provide and conduct training for special magistrates; providing training requirements; requiring the department to charge tuition fees; providing for deposit of such fees; amending s. 194.037, F.S.; revising information required to be provided on the disclosure of tax impact form; providing legislative intent; specifying that taxpayers are precluded from having certain burdens of proof; amending s. 195.002, F.S.; conforming provisions to changes made by the act; amending s. 195.052, F.S.; specifying requirements for data to be published by the Department of Revenue; extending the publication period; providing an effective date.

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

Section 1. Section 193.011, Florida Statutes, is amended to read:

193.011 Factors to consider in deriving just valuation.—In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order,

ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;
- (7) The income from said property; and
- (8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

Section 2. Paragraph (b) of subsection (3) of section 193.461, Florida Statutes, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(3)

(b) Subject to the restrictions set out in this section, only lands which are used primarily for bona fide agricultural purposes shall be classified agricultural. “Bona fide agricultural purposes” means good faith commercial agricultural use of the land. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

1. The length of time the land has been so used. ~~utilized~~;
2. Whether the use has been continuous.;
3. The purchase price paid.;
4. Size, as it relates to specific agricultural use, but in no event shall a minimum acreage be required for agricultural assessment.;
5. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices.;

6. Whether such land is under lease and, if so, the effective length, terms, and conditions of the lease;~~;~~ ~~and~~

7. Such other factors as may from time to time become applicable.

Section 3. Subsection (5) of section 194.011, Florida Statutes, is amended to read:

194.011 Assessment notice; objections to assessments.—

(5)(a) The department shall by rule prescribe uniform procedures for hearings before the value adjustment board which include requiring:

1.(a) Procedures for the exchange of information and evidence by the property appraiser and the petitioner consistent with s. 194.032; ~~and~~

2.(b) That the value adjustment board hold an organizational meeting for the purpose of making these procedures available to petitioners.

(b) The department shall develop a uniform policies and procedures manual that shall be used by value adjustment boards, special magistrates, and taxpayers in proceedings before value adjustment boards. The manual shall be made available, at a minimum, on the department's website and on the existing websites of the clerks of circuit courts.

Section 4. Section 194.015, Florida Statutes, is amended to read:

194.015 Value adjustment board.—There is hereby created a value adjustment board for each county, which shall consist of ~~two~~ three members of the governing body of the county as elected from the membership of the board of said governing body, one of whom shall be elected chairperson, and ~~one member~~ two members of the school board as elected from the membership of the school board, ~~and two citizen members, one of whom shall be appointed by the governing body of the county and must own homestead property within the county and one of whom must be appointed by the school board and must own a business occupying commercial space located within the school district.~~ A citizen member may not be a member or an employee of any taxing authority, and may not be a person who represents property owners in any administrative or judicial review of property taxes. The members of the board may be temporarily replaced by other members of the respective boards on appointment by their respective chairpersons. Any three members shall constitute a quorum of the board, except that each quorum must include at least one member of said governing board, ~~and~~ at least one member of the school board, and at least one citizen member and no meeting of the board shall take place unless a quorum is present. Members of the board may receive such per diem compensation as is allowed by law for state employees if both bodies elect to allow such compensation. The clerk of the governing body of the county shall be the clerk of the value adjustment board. ~~The office of the county attorney may be counsel to the board unless the county attorney represents the property appraiser, in which instance~~ The board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the board. The private counsel may not represent the property appraiser, the tax collector, any taxing authority, or any property owner

~~in any administrative or judicial review of property taxes. No meeting of the board shall take place unless counsel to the board is present. However, counsel for the property appraiser shall not be required when the county attorney represents only the board at the board hearings, even though the county attorney may represent the property appraiser in other matters or at a different time. Two-fifths of the expenses of the board shall be borne by the district school board and three-fifths by the district county commission.~~

Section 5. Section 194.035, Florida Statutes, is amended to read:

194.035 Special magistrates; property evaluators.—

(1) In counties having a population of more than 75,000, the board shall appoint special magistrates for the purpose of taking testimony and making recommendations to the board, which recommendations the board may act upon without further hearing. These special magistrates may not be elected or appointed officials or employees of the county but shall be selected from a list of those qualified individuals who are willing to serve as special magistrates. Employees and elected or appointed officials of a taxing jurisdiction or of the state may not serve as special magistrates. The clerk of the board shall annually notify such individuals or their professional associations to make known to them that opportunities to serve as special magistrates exist. The Department of Revenue shall provide a list of qualified special magistrates to any county with a population of 75,000 or less. Subject to appropriation, the department shall reimburse counties with a population of 75,000 or less for payments made to special magistrates appointed for the purpose of taking testimony and making recommendations to the value adjustment board pursuant to this section. The department shall establish a reasonable range for payments per case to special magistrates based on such payments in other counties. Requests for reimbursement of payments outside this range shall be justified by the county. If the total of all requests for reimbursement in any year exceeds the amount available pursuant to this section, payments to all counties shall be prorated accordingly. If a county having a population less than 75,000 does not appoint a special magistrate to hear each petition, the person or persons designated to hear petitions before the value adjustment board or the attorney appointed to advise the value adjustment board shall attend the training provided pursuant to subsection (3), regardless of whether the person would otherwise be required to attend, but shall not be required to pay the tuition fee specified in subsection (3). A special magistrate appointed to hear issues of exemptions and classifications shall be a member of The Florida Bar with no less than 5 years' experience in the area of ad valorem taxation. A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than 5 years' experience in real property valuation. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than 5 years' experience in tangible personal property valuation. A special magistrate need not be a resident of the county in which he or she serves. A special magistrate may not represent a person before the board in any tax year during which he or she has served that board as a special magistrate. Before appointing a special magistrate, a value adjustment

board shall verify the special magistrate's qualifications. The value adjustment board shall ensure that the selection of special magistrates is based solely upon the experience and qualifications of the special magistrate and is not influenced by the property appraiser. The special magistrate shall accurately and completely preserve all testimony and, in making recommendations to the value adjustment board, shall include proposed findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser. The board shall appoint special magistrates from the list so compiled prior to convening of the board. The expense of hearings before magistrates and any compensation of special magistrates shall be borne three-fifths by the board of county commissioners and two-fifths by the school board.

(2) The value adjustment board of each county may employ qualified property appraisers or evaluators to appear before the value adjustment board at that meeting of the board which is held for the purpose of hearing complaints. Such property appraisers or evaluators shall present testimony as to the just value of any property the value of which is contested before the board and shall submit to examination by the board, the taxpayer, and the property appraiser.

(3) The department shall provide and conduct training for special magistrates at least once each state fiscal year in at least five locations throughout the state. Such training shall emphasize the department's standard measures of value, including the guidelines for real and tangible personal property. Notwithstanding subsection (1), a person who has 3 years of relevant experience and who has completed the training provided by the department under this subsection may be appointed as a special magistrate. The training shall be open to the public. The department shall charge tuition fees to any person attending this training in an amount sufficient to fund the department's costs to conduct all aspects of the training. The department shall deposit the fees collected into the Certification Program Trust Fund pursuant to s. 195.002(2).

Section 6. Subsection (1) of section 194.037, Florida Statutes, is amended to read:

194.037 Disclosure of tax impact.—

(1) After hearing all petitions, complaints, appeals, and disputes, the clerk shall make public notice of the findings and results of the board in at least a quarter-page size advertisement of a standard size or tabloid size newspaper, and the headline shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county. The newspaper selected shall be one of general interest and readership in the community, and not one of limited subject matter, pursuant to chapter 50. The headline shall read: TAX IMPACT OF VALUE ADJUSTMENT BOARD. The public notice shall list the members of the value adjustment board and the taxing authorities to which they are elected. The form shall show, in columnar form, for each of the property classes listed under subsection (2), the following information, with appropriate column totals:

(a) In the first column, the number of parcels for which the board granted exemptions that had been denied or that had not been acted upon by the property appraiser.

(b) In the second column, the number of parcels for which petitions were filed concerning a property tax exemption.

(c) In the third column, the number of parcels for which the board considered the petition and reduced the assessment from that made by the property appraiser on the initial assessment roll.

(d) In the fourth column, the number of parcels for which petitions were filed but not considered by the board because such petitions were withdrawn or settled prior to the board's consideration.

(e)(d) In the fifth ~~fourth~~ column, the number of parcels for which petitions were filed requesting a change in assessed value, including requested changes in assessment classification.

(f)(e) In the sixth ~~fifth~~ column, the net change in taxable value from the assessor's initial roll which results from board decisions.

(g)(f) In the seventh ~~sixth~~ column, the net shift in taxes to parcels not granted relief by the board. The shift shall be computed as the amount shown in column ~~6~~ 5 multiplied by the applicable millage rates adopted by the taxing authorities in hearings held pursuant to s. 200.065(2)(d) or adopted by vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution, but without adjustment as authorized pursuant to s. 200.065(6). If for any taxing authority the hearing has not been completed at the time the notice required herein is prepared, the millage rate used shall be that adopted in the hearing held pursuant to s. 200.065(2)(c).

Section 7. It is the express intent of the Legislature that a taxpayer shall never have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment. It is the further intent of the Legislature that any cases of law published since 1997 applying the every-reasonable-hypothesis burden of proof to uphold the property appraiser's assessment are expressly rejected to the extent that they are interpretive of legislative intent.

Section 8. Subsection (2) of section 195.002, Florida Statutes, is amended to read:

195.002 Supervision by Department of Revenue.—

(2) In furtherance of its duty to conduct schools to upgrade assessment skills and collection skills, the department may establish by rule committees on admissions and certification. Additionally, The department may also incur reasonable expenses for hiring instructors, travel, office operations, certificates of completion, badges or awards, and food service incidental to conducting such schools and for administering any certification program under s. 145.10, ~~or s. 145.11,~~ or s. 194.035. The department may charge a tuition fee and an examination fee to any person who attends such a school

and may charge a fee to certify or recertify any person under such a program. The department shall deposit such fees into the Certification Program Trust Fund which is created in the State Treasury. There shall be separate school accounts and program accounts in the trust fund for property appraisers, ~~and for tax collectors, and special magistrates.~~ The department shall use money in the fund to pay such expenses.

Section 9. Section 195.052, Florida Statutes, is amended to read:

195.052 Research and tabulation of data.—The department shall conduct constant research and maintain accurate tabulations of data and conditions existing as to ad valorem taxation, shall annually publish such data as may be appropriate to facilitate fiscal policymaking, and shall annually make such recommendations to the Legislature as are necessary to ensure that property is valued according to its just value and is equitably taxed throughout the state. Such data shall include the annual percentage increase in total nonvoted ad valorem taxes levied by each city and county and shall include information on the distribution of ad valorem taxes levied among the various classifications of property, including homestead, non-homestead residential, new construction, commercial, and industrial properties. Such data shall include the previous year's adopted millage rate, the current year's millage rate, and the current percentage increase in taxes levied above the rolled-back rate. Such data shall be published, at a minimum, on the department's website and on the websites of all property appraisers of this state, if available. Publication shall occur not later than ~~90~~ 60 days after receipt of extended rolls for all counties pursuant to s. 193.122(7).

Section 10. This act shall take effect September 1, 2008.

Approved by the Governor June 17, 2008.

Filed in Office Secretary of State June 17, 2008.