

STATE OF FLORIDA
DEPARTMENT OF REVENUE
PROPERTY TAX OVERSIGHT PROGRAM

EMERGENCY RULES 12DER08-32, 12DER08-33, 12DER08-34, AND 12DER08-35

12DER08-32 Scope of Emergency Rules 12DER08-33 Through 12DER08-35; How to Obtain Forms.

(1) These rules shall replace Rules 12DER08-20 through 12DER08-23, which were effective July 18, 2008. Rules 12DER08-11, 12DER08-24, 12DER08-25 and 12DER08-26 have not been affected.

(2) These rules shall supersede any existing rule to the contrary to the extent necessary to implement Chapter 2007-339 (Senate Bill 4-D) and Chapter 2008-173 (Senate Bill 1588), Laws of Florida.

(3) These rules are to be read in conjunction with applicable statutes and not as a substitute for them. They are designed to assist with the understanding and deployment of the requirements of Chapter 2007-339 (Senate Bill 4-D) and Chapter 2008-173 (Senate Bill 1588), Laws of Florida. Users should consult those laws as the source documents that created the legal requirements, and not rely solely on these rules.

(4)(a) Copies of the forms incorporated in Emergency Rules 12DER08-11, 12DER08-33 and 12DER08-35 may be obtained at the Department's Internet site: <http://dor.myflorida.com/dor/property/codownloads.html>. Copies of the forms incorporated in Emergency Rule 12DER08-34 can be obtained by calling Ed Parker, Property Tax Oversight Program, Florida Department of Revenue, at 850-922-7944.

(b) The Department has also sent an email to all property appraisers telling them that the forms are available on the above site.

Specific Authority Section 1 of Ch. 2007-339, L.O.F. (Senate Bill 4-D), Section 13 of Ch. 2008-173, L.O.F. (Senate Bill 1588) Law Implemented 193.155, 196.031, 196.183, FS., History--New 12-31-08.

12DER08-33 Transfer of Assessment Limitation Difference; "Portability;" Sworn Statement Required.

(1) This rule shall replace Rule 12DER08-21, which was effective July 18, 2008.

(2) Section 193.155(8), Florida Statutes, provides the procedures for the transfer of the assessment limitation difference, within stated limits, when a homestead is abandoned. These rules describe those procedures, which are an alternative to assessment at just value. The transfer of the assessment limitation difference is to the just value of the interest owned by those persons that qualify and receive homestead exemption on a new homestead.

(a) These rules set forth limitations and special rules that must be met consistent with Section 193.155(8), Florida Statutes. A person may apply for the transfer of a homestead assessment difference from a previous homestead property to a new homestead property if:

1. that person received a homestead exemption on the previous property as of January 1 of either of the two (2) immediately preceding years; and,

2. the previous property was abandoned as a homestead after such January 1 and was, or will be, reassessed at just value or assessed under Section 193.155(8), Florida Statutes, as of January 1 of the year after the year in which the abandonment occurred; and,

3. the new homestead property was assessed at just value without the homestead exemption either because it did not receive a homestead exemption, or the homestead exemption was abandoned, as of January 1 of the year for which application is made.

(b) Under Section 193.155(8), Florida Statutes, the transfer of an assessment limitation difference is available to a person only from a prior homestead in which that person received a homestead exemption.

1. For a husband and wife who owned, shared and both resided on a previous homestead, each shall be considered to have received the homestead exemption for purposes of these rules.

2. For joint tenants with right of survivorship, those tenants that applied for, received the homestead exemption, and resided on a previous homestead shall be considered to have received the homestead exemption for purposes of these rules.

3. For tenants in common, those tenants that applied for and received the homestead exemption and resided on a previous homestead shall be considered to have received the homestead exemption for purposes of these rules.

(3) To apply for portability, the applicant taxpayer shall file Form DR-501T (Transfer of Homestead Assessment Difference-Attachment to Original Application for Ad Valorem Tax Exemption) which the Department of Revenue hereby adopts and incorporates in this rule by reference, by March 1, as an attachment to the homestead exemption application, Form DR-501, Original Application for Tax Exemption, (incorporated by reference in Rule 12D-16.002, Florida Administrative Code). Completing Form DR-501T, including a sworn statement, and Form DR-501 shall be considered sufficient documentation for applying for the transfer. Note: Section 192.047(2), Florida Statutes provides “When the deadline for filing an ad valorem tax application or return falls on a Saturday, Sunday, or legal holiday, the filing period shall extend through the next working day immediately following such Saturday, Sunday, or legal holiday.”

(4)(a) Upsizing - When the just value of the new homestead is equal to or greater than the just value of the previous homestead, the maximum assessment limitation difference that can be transferred is \$500,000. Within that limit, the differential between assessed value and just value can be transferred to the new property, subject also to provisions for multiple owners described below.

(b) Downsizing - When the just value of the new homestead is less than the just value of the previous homestead, the maximum assessment difference that can be transferred is \$500,000. However, within that limit, the transferred assessment difference must be the same proportion of the new homestead's just value as the proportion of the assessment difference of the previous homestead was of the just value of the previous homestead, subject also to provisions for multiple owners described below.

(5)(a) Transferring without splitting or joining - When one or more people who previously owned a single homestead and each received the homestead exemption as described in these rules together qualify for a new homestead, where all persons who qualify for homestead exemption in the new homestead also qualified for homestead exemption in the previous homestead without an additional person qualifying for homestead exemption in the new homestead, the maximum assessment difference that can be transferred is \$500,000. Within that limit, the assessment limitation difference from the previous homestead may be transferred, and it is not considered to be a splitting or joining as discussed in paragraphs (b) and (c) below. Further, the rules for "upsizing" and "downsizing" as set forth above apply.

(b) Splitting - When two or more people who previously shared a homestead abandon that homestead and establish separate homesteads, the maximum total limitation that can be transferred from the previous homestead is \$500,000. However, within that limit, each person that received a homestead exemption and who is eligible to transfer an assessment limitation

difference is also limited to a share of the previous homestead's difference between assessed value and just value. For tenants in common, this share is equal to the difference between just value and assessed value for the tenant's proportionate interest in the property, in other words, the just value of the person's interest minus the assessed value of the person's interest. For tenancy with right of survivorship, the share is equal to the assessed value of the homestead portion of the property divided by the number of owners that received the exemption, unless another interest share is stated on the title in which case the portion of the assessment limitation difference that may be transferred is equal to the difference between just value and assessed value for the stated share. Within this limit, the rules for "upsizing" and "downsizing" as set forth above would apply. For purposes of the transfer of the assessment limitation difference, the shares of the assessment limitation difference cannot be sold, transferred, or pledged to any person. For example, a husband and wife divorcing and both abandoning the homestead would each take their share of the assessment limitation difference and the property appraiser could not accept a stipulation otherwise. In no case shall the shares of the persons that received the homestead exemption add up to more than 100 percent.

(c) Joining - When two or more people, some of whom previously owned separate homesteads on which they received homestead exemption, join together in qualifying for a new homestead, the maximum assessment limitation difference that can be transferred is \$500,000. However, within that limit, the assessment difference that can be transferred is further limited to the highest difference between assessed value and just value from any of the applicants' former homesteads. Within that limit, the rules for "upsizing" and "downsizing" as set forth above apply.

(6) For the applicant taxpayer to be eligible for any transfer, the prior homestead must be "reassessed" at just value in the year after the year in which the abandonment occurred , or

subject to such reassessment, either under the “change in ownership“ rules of Section 193.155(3), Florida Statutes, or because the property is no longer used as a homestead. After it is assessed at just value, the prior homestead could have some assessment limitation difference transferred to it and be assessed under Section 193.155(8), Florida Statutes. Generally, if all joint owners of the prior homestead “abandon” it, then the prior homestead is reassessed at just value. However, under the referenced “change in ownership“ rules of Section 193.155(3), Florida Statutes, some transfers do not subject property to re-assessment, such as transfers between husband and wife, equitable and legal title, and addition of persons to a title. Unless the property is reassessed at just value, or assessed under Section 193.155(8), Florida Statutes, if only one of the previous owners of the homestead property moved to another parcel and other previous owners of the homestead property stayed in the original homestead, the homestead would not be abandoned and the one who moved could not transfer any assessment limitation difference. For purposes of transferring an assessment limitation difference, a homestead owner may abandon his or her homestead, as of or before January 1 of the year for which application is made, even though it remains his or her primary residence. To do so, the person must notify the property appraiser in writing before or at the same time as filing the timely new application for homestead exemption on the property. Such an abandonment will result in reassessment at just value as provided in subparagraph (2)(a)2, of this rule above.

(7) Classified use assessment and living quarters for parents and grandparents - The assessment limitation difference that is eligible for transfer under these rules is the amount of difference between assessed value and just value of the portion of the property used as a homestead. This difference is equal to the reduction in value due to Section 193.155, Florida Statutes. For property with both a classified use assessment, such as agricultural, and assessed pursuant to Section 193.155, Florida Statutes, the difference eligible for transfer is equal to the

difference between just and assessed value on the homestead portion of the property. No portion of property classified and used for agricultural or other non-homestead purpose may be included in the calculation of the eligible assessment limitation difference under Section 193.155(8), Florida Statutes. In calculating the assessment reduction to be transferred from a prior homestead that has an assessment reduction for living quarters of parents or grandparents pursuant to Section 193.703, Florida Statutes, the value calculated pursuant to Section 193.703(6), Florida Statutes, must first be added back to the assessed value of the prior homestead.

(8) Procedures for property appraiser:

(a) If the previous homestead was located in a different county than the new homestead, the property appraiser in the new county must transmit a copy of the completed Form DR-501T together with a completed Form DR-501 to the property appraiser in the previous county. If the previous homesteads of applicants for transfer were in more than one county, each applicant from a different county must fill out a separate Form DR-501T.

1. The property appraiser in the previous county must complete Form DR-501RVSH (Certificate for Transfer of Homestead Assessment Difference) which the Department of Revenue hereby adopts and incorporates in this rule by reference, within two weeks of receipt of Form DR-501T, and forward this form to the new property appraiser. As part of the information returned on Form DR-501RVSH, the previous property appraiser shall certify that the homestead assessment difference to be transferred is part of a previous homestead that has been or will be reassessed at just value as of January 1 of the year after the year in which the abandonment occurred.

2. Based on the information provided on Form DR-501RVSH from the previous property appraiser, the new property appraiser shall calculate the amount of the assessment limitation

difference that may be transferred and apply such difference to the January 1 assessment of the new homestead for the year for which application is made.

(b) If the transfer is requested from the same county in which the new homestead is located, the property appraiser shall retain the Form DR-501T and Form DR-501RVSH is not required. Upon request of a taxpayer that had timely applied for the transfer of assessment limitation difference, the property appraiser shall update the ownership share information using the share methodology in this rule.

(c) The property appraiser in the county in which the new homestead is located shall record in the NAL file record, (see Emergency Rule 12DER08-11) the following information for the year in which the transfer is made to the homestead parcel:

1. flag for current year assessment difference transfer;

2. number of owners among whom previous assessment difference split. Enter 1 if previous difference was not split;

3. assessment difference value transferred;

4. county number of previous homestead;

5. parcel ID of previous homestead;

6. year from which assessment difference value transferred;

(d) All information sharing agreements in effect in 2007 that were extended by previous emergency rule, and such agreements in effect in 2008, covering confidential tax information are hereby perpetuated and extended during the period these emergency rules are in effect, and property appraisers having information sharing agreements with the Department are authorized to share confidential tax information with each other pursuant to Section 195.084, Florida Statutes, including social security numbers and linked information on Forms DR-501, DR-501T, and DR-501RVSH.

(9) Documenting changes in the assessment roll due to this provision will necessitate changes to the record layout and the information provided on the Rule 12D-8.013, Florida Administrative Code, NAL file submitted to the Department. See Emergency Rule 12DER08-11.

(10) The transfer of any limitation is not final until any values on the assessment roll on which the transfer is based are final. If such values are final after the procedures in these rules are exercised, the property appraiser(s) shall make appropriate corrections and a corrected tax notice bill shall be sent. Any values that are in administrative or judicial review shall be noticed to the tribunal or court for accelerated hearing and resolution so that the intent of Section 193.155(8), Florida Statutes may be carried out and fulfilled.

(11) Additional provisions.

(a) If the information from the property appraiser in the county where the previous homestead was located is provided after the procedures in this section are exercised, the property appraiser in the county where the new homestead is located shall make appropriate corrections and a corrected tax notice and tax bill shall be sent.

(b) The property appraiser in the county where the new homestead is located shall promptly notify a taxpayer if the information received or available is insufficient to identify the previous homestead and the amount of the assessment limitation difference which is transferable. Such notification shall be sent on or before July 1.

(c) If the property appraiser in the county where the previous homestead was located supplies sufficient information to the property appraiser in the county where the new homestead is located, such information shall be considered timely if provided in time for inclusion on the notice of proposed property taxes sent pursuant to Sections 194.011 and 200.065(1), Florida Statutes.

(d) If the property appraiser has not received information sufficient to identify the previous homestead and the amount of the assessment limitation difference which is transferable before mailing the notice of proposed property taxes, and such amount is not included on such notice, the taxpayer may file a petition with the value adjustment board in the county where the new homestead is located.

Specific Authority Section 1 of Ch. 2007-339, L.O.F. (Senate Bill 4-D), Section 13 of Ch. 2008-173, L.O.F. (Senate Bill 1588) Law Implemented 192.047, 193.114, 193.155, 193.461, 193.703 FS., History--New 12-31-08.

12DER08-34 Tangible Personal Property Exemption.

(1) This rule shall replace Rule 12DER08-22, which was effective July 18, 2008.

(2) To apply for the exemption, no new form will be necessary; Form DR-405, DR-470, or Form DR-471 (incorporated by reference in Rule 12D-16.002, Florida Administrative Code), if required, will be considered the application for exemption. Form DR-405EZ (Tangible Personal Property Exemption Application and Return) which the Department of Revenue hereby adopts and incorporates in this rule by reference, may be used by property appraisers at their option. Nothing in this rule shall preclude a property appraiser from requiring that Form DR-405 be filed.

(3) For taxpayers who fail to make a complete return and file a return by April 1 or within any applicable extension period, or who late file, the \$25,000 exemption shall not apply; however, at the option of the property appraiser, owners of property previously assessed without a return being filed may qualify for the exemption without filing an initial return. For returns not timely filed and for which the property appraiser does not grant the exemption, the penalties enumerated in Section 193.072, Florida Statutes, are applicable. Note: Section 192.047(2),

Florida Statutes provides “When the deadline for filing an ad valorem tax application or return falls on a Saturday, Sunday, or legal holiday, the filing period shall extend through the next working day immediately following such Saturday, Sunday, or legal holiday.”

(4) Section 196.183(1), Florida Statutes specifically states that a single return must be filed, and therefore a single exemption granted, for all freestanding equipment not located at the place where the owner transacts business.

(5) “Site where the owner of tangible personal property transacts business”.

(a) The "site where the owner of tangible personal property transacts business" includes facilities where the business ships or receives goods, employees of the business are located, goods or equipment of the business are stored, or goods or services of the business are produced, manufactured, or developed, or similar facilities located in offices, stores, warehouses, plants, or other locations of the business. Sites where only the freestanding property of the owner is located shall not be considered sites where the owner of tangible personal property transacts business.

(b) Example: For a business leasing copying machines or other freestanding equipment, the location where the leased equipment is located does not constitute a site where the owner transacts business. If it is not a site where one or more of the activities stated in subsection (a) occur, for purposes of the tangible personal property exemption, it is not considered a site where the owner transacts business.

(6) Property Appraiser actions - maintaining assessment roll entry.

(a) For all freestanding equipment not located at a site where the owner transacts business, and for which a single return is required, and for centrally assessed property under Section 193.085, Florida Statutes, the property appraiser is responsible for allocating the exemption to taxing jurisdictions in which freestanding equipment or centrally assessed property is located. Allocation should be based on the proportionate share of the just value of such property in each

jurisdiction. However, the amount of the exemption allocated to each taxing authority may not change following the extension of the tax roll pursuant to Section 193.122, Florida Statutes. All accounts shall be listed on the Rule 12DER08-11 and 12D-8.013, Florida Administrative Code, NAP file submitted to the Department, whether fully exempt or not.

(b) Documenting changes in the assessment roll due to this provision will necessitate changes to the record layout and the information provided on the Rule 12D-8.013, Florida Administrative Code, NAP file submitted to the Department. See Emergency Rule 12DER08-11.

(7) By February 1 of each year, the property appraiser shall notify by mail all taxpayers whose requirement for filing an annual tangible personal property tax return was waived in the previous year. The notification shall state that a return must be filed if the value of the taxpayer's tangible personal property exceeds the exemption and include the penalties for failure to file such a return. Form DR-405W (Notice to Taxpayer Whose Tangible Personal Property Return Was Waived in the Previous Year.) which the Department of Revenue hereby adopts and incorporates in this rule by reference, may be used by property appraisers at their option.

Specific Authority Section 1 of Ch. 2007-339, L.O.F. (Senate Bill 4-D), Section 13 of Ch. 2008-173, L.O.F. (Senate Bill 1588) Law Implemented 192.047, 193.063, 193.072, 193.114, 196.183 F.S. History--New 12-31-08.

12DER08-35 Additional Homestead Exemption Pursuant to Section 196.031(1)(b), Florida Statutes.

(1) This rule shall replace Rule 12DER08-23, which was effective July 18, 2008.

(2) To apply for the additional homestead exemption, no new application form will be necessary. Form DR-501, "Original Application for Ad Valorem Tax Exemption" (incorporated

by reference in Rule 12D-16.002, Florida Administrative Code), will be considered the application for exemption.

(3) The additional homestead exemption shall only apply to non-school levies.

(4) Property appraiser actions - Documenting changes in the assessment roll due to this provision will necessitate changes to the record layout and the information provided on the Rule 12D-8.013, Florida Administrative Code, NAL file submitted to the Department. See Emergency Rule 12DER08-11. The property appraiser's programming may use a different approach than that set forth in this rule for exemption ordering as long as such programming achieves the same result as this rule requires.

Specific Authority Section 1 of Ch. 2007-339, L.O.F. (Senate Bill 4-D), Section 13 of Ch. 2008-173, L.O.F. (Senate Bill 1588) Law Implemented 193.114, 196.031, 196.075, 196.082, 196.202 196.24 F.S., History--New 12-31-08.