

**DEPARTMENT OF REVENUE
2012 LEGISLATIVE CONCEPTS**

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**New Issue for 2012*

ADMINISTRATIVE

VOLUNTEERS

Statutory Reference: Sections 110.502, 110.503, 110.506, and 213.053, Florida Statutes

Current Situation: All state agencies are authorized to recruit, train and accept volunteers to assist with agency programs and volunteers are required to comply with applicable agency rules. However, applicable statutes do not specifically state that agencies are authorized to conduct security background checks on volunteers, nor do they provide specific authority for a volunteer's access to confidential information.

Proposed Change: Under the proposal, agencies would be authorized to provide volunteers, including interns, access to confidential information as appropriate and volunteers would be subject to the same confidentiality requirements applicable to agency employees. As appropriate, volunteers would be subject to security background checks and agencies would be authorized to pay the costs of such background checks.

CHILD SUPPORT ENFORCEMENT

REQUESTS FOR INFORMAL DISCUSSION

Statutory Reference: Section 409.2563, Florida Statutes

Current Situation: The administrative support process provides that a parent from whom support is being sought may request to informally discuss a proposed administrative support order with the Department of Revenue (Department) by making the request to “a department representative, at the address or telephone number in the notice.” Due to the informal manner of the request, it is not always clear if such a request has been made.

Proposed Change: In order to clarify when a request has been made and use limited resources more efficiently, amend current law to require that a request for an informal discussion be made in writing. Additionally, the concept would extend the time to make the request from 10 days to 15 days from the date of mailing or other service of the proposed administrative support order.

CAREGIVER PATERNITY AFFIDAVIT

Statutory Reference: Section 409.256, Florida Statutes

Current Situation: Section 409.256, Florida Statutes, allows the Department to commence an administrative paternity proceeding if certain conditions are met. One of the conditions is that the child’s mother or putative father has stated in an affidavit, or in a written declaration, that the putative father is or may be the child’s biological father. In cases where a caregiver is receiving services and paternity is an issue, the Department cannot proceed with an administrative action to establish paternity without the completion of the paternity declaration.

It can be difficult to obtain the declaration from the mother or putative father if they are not the current custodian of the child and the Department is proceeding against them to obtain support.

Proposed Change: This concept would amend Section 409.256, Florida Statutes, to allow a caregiver with knowledge of who the alleged father is to complete the paternity declaration (affidavit or written declaration). This will allow the Department to proceed with an administrative action to establish paternity based on genetic testing.

DEPOSITORY ROLE IN TITLE IV-D CASES

STATUTORY REFERENCE: Section 61.13, Florida Statutes

CURRENT SITUATION: The Department of Revenue is required to provide child support services in public assistance cases and also when a citizen requests services. In all cases handled by the Department (Title IV-D cases), state and federal laws require support payments to be made to the State Disbursement Unit.

When the Department begins providing services in what had been a private case, if all payments are up to date, some clerks of court will not establish the necessary payment accounts for processing by the State Disbursement Unit. The statute only authorizes them to provide services if payments are delinquent.

PROPOSED CHANGE: Amend current law to require the clerk of court to create the necessary payment accounts in private cases that become Title IV-D cases. Also, clarify that in Title IV-D cases all payments must be made to the State Disbursement Unit.

CLARIFICATION OF DRIVER'S LICENSE SUSPENSION

STATUTORY REFERENCE: Sections 61.13016 and 322.058, Florida Statutes

CURRENT SITUATION: A person who is at least 15 days late on child support payments may have his or her driver's license suspended after notice and the opportunity for a hearing. After 20 days if the person does not pay the delinquency in full, enter into a written agreement or file a petition in circuit court to contest the suspension, the Department of Revenue notifies the Department of Highway Safety and Motor Vehicles to suspend the license

PROPOSED CHANGE: This concept amends current law to clarify that when support payments are being made by income deduction order, payment of the full amount of the delinquency is not required to avoid suspension. It also authorizes the Department to stop the suspension process when appropriate; for example, if the obligor becomes disabled, begins receiving unemployment benefits or files bankruptcy.

ADMINISTRATIVE HEARINGS

STATUTORY REFERENCE: Section 120.80, Florida Statutes

CURRENT SITUATION: Pursuant to an interagency agreement, the Department of Children and Families, Office of Appeal Hearings (DCF), conducts administrative hearings for the Child Support Program in contested matters concerning federal income tax refund offset, passport denial, and child support distributions. Recently DCF has indicated they will no longer have the resources to provide these hearings for child support cases.

PROPOSED CHANGE: Authorize the Department to send these cases to the Division of Administrative Hearings (DOAH) for hearing and authorize DOAH to enter a final order.

ADMINISTRATIVE LIENS

STATUTORY REFERENCE: Section 409.2575, Florida Statutes

CURRENT SITUATION: The Department is authorized to place liens only on vehicles and vessels registered to obligors who owe past due support that exceeds \$600. To place a lien on other types of personal property the Department must proceed in circuit court.

PROPOSED CHANGE: Authorize the Department to also place administrative liens on personal injury claims, settlement proceeds and judgments of delinquent obligors. Clarify that an administrative lien may be placed on vehicles and vessels owned free and clear by delinquent obligors.

UNCONTESTED UNCLAIMED PROPERTY CASES

STATUTORY REFERENCE: Section 409.25658, Florida Statutes

CURRENT SITUATION: The Department works jointly with the Department of Financial Services (DFS) to identify persons who owe past due support and who have unclaimed property held by DFS. When identified, the Department sends a notice to the obligor advising of the intent to intercept and informing the obligor of the right to an administrative hearing. A final order is statutorily required before DFS can transfer the property to the Department, even when the claim is not contested by the obligor.

PROPOSED CHANGE: Authorize the intercept notice to be sent by regular mail to the address the obligor provided to DFS. When the intercept is uncontested and the protest period has concluded, permit DFS to transfer the unclaimed property to the Department without a final order.

GARNISHMENT

STATUTORY REFERENCE: Section 409.25656, Florida Statutes

CURRENT SITUATION: The Department is authorized to garnish personal property or credits of persons who owe past due support. The current garnishment process requires multiple registered mail notifications even for uncontested actions. The existing data matching requirements with the Chief Financial Officer (CFO) and the provisions to withhold payments to delinquent obligors are problematic and thus have not been utilized.

PROPOSED CHANGE: Amend current law to authorize the Department to issue garnishment notices by regular mail instead of registered mail and improve automated data matching with the CFO to identify delinquent obligors who have income or property that may be garnished.

***PUBLIC RECORDS EXEMPTION - INSURANCE CLAIMS DATA**

STATUTORY REFERENCE: Section 409.25661, Florida Statutes

CURRENT SITUATION: The information obtained from insurers for the purpose of identifying persons who owe past due support is confidential and exempt from disclosure as a public record, s. 119.07(1), F.S., and s. 24(a), Fla. Constitution. The exemption is scheduled for repeal October 2, 2012.

PROPOSED CHANGE: Reenact this section eliminating the repeal requirement thus allowing the Department to maintain the confidentiality of personal data provided by insurers.

*The Senate Children, Families and Elder Affairs Committee has indicated they will offer this legislation.

GENERAL TAX ADMINISTRATION

CORPORATE INCOME TAX

CORPORATE INCOME TAX “PIGGYBACK”

Statutory Reference: Section 220.03, Florida Statutes

Current Situation: Florida uses portions of the Internal Revenue Code as the starting point in calculating Florida corporate income tax. Each year, the Legislature decides what portions of the new code should be adopted by Florida.

Proposed Change: The proposal would adopt the 2012 version of the Internal Revenue Code.

SALES & USE TAX

CRIMINAL STATUTE GLITCH LANGUAGE

Statutory Reference: Sections 212.07, 212.12 and 212.18, Florida Statutes

Current Situation: Recent amendments to the criminal penalties imposed on registration and collection violations do not specifically state the level of offense. Additionally, including the registration violation and the failure to collect violation with the violation for filing of false or fraudulent returns may be confusing.

Proposed Change: The proposal would specify that a person who willfully fails to register after receiving notice commits a third degree felony and will establish graduated offense degrees for failure to collect taxes after notice. This proposal would clarify these penalties by moving the “failure to register after notice” provision to s. 212.18, F.S., and moving the “failure to collect” provision to s. 212.07, F.S., which are the respective provisions of the statutes that deal with these issues. No new penalties are being created by this proposal.

**DELINQUENT TAXPAYERS:
SECURITY REQUIREMENTS FOR NEW REGISTRATIONS**

Statutory Reference: Section 212.14, Florida Statutes

Current Situation: Delinquent sales tax dealers are able to close down their business with tax liabilities, and to reopen under a new name. This allows the business operators who were in actual control of the business and responsible for non-payment to repeatedly fail to remit sales and use tax for successive businesses.

In these instances, Florida Statutes require businesses to provide a cash deposit, bond, or other security as a condition to register the new business. However, the current provision does not clearly apply to all of the individuals that were operating the prior business.

Proposed Change: The proposed statutory revision would clearly authorize the Department to require security for individuals or entities that are responsible for prior delinquent tax accounts when they seek to register new businesses.

UNEMPLOYMENT TAX

STANDARD RATE FOR NON-COMPLIANCE WITH AUDIT RECORD REQUESTS

Statutory Reference: Section 443.131, Florida Statutes

Current Situation: Florida law provides a standard unemployment rate. However, many businesses earn a lower, preferential rate if they are in compliance. When not in compliance, the law permits the rate to increase to the standard rate. However, this “non-compliance” treatment does not clearly apply to situations where the taxpayer is not complying with records requests during audits.

Proposed Change: This proposal would permit employer’s rates to increase to the standard rate when the business fails to comply with audit records requests. Once the requested records are provided, the earned rate will be restored.

FLOATING INTEREST RATE FOR UNEMPLOYMENT TAX

Statutory Reference: Section 443.141, Florida Statutes

Current Situation: Unemployment compensation tax contributions or reimbursements that are unpaid on the due date bear an interest rate of 1 percent per month (an effective rate of 12 percent). Other taxes that are administered by the Department have an interest rate of prime plus 4 percent, not to exceed an effective rate of one percent per month, adjusted twice per year.

Proposed Change: This proposal would reduce and make interest rate provisions for unemployment tax the same as other taxes administered by the Department.

SEVERANCE TAX

PHOSPHATE SEVERANCE TAX RATE

Statutory Reference: Section 211.3103, Florida Statutes

Current Situation: The statute requires that the tax rate for phosphate is calculated annually based on a formula using the federal Producer Price Index (PPI) for phosphate rock mining in year 1999, however, there was not a PPI for phosphate rock mining published in 1999. Since the adoption of this requirement in 2007, the Legislature established specific rates for subsequent years in order that a surcharge be imposed and then repaid to the taxpayers. The lack of a reliable index makes calculation of the current rate and administration of the tax difficult for the Department and taxpayers.

Proposed Change: This proposal would seek direction on how to calculate and administer the severance tax on phosphate.

ADMINISTRATION

“ZAPPERS”

Statutory Reference: Section 213.295, Florida Statutes

Current Situation: Automated sales suppression devices or “zappers” are software programs that falsify the records of electronic cash registers and other point-of-sale systems. This technology allows dealers to fraudulently create a virtual second set of records in order to evade state and federal taxes. In the case of sales tax this results in the theft of taxes collected from citizens.

Proposed Change: This proposal would make it illegal to sell, purchase, install, transfer or possess sales suppression software or devices.

IDENTITY CONFIRMATION

Statutory Reference: Section 322.142, Florida Statutes

Current Situation: Currently, the Department tax staff does not have a way to verify the identity of business owners prior to visiting businesses during audits. This situation makes it difficult for staff to ensure that the business owner is the person with whom staff is working during field visits.

Proposed Change: This proposal would permit the Department’s tax staff access to driver license photos thus providing a means to verify the identity of business owners.

CLERKS OF THE COURT REMITTANCES – CONFORMING AMENDMENT

Statutory Reference: Section 213.13, Florida Statutes

Current Situation: In 2010, the Legislature changed the remittance date for funds collected by the Clerks of the Court from the 20th to the 10th day of the month immediately after the month in which the funds are collected. The provision in Section 213.13, Florida Statutes, regarding electronic remittance and distribution of funds by the Clerks of the Court was not updated in the legislation.

Proposed Change: This proposal would amend Section 213.13, Florida Statutes, concerning electronic remittance and distribution of funds from the 20th to the 10th, to conform and be consistent with the 2010 legislation.

PROPERTY TAX OVERSIGHT

I. REDUCING THE BURDEN ON TAXPAYERS

VALUE ADJUSTMENT BOARD -- FOUR-HOUR HEARING WAIT TIME

Statutory Reference: Sections 192.0105 and 194.032, Florida Statutes

Current Situation: The Value Adjustment Board is often the only cost effective avenue for property owners seeking to resolve value disputes with property appraisers. Under existing statutory provisions individuals could be required to wait up to four hours to be heard before being able to request to reschedule a hearing due to delays. The four hour requirement can impose a significant financial burden potentially discouraging property owners from seeking relief.

This statutory provision also includes an obsolete provision requiring the exhaustion of administrative remedies which was superseded by court decisions and a 1974 amendment to Section 194.034, F.S., which allows petitioners to contest their assessment directly to circuit court.

Proposed Change: This proposal would make it easier for property owners to seek to have hearings rescheduled when value adjustment boards are unable to hear petitions at the time scheduled.

DELAY IN DISABILITY EXEMPTION

Statutory Reference: Sections 196.081, 196.082, 196.091, 196.101, 196.202 and 196.24, Florida Statutes

Current Situation: Florida provides property tax discounts and exemptions for disabled veterans and other disabled persons, under certain conditions. In order to qualify, the taxpayer is required to obtain a disability letter from the federal government. The process of obtaining a disability letter can take years, during which time, a disabled veteran receives no tax benefit.

Proposed Change: Amend statutes to allow the disabled taxpayer to apply for the discount or exemption, with approval contingent on the taxpayer providing the required documentation from the federal government. Once the documentation is received by the property appraiser, the exemption shall be granted back to the date of the original application and a refund of excess taxes paid would be allowed as long as the refund is within the time limit allowed for refunds under current law.

ORDER OF EXEMPTIONS

Statutory Reference: Section 196.031, Florida Statutes

Current Situation: For some properties where only a portion of the property is homesteaded, the order of exemptions in current statute can result in an owner not being able to take full advantage of all the exemptions for which the owner qualifies.

Proposed Change: Amend the statute to require that homestead exemptions be applied in the order that results in the greatest benefit to the taxpayer.

NOTICE OF TAX FOR SCHOOL CAPITAL OUTLAY ADVERTISEMENT

Statutory Reference: Section 200.065, Florida Statutes

Current Situation: As part of the TRIM process, school districts are required to publish an advertisement outlining how their property tax levy for capital outlay is to be spent. Previously, school districts were allowed to levy only one capital outlay levy. Currently, however, there are three different levies for capital outlay or capital improvement. To continue requiring the advertisement to only include the levy and project descriptions for one of these levies is confusing to taxpayers.

Proposed Change: Amend statute to require that the capital outlay advertisement include all capital outlay and capital improvement taxes.

II. ADMINISTRATIVE EFFICIENCIES

DATA REPORTING PROVISIONS

Statutory Reference: Sections 195.096, 195.0985 and 1011.62, Florida Statutes

Current Situation: As part of its property tax oversight duties, the Department reviews property tax assessment rolls. Currently, when a review is completed, the Department must both publish its findings for all interested parties, as well as forward copies of its findings to legislative staff and other county officials. Several statutory sections provide reporting requirements relating to the Department's roll review process. However, they each contain different reporting dates and redundant reporting requirements.

Proposed Change: The proposal would repeal redundant or unnecessary reporting requirements, and the proposal would also standardize reporting requirements for roll approval. The proposed change would require the Department to publish the results of these reviews on its website.

CLASSIFIED USE TAX LIABILITY

Statutory Reference: Sections 193.501, 193.503 and 193.505, Florida Statutes

Current Situation: Florida law provides property tax incentives for conservation and historic properties for extended periods of time. The statute requires repayment of the incentives if the use is not maintained for the required period. Current law requires local governments to report this repayment information to the Department. These repayments are rare and this information is not needed by the Department.

Proposed Change: The proposal would repeal the repayment reporting requirement.

NOTIFICATION OF VALUE ADJUSTMENT BOARD DECISIONS

Statutory Reference: Section 194.034, Florida Statutes

Current Situation: In each Value Adjustment Board case, the clerk of the board is required to notify the taxpayer, the property appraiser, and the Department of the Value Adjustment Board decision. The Department does not need copies of these decisions, but must retain the ability to get copies of the decisions if necessary.

Proposed Change: The requirement of the clerk of the board to notify the Department of the decision for each hearing would be amended to make it available upon the Department's request.

PRINTED FORMS

Statutory Reference: Section 196.121, Florida Statutes

Current Situation: Florida law currently requires the Department to furnish printed homestead exemption forms to property appraisers. Since the forms are provided electronically, funding for printed forms has been eliminated and the Department no longer provides printed forms.

Proposed Change: The proposal would repeal the requirement of the Department to provide printed forms and clarify that the Department will provide these forms electronically.

REMOVE FIDUCIARY FIELD FROM REAL PROPERTY ASSESSMENT ROLL

Statutory Reference: Section 193.114, Florida Statutes

Current Situation: Florida Statutes specify what data fields are required to be included in a property assessment roll. One of the required fields is the name of any fiduciary that represents the owner. This field is not needed for property tax administration and the information is not needed by the Department.

Proposed Change: This proposal would amend statutes to remove this data field from the property tax roll.

REVIEW ASSESSMENT OF NEW, REBUILT, EXPANDED PROPERTY

Statutory Reference: Section 195.099, Florida Statutes

Current Situation: Some businesses in designated enterprise zones or “brownfield” areas may qualify for an economic development ad valorem tax exemption. Section 195.099, Florida Statutes, requires the Department to review the assessments of new, rebuilt or expanded businesses that qualify for these benefits.

Proposed Change: The requirement of the Department to periodically review these properties would be amended to allow the Department to review these properties if deemed necessary.

IN-DEPTH REVIEW STANDARDS

Statutory Reference: Section 195.096, Florida Statutes

Current Situation: The level of assessment produced for each classification of property or stratum studied as part of the Department’s in-depth review is required to be produced with a 95 percent level of confidence, which is not always attainable or the most appropriate standard due to lack of data or small sample sizes that are available.

Proposed Change: The proposal would change the requirement for 95 percent level of confidence for the level of assessment to a statistically reliable standard that is based on generally accepted standards published by a professional appraisal organization.

III. CLARIFYING STATUTORY PROVISIONS

DEFINITION OF PLACED ON TAX ROLL

Statutory Reference: Sections 193.1554 and 193.1555, Florida Statutes

Current Situation: Since 2008, Florida law has provided that the assessed value of certain property cannot increase by more than 10 percent over the prior year. The statutes imposing this limitation require that property be assessed at just value the first year the property is “placed on the tax roll.”

Although not specifically stated in the statute, it appears that the intent of the language is that “placed on the tax roll” is meant to include property that was already on the roll in a different classification.

Proposed Change: Amend statutes to clarify that property is to be assessed at just value when it is subject to a new limitation.

COMBINED OR SUBDIVIDED PARCELS

Statutory Reference: Sections 193.1554 and 193.1555, Florida Statutes

Current Situation: Since 2008, Florida law has provided that the assessed value of certain property cannot increase by more than 10 percent over the prior year. The legislation is unclear how the limitation applies when a parcel of realty is subdivided after the assessment date, but before the tax bills are sent.

Proposed Change: Clarify that parcels combined or divided after January 1st and included as combined or divided parcels on the tax notice shall not be considered combined or divided parcels for purposes of this section until the January 1st the parcels are first assessed as combined or divided parcels.

DEFINITION OF NONRESIDENTIAL REAL PROPERTY – CITATION CORRECTION

Statutory Reference: Section 193.1555, Florida Statutes

Current Situation: Voters approved an amendment in January 2008 which created the 10% assessment limitation for nonhomestead residential property and certain nonresidential real property. Article 4(h), Article VII of the State Constitution, states that the 10% limitation applies to all real property except property subject to the assessment limitations contained in “(a)-(d) and (g).” It appears that a reviser’s bill in 2010 created an unintentional conflict between the constitutional provision and the statutory definition of “nonresidential real property” in Section 193.1555, F.S., as the references in the law are to Article 4(a), (c), (d) or (g), Article VII of the State Constitution.

Proposed Change: This proposal would amend the statutory definition of “nonresidential real property” to clearly exclude those properties that are subject to assessment limitation set forth in Section 4(a)-(d) or (g), Article VII of the Florida Constitution.

DEFINITION OF ASSESSED VALUE OF PROPERTY

Statutory Reference: Section 192.001, Florida Statutes

Current Situation: The current statutory definition of “Assessed Value of Property” contains references to specific provisions in the Florida Constitution. The relevant constitutional provisions have been changed and amended, without corresponding changes to the statute.

Proposed Change: Specific references that relate to constitutional provisions would be removed and replaced with a general reference to the correct constitutional article, which will correct the current statute and permit future changes to the Constitution without necessitating conforming changes to the statute.

FISCALLY CONSTRAINED COUNTY DISTRIBUTION

Statutory Reference: Sections 218.12 and 218.125, Florida Statutes

Current Situation: This concept addresses three issues concerning the distributions to fiscally constrained counties for tax losses due to Amendment 1 that was approved by the voters in January 2008, and the conservation lands use assessment and exemption provisions added to the Florida Constitution in November 2008.

There is currently no provision addressing what happens if a county fails to apply for the distribution. Additionally, in applying for the distribution under both statutes, counties must report their maximum millage under chapter 200, Florida Statutes. The current statutory reference to the maximum millage is incorrect. Lastly, both fiscally constrained county distributions are calculated by multiplying the current year reduction in taxable value by the prior year's millage rate. There appears to be no reason to use the prior year's millage rate, rather than the current year millage rate, in this calculation.

Proposed Change: Amend statutes to specify that if a county fails to apply for the fiscally constrained county distribution, its share shall revert to the fund from which the appropriation was made. Sections 218.12 and 218.125, Florida Statutes, would be amended to revise the reference to majority vote maximum millage rates from Section 200.185, Florida Statutes, to Section 200.065(5), Florida Statutes. Sections 218.12 and 218.125, Florida Statutes, would be amended to change the millage rate used in the calculation of the fiscally constrained county distributions from the prior year millage to the current year millage.

IV. STATUTORY REFERENCE CORRECTIONS

MAXIMUM MILLAGE DETERMINATION

Statutory Reference: Section 200.065, Florida Statutes

Current Situation: Florida imposes a limitation on the tax rate (millage rate) that can be imposed on property by the local government. Generally, the new millage rate will be affected by the prior year's rates. In the statute, it appears that an error was made in referring to the prior year's millage rate. The adoption of the prior year's rate is referred to in the present tense rather than the past tense. This situation causes uncertainty in the meaning.

Proposed Change: Amend statute to change the phrase "is adopted" to "was adopted" in referring to the millage rate that was adopted in the prior year.

REAL PROPERTY ASSESSMENT ROLLS

Statutory Reference: Sections 192.001 and 193.114, Florida Statutes

Current Situation: In 2008, the Legislature created Section 193.114(2)(n), F.S., that requires that the real property assessment roll contain specific sale details for each transfer in the prior year. This requirement contradicts the definition of “complete submission of the rolls” in Section 192.001(18), F.S., which requires only the inclusion of the two most recently recorded selling prices. Additionally, there is a need to improve consistency in the reporting of sale or transfer data on tax rolls to the Department.

Proposed Change: The proposal would amend the statutes to be consistent by providing that the assessment rolls contain the sale or transfer information required in Section 193.114, F.S. To improve consistency of data that is reported on the assessment rolls, clarification would be provided about other necessary sale-related data. A definition would also be added to clarify that the ownership transfer date is the date the instrument is signed and notarized or otherwise executed.

PROPERTY TAX ADMINISTRATION TASK FORCE

Statutory Reference: Section 192.117, Florida Statutes

Current Situation: In 2001, the Legislature created the Property Tax Administration Task Force. The work of the task force was completed in 2004, and the task force dissolved. Under section 20.03(8), Florida Statutes, a task force created by statute can exist for a maximum of three years. Because of this provision, section 192.117, Florida Statutes, is no longer necessary.

Proposed Change: The proposal would repeal the obsolete statutory section on the task force.