

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

PROPERTY TAX OVERSIGHT PROGRAM

RULE NO:	RULE TITLE:
12D-10.001	Composition of Value Adjustment Board.
12D-10.002	Appointment and Employment of Special Magistrates.
12D-10.003	Powers, Authority, Duties and Functions of Value Adjustment Board.
12D-10.004	Receipt of Taxpayer's Petition to Be Acknowledged.
12D-10.0044	Uniform Procedures for Hearings; Procedures for Information and Evidence Exchange Between the Petitioner and Property Appraiser, Consistent with s. 194.032, F.S.; Organizational Meeting; Uniform Procedures to be Available to Petitioners.
12D-10.005	Duty of Clerk to Prepare and Transmit Record.
12D-10.006	Public Notice of Findings and Results of Value Adjustment Board.

PURPOSE AND EFFECT: The repeal of specific provisions in Rule Chapter 12D-10, F.A.C., is necessary to administratively implement the provisions of Sections 3, 4, 5, and 6 of Chapter 2008-197, Laws of Florida and to conform to the new proposed Rule Chapter 12D-9, F.A.C. The effect of these proposed rule changes is that taxpayers who petition property tax matters to Value Adjustment Boards, including property tax assessments, denials of classifications, and denials of exemptions, have access to the procedures that apply to the hearing of their petitions.

SUMMARY: Proposed Rule Chapter 12D-9, F.A.C., is being created to establish uniform procedures for hearings before value adjustment boards and their special magistrates. Current Rule Chapter 12D-10, F.A.C., repeats language in the new proposed chapter. The repeal of

specific provisions in current Rule Chapter 12D-10, F.A.C., and the amendment of other provisions in Rule Chapter 12D-10, F.A.C., fulfills the intention of conforming it to the proposed new Rule Chapter 12D-9, F.A.C. The repeal eliminates confusion for the public and clarifies the procedures. The rule draft incorporates a series of technical changes and repeals to place current Rule Chapter 12D-10, F.A.C., into consistency with new Rule Chapter 12D-9, F.A.C., as currently proposed. These changes to Rule Chapter 12D-10, F.A.C., are a portion of the changes that will ultimately be proposed to fully implement Chapters 2008-197 and 2009-121, Laws of Florida.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST: No statement of estimated regulatory costs has been prepared. Any person who wishes to provide information regarding regulatory costs, or to provide a proposal for a lower-cost regulatory alternative, must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS.

LAW IMPLEMENTED: Ch. 2008-197, Laws of Florida, 50, 193.122, 194.011, 194.015, 194.032, 194.034, 194.035, 194.036, 194.037, 194.301, 195.002, 195.022, 195.096, 196.011, 197.122, 200.069, 213.05 FS.

A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW:

DATE AND TIME: January 11, 2010; starting at 9:00 a.m.

PLACE: Room 442, Carlton Building, 501 South Calhoun Street, Tallahassee Florida. The public can also participate in the hearing through a telephone conference call. Information on how to participate in this conference call will be posted on the Property Tax Oversight Program's Internet site at <http://dor.myflorida.com/dor/property/vabwb/vabws.html> on or before January 4, 2010.

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding is asked to advise the Department at least 48 hours before such proceeding by contacting Janice Forrester at (850)922-7945. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800)955-8770 (Voice) and (800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULES IS: Janice Forrester, Tax Law Specialist, Property Tax Oversight Program, Department of Revenue, P.O. Box 3000, Tallahassee, Florida 32315-3000, telephone 850-922-7945, ForrestJ@dor.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULES IS:

STATE OF FLORIDA
DEPARTMENT OF REVENUE
PROPERTY TAX OVERSIGHT PROGRAM
CHAPTER 12D-10, FLORIDA ADMINISTRATIVE CODE
VALUE ADJUSTMENT BOARDS
REPEALING RULES 12D-10.001, 12D-10.002, 12D-10.004,
12D-10.0044, 12D-10.005, AND 12D-10.006
AMENDING RULE 12D-10.003

12D-10.001 Composition of Value Adjustment Board. ~~The value adjustment board may be convened at any time in order to consider necessary business. Each elected member of the board shall serve on the board until he is replaced by a successor elected by his respective parent board or is no longer a member of the governing body or school board of the county. The respective parent boards must elect a replacement for those members of the value adjustment board who are no longer members of the governing body or school board of the county. The quorum requirements of section 194.015, Florida Statutes, may not be waived by anyone, including the petitioner.~~

Rulemaking Specific Authority 195.027(1), 213.06(1) FS. Law Implemented 194.015, 213.05 FS. History--New 10-12-76, Formerly 12D-10.01, Amended 12-31-98, Repealed xx-xx-10.

12D-10.002 Appointment and Employment of Special Magistrates. ~~Special magistrates appointed by the board act in place and stead of the board except to render final decision. The recommendation of a special magistrate to the board shall be in writing and contain the findings~~

~~of fact and conclusions of law upon which the recommendation is based and shall conform to the provisions of Rule 12D-10.003(5)(a) and (b), F.A.C. Proceedings before the special magistrate shall meet all basic requirements of a proceeding before the board, and the special magistrate's records and decisions shall be developed, preserved and maintained as described in Rule 12D-10.003(4).~~

Rulemaking Specific Authority 195.027(1), 213.06(1) FS. Law Implemented 194.032, 194.034, 194.035, 213.05 FS. History--New 10-12-76, Formerly 12D-10.02, Repealed xx-xx-10.

12D-10.003 Powers, Authority, Duties and Functions of Value Adjustment Board.

(1) The board has no power to fix the original valuation of property for ad valorem tax purposes or to grant an exemption not authorized by law and the board is bound by the same standards as the county property appraiser in determining values and the granting of exemptions. The board has no power to grant relief either by adjustment of the value of a property or by the granting of an exemption on the basis of hardship of a particular taxpayer. The board, in determining the valuation of a specific property, shall not consider the ultimate amount of tax required.

(2) The powers, authority, duties and functions of the board, insofar as they are appropriate, apply equally to real property and tangible personal property (including taxable household goods).

~~(3) A county property appraiser's determination of value is entitled to a presumption of correctness. The petitioning taxpayer has the burden to prove that the property appraiser's determination was incorrect. The presumption of correctness for valuation determinations can be properly rebutted as described in section 194.301, Florida Statutes.~~

~~(4)(a) The verbatim record required by section 194.034(1)(c), Florida Statutes, may be kept by electronic tape recording. The clerk of the board shall maintain the verbatim record and the preserved evidence and listings for a period of not less than four years. All witnesses may be required, upon the request of either party, to testify under oath as administered by the chairman of the board. Witnesses for either party may be cross-examined by the other party when testimony is taken.~~

~~(b) No evidence shall be considered by the board or special magistrate except when presented during the time scheduled for the petitioner's hearing, or at a time when the petitioner has been given reasonable notice. All documentary evidence presented shall be properly preserved and indexed to the verbatim record. Where no decision is rendered in a case, such as where the petition is withdrawn or acknowledged correct by the property appraiser, the reasons for no decision shall be placed in the record and a detailed listing of each case so handled and the reasons therefor shall be compiled by the clerk and maintained along with the verbatim record.~~

~~(c) No petitioner shall present, nor shall the board or special magistrate accept, testimony or other evidentiary materials for consideration that were requested of the petitioner in writing by the property appraiser of which the petitioner had knowledge and deliberately denied to the property appraiser.~~

~~(5)(a) Every decision of the board must contain specific and detailed findings of fact which shall include both ultimate findings of fact and basic and underlying findings of fact. Each basic and underlying finding must be properly annotated to its supporting evidence. For purposes of these rules, the following are defined to mean:~~

~~(a)1. An ultimate finding is a determination of fact. An ultimate finding is usually expressed in the language of a statutory standard and must be supported by and flow rationally from~~

adequate basic and underlying findings.

~~(b)2.~~ Basic and underlying findings are those findings on which the ultimate findings rest and which are supported by evidence. Basic and underlying findings are more detailed than the ultimate findings but less detailed than a summary of the evidence.

~~(c)3.~~ Reasons are those clearly stated grounds upon which the board or property appraiser acted.

~~(b)~~ All decisions made shall include the nature of the change made and indicate the just, taxable, and exempt value before and after the change.

~~(6)~~ The board shall certify each assessment roll or part of an assessment roll after all hearings on that roll or part of a roll have been held. The certificate shall be in the manner and form prescribed by the Department of Revenue and a sufficient number of copies thereof delivered to the property appraiser who shall attach the same to each copy of each assessment roll prepared by the property appraiser. The board shall forward a copy of the certificate to the Department of Revenue.

~~(7)~~ The board shall remain in session until its duties are completed concerning all assessment rolls or parts of assessment rolls. The board may temporarily adjourn from time to time but shall reconvene when necessary in the normal course of business or to hear petitions, complaints, or appeals and disputes filed upon that roll or portion of the roll finally approved which had been disapproved by the Executive Director pursuant to section 193.1142(2), Florida Statutes, or disapproved by the assessment administration review commission or the Supreme Court pursuant to section 195.098, Florida Statutes. A temporary adjournment after consideration of all petitions objecting to an assessment on the roll as submitted to the Department of Revenue under section 193.114(5), Florida Statutes, shall be considered an "adjournment" under section 200.011,

Florida Statutes.

~~(8) The board may not extend the time for the filing of petitions. However, the failure to meet the statutory deadline for filing a petition to the board is not an absolute bar to consideration of such a petition by the board when the board determines that the petitioner has demonstrated good cause justifying consideration and that the delay will not, in fact, be prejudicial to the performance of its functions in the taxing process.~~

Rulemaking Specific Authority 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 193.122, 194.011, 194.015, 194.032, 194.034, 194.036, 194.037, 194.301, 195.002, 195.096, 196.011, 197.122, 213.05 FS. History--New 10-12-76, Formerly 12D-10.03, Amended 11-10-77, 9-30-82, 12-31-98, xx-xx-10.

12D-10.004 Receipt of Taxpayer's Petition to Be Acknowledged.

~~(1)(a) The taxpayer has the sole responsibility for filing a petition with the clerk of the value adjustment board to appeal any decision of the property appraiser, including denial of homestead exemption. The prescribed form for filing a petition is Form DR-486 (or DR-486T for tangible personal property), as incorporated by reference in Rule 12D-16.002, F.A.C. Regardless that the value adjustment board uses a form other than Forms DR-486 or DR-486T, as permitted under section 195.022, F.S., a taxpayer may submit, and the value adjustment board must accept, Forms DR-486 and DR-486T.~~

~~(b) The clerk shall acknowledge receipt of the petition and promptly furnish a copy of the petition to the property appraiser. If the taxpayer files a petition after the statutory deadline of 25 days after the notice of proposed property taxes was mailed, the clerk shall note this fact on the petition and bring it to the attention of the board.~~

~~(c) If any taxpayer's request for homestead exemption is denied by the property appraiser, such taxpayer may file a petition with the clerk of the value adjustment board. The taxpayer must file this petition on or before the 30th day following the mailing (postmark date) of the notice of denial. It is the sole option and responsibility of the taxpayer to file this petition.~~

~~(2) The clerk of the board shall prepare a schedule of appearances before the board based on timely filed petitions. The clerk shall notify each petitioner of the scheduled time of appearance. The notice shall be in writing and delivered by regular or certified U.S. mail or personal delivery so that the notice shall be received by the taxpayer no less than twenty-five (25) calendar days prior to the day of such scheduled appearance. The clerk will have prima facie complied with the requirements of this section if the notice was deposited in the U.S. mail thirty (30) days prior to the day of such scheduled appearance.~~

~~(3) For the purposes of section 194.032(2), Florida Statutes, the term "chairman" shall include a special magistrate appointed under section 194.035(1), Florida Statutes.~~

~~(4) Where a petitioner, pursuant to section 194.032(2), Florida Statutes, leaves a scheduled meeting for undue delay, the board or special magistrate is not precluded from considering the petition of the taxpayer. In that event, if the petition contains sufficient information, then the board is authorized to enter its decision on the petition.~~

Rulemaking Specific Authority 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 195.022, 200.069, 213.05 FS. History--New 10-12-76, Formerly 12D-10.04, Amended 1-11-94, 12-28-95, 12-31-98, 1-20-03, 12-30-04, Repealed xx-xx-10.

12D-10.0044 Uniform Procedures for Hearings; Procedures for Information and Evidence Exchange Between the Petitioner and Property Appraiser, Consistent with s. 194.032, F.S.;

Organizational Meeting; Uniform Procedures to be Available to Petitioners.

~~(1) The value adjustment board must accept Forms DR 486 and DR 486T, regardless that the value adjustment board uses another such form, as permitted under section 195.022, F.S.~~

~~(2) Subsequent to the mailing or sending of the hearing notice, and at least 15 days before the scheduled hearing, the petitioner shall provide the property appraiser with a list and summary of evidence to be presented at the hearing. The list and summary must be accompanied by copies of documentation to be presented at the hearing.~~

~~(3) No later than 7 days before the hearing, if the property appraiser receives the petitioner's documentation and if requested in writing by the petitioner, the property appraiser shall provide the petitioner with a list and summary of evidence to be presented at the hearing. The list and summary must be accompanied by copies of documentation to be presented at the hearing. The evidence list must contain the property record card if provided by the clerk.~~

~~(4)(a) If the taxpayer does not provide the information to the property appraiser at least 15 days prior to the hearing pursuant to subsection (2), the property appraiser need not provide the information to the taxpayer pursuant to subsection (3).~~

~~(b) If the property appraiser does not provide the information within the time required by subsection (3), the hearing shall be rescheduled.~~

~~(5)(a) The exchange in subsections (2) and (3) shall be delivered by regular or certified U.S. mail, personal delivery, overnight mail, FAX or email. It shall be sufficient if at least three (3) FAX or email attempts are made to such address. If more than one (1) FAX number is provided, three (3) attempts must be made for each number to satisfy this requirement. The taxpayer and property appraiser may agree to a different timing and method of exchange. "Provided" means made available in the manner designated by the property appraiser or by the petitioner in his/her~~

~~submission of information, as via email, facsimile, U.S. mail, or at the property appraiser's office for pick up. If the petitioner does not designate his/her desired manner for receiving the property appraiser's information, the information shall be provided by the property appraiser by depositing it in the U.S. mail.~~

~~(b) The information shall be sent to the address listed on the petition form; however, it may be submitted to an email or FAX address if given.~~

~~(c) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. If the fifteenth day before a hearing is a Saturday, Sunday, or legal holiday, the information under subsection (2) shall be provided no later than the previous business day.~~

~~(6) Level of detail on evidence summary: The summary pursuant to subsections (2) and (3) shall be sufficiently detailed as to reasonably inform a party of the general subject matter of the witness' testimony, and the name and address of the witness.~~

~~(7) Hearing procedures: Neither the Board nor the special magistrate shall take any general action regarding compliance with this section, but any action on each petition shall be considered on a case by case basis. Any action shall be based on a consideration of whether there has been a substantial noncompliance with this section, and shall be taken at a scheduled hearing and based on evidence presented at such hearing. "General action" means a prearranged course of conduct not based on evidence received in a specific case at a scheduled hearing on a petition. A property appraiser shall not appear at the hearing and use undisclosed evidence that was not supplied to~~

~~the petitioner as required. The normal remedy for such noncompliance shall be a rescheduling of the hearing to allow the petitioner an opportunity to review the information of the property appraiser.~~

~~(8) The petitioner may reschedule the hearing one time by submitting a written request to the clerk of the board no less than five (5) calendar days before the scheduled appearance.~~

~~(9) This rule provides procedures for information and evidence exchange between the petitioner and property appraiser, consistent with s. 194.032, F.S., subject to the provisions of s. 194.034(1)(d), F.S., and subsection 12D-10.003(4), F.A.C., relating to a request by a property appraiser for information from the petitioner in connection with a filed petition, which information need not be provided earlier than fifteen (15) days prior to a scheduled hearing pursuant to subsections (2) and (5).~~

~~(10) The value adjustment board shall hold an organizational meeting and must make the uniform procedures available to petitioners. Such procedures shall be available a reasonable time following the organizational meeting and shall be available a reasonable time before the commencement of hearings in conformance with this rule. The Board shall be deemed to have complied if it causes petitioners to be notified in writing, along with or as part of the notice of hearing, of the existence and availability of its procedures and include notice as to the exchange of information contained in this rule. The Board is authorized to use other additional or alternative means of notification directed to the general public or specific taxpayers, as it may determine.~~

~~(11) Such procedures shall be available in time to permit parties to comply with them, and such procedures, and the provisions of this rule, shall apply to petitions heard on and after January 1, 2003.~~

~~Rulemaking-Specific~~ Authority 194.011(5), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034.035, 195.022, 200.069, 213.05 FS. History–New 4-4-04, Amended 12-30-04, Repealed xx-xx-10.

12D-10.005 Duty of Clerk to Prepare and Transmit Record.

~~(1) To the extent not inconsistent with the Florida Rules of Appellate Procedure, when applicable, when a change in the tax roll made by the board becomes subject to review by the Circuit Court pursuant to section 194.036, Florida Statutes, it shall be the duty of the clerk, when requested, to prepare the record for review. The record shall consist of a copy of each paper, including the petition and each exhibit in the proceeding together with a copy of the board's decision and written findings of fact and conclusions of law. The clerk shall transmit to the Court this record, and the clerk's certification of the record which shall be in the following form:~~

~~Certification of Record~~

~~I hereby certify that the attached record, consisting of sequentially numbered pages one through, consists of true copies of all papers, exhibits, and the Board's findings of fact and conclusions of law, in the proceeding before the _____ County Value Adjustment Board upon petition numbered filed by~~

~~_____~~

~~Clerk of Value Adjustment Board~~

~~By: _____~~

~~Deputy Clerk~~

~~Should the verbatim transcript be prepared other than by a court reporter, the clerk shall also make the following certification:~~

CERTIFICATION OF VERBATIM TRANSCRIPT

I hereby certify that the attached verbatim transcript consisting of sequentially numbered pages through is an accurate and true transcript of the hearing held on _____ in the proceeding before the County Value Adjustment Board petition numbered filed by:

Clerk of Value Adjustment Board

By: _____

Deputy Clerk

~~(2) The clerk shall provide the petitioner and property appraiser, upon their request, a copy of the record at no more than actual cost.~~

~~Rulemaking Specific Authority 195.027(1), 213.06(1) FS. Law Implemented 194.032, 194.036, 213.05 FS. History--New 10-12-76, Amended 11-10-77, Formerly 12D-10.05, Repealed xx-xx-10.~~

12D-10.006 Public Notice of Findings and Results of Value Adjustment Board.

~~(1) After all hearings have been completed the clerk of the value adjustment board shall publish a public notice advising all taxpayers of the findings and results of the board. The public notice shall be in the form of a newspaper advertisement and shall be referred to as the "tax impact notice". The format of the tax impact notice shall be substantially as follows:~~

~~(2) The size of the notice shall be at least a quarter page size advertisement of a standard or tabloid size newspaper. The newspaper notice shall include all of the above information and no change shall be made in the format or content without Department approval. The notice shall be~~

~~published in a part of the paper where legal notices and classified ads are not published.~~

~~(3) The notice of the findings and results of the value adjustment board shall be published in a newspaper of paid general circulation within the county. It shall be the specific intent of the publication of notice to reach the largest segment of the total county population. Any newspaper of less than general circulation in the county shall not be considered for publication except to supplement notices published in a paper of general circulation.~~

~~(4) The headline of the notice shall be set in a type no smaller than 18 point and shall read "TAX IMPACT OF VALUE ADJUSTMENT BOARD."~~

~~(5) It shall be the duty of the clerk of the value adjustment board to insure publication of the notice after the board has heard all petitions, complaints, appeals, and disputes.~~

Rulemaking Specific Authority 195.027(1), 213.06(1) FS. Law Implemented 50, 194.032, 194.034, 194.037, 213.05 FS. History--New 2-12-81, Formerly 12D-10.06, Repealed xx-xx-10.

NAME OF PERSON ORIGINATING PROPOSED RULES: Howard Moyes, Deputy Director, Property Tax Oversight Program, Department of Revenue, Bloxham Building, 725 S. Calhoun Street, Room G-12, Tallahassee, Florida, 32399-0100, telephone 850-922-7991.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULES: The Governor and Cabinet of Florida.

DATE PROPOSED RULES APPROVED BY AGENCY HEAD: December 8, 2009.

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:

Section 120.54(2), F.S. provides that no notice of rule development is required when an entire rule provision is being repealed. However, several notices of proposed rule development have been published, and several rule development workshops have been held. A notice of rule development was published on December 5, 2008 (see Vol. 34, No. 49, pp. 6352-6353 of the Florida Administrative Weekly/F.A.W). Notices for rule development workshops at which versions of these proposed new and amended rules were also discussed were published on: July 11, 2008, for a workshop that was held in Ft. Lauderdale, Florida, on July 28, 2008 (see Vol. 34, No. 28, pp. 3613-3614 of the Florida Administrative Weekly/F.A.W); July 18, 2008, for a workshop that was held in Live Oak, Florida, on August 6, 2008 (see Vol. 34, No. 29, p. 3668 of the F.A. W); July 18, 2008, for a workshop that was held in Tallahassee, Florida, on August 12, 2008 (see Vol. 34, No. 29, p. 3668 of the F.A.W); September 19, 2008, for a workshop that was held in Tampa, Florida, on October 13, 2008 (see Vol. 34, No. 38, p. 4803, of the F. A.W); September 19, 2008, for a workshop that was held in Panama City, Florida, on October 17, 2008 (see Vol. 34, No. 38, p. 4803, of the F.A. W); October 31, 2008, for a workshop that was held in Orlando, Florida, on November 19, 2008 (see Vol. 34, No.44, pp. 5709-5711 of the FA W); and, October 31, 2008, for a workshop that was held in Miami, Florida, on November 20, 2008 (see

Vol. 34, No. 44, pp, 5709-5711 of the F.A.W). Members of the public attended each of these workshops and made comments on the proposed rules. In addition, written comments have been submitted to the Department by email, and to an Internet site at <http://dor.myflorida.com/dor/property/vabwb/vabws.html>, which was created specifically to give the public access to all versions of public a site to submit comments, and to view the comments submitted by others. In addition, a Notice of Rule Development for rules in Rule Chapter 12D-10, F.A.C., was published in the F.A.W. on August 14, 2009 (Vol. 35, No. 32, pp. 3843-3844).