



TAXATION AND BUDGET REFORM COMMISSION

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Staff Analysis and Economic Impact Statement

Measure: CP 42

REFERENCE:

ACTION:

Sponsor: Commissioner Barney Barnett

1. FTC
2. GPSC

Pre-meeting

Subject: Taxpayers' Bill of Rights

Date: February 7, 2008

I. Summary:

Constitutional Proposal 42 abolishes the presumption of correctness of an assessment in a challenge of an assessment. The measure also requires the property appraiser to carry the burden of proving that the assessment does not exceed just value. Evidence that an assessment is not based upon appraisal practices that differ from those applied to comparable properties within the state shall be relevant. The measure further provides that taxpayers are entitled to reasonable attorney's fees and costs under circumstances authorized by law.

II. Present Situation:

Article VII Section 4 of the Florida Constitution requires all property to be justly valued for the purposes of ad valorem taxation. Just value has been interpreted to mean fair market value.¹

Section 193.011, F.S. requires a property appraiser to determine the just value of property by consideration of 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 any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, 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

¹ *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965).

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.

The resulting assessed value has a presumption of correctness. The property appraiser also is effectively presumed to have properly considered the appraisal criteria in s. 193.011, F. S.

Section 194.301, F.S., provides that the presumption of correctness is lost if the taxpayer shows by a preponderance of evidence that the property appraiser has failed to consider properly the criteria of s. 193.011, F.S., or that the assessment is arbitrarily based on appraisal practices that are different than appraisal practices generally applied by the property appraiser to comparable property within the same class and within the same county. It is only after the presumption is lost that the taxpayer is afforded the burden of proving the assessment is in excess of just value with the preponderance of the evidence. If the presumption of correctness is not lost, then the taxpayer's burden is with clear and convincing evidence.

A "presumption" may be defined as:

[a] legal inference or assumption that a fact exists based on the known or proven existence of some other fact or group of facts. Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption.

In order to overcome the presumption of correctness, first, one must prove by the preponderance of evidence that the property appraiser did not properly consider s. 193.011 F.S. How the factors are applied differs from one county to another.

Prior to 1997, Florida required that “any reasonable hypothesis” (see *Folsom v. Bank of Greenwood*) would support the presumption. In *Mastroianni v Barnett Banks, Inc.*, nos. 94-2518 and 94-2520, the court determined that: (1) the county property appraiser followed policy and directives from the Department of Revenue in making the appraisal so that the trial court could not substitute its finding of fair market value for that of the county assessor; (2) the county property appraiser was only required to consider, not use, three recognized approaches to valuing property; and (3) the decision on whether to use actual occupancy figures in valuing the office building fell within the administrative discretion of the county appraiser. As long as the property appraiser testified that 193.011, F.S. was considered and that the guidelines of the Department of Revenue were followed, the presumption of correctness could not be overcome.

In 1996, House Bill 557 provided that, “The taxpayer shall have the burden of overcoming the presumption of correctness by a preponderance of the evidence, but shall not have the burden of presenting proof which excludes every reasonable hypothesis of a legal assessment.” The opponents argued that the reduction of the burden of proof would have a significant negative fiscal impact on local governments. In Governor Chiles veto message for the bill, he stated, “the bill may create as many inequities as it attempts to correct and will seriously affect local government revenues at the same time if, in fact, the assessments fall in amount of value.” Following the veto of HB 557 (1996), Governor Chiles issued Executive Order Number 96-172 which established the Florida Ad Valorem Task Force to study the burden of proof in assessment challenges and other ad valorem issues. The task force found:

- Real property accounted for 87.4 percent, tangible property 12.5 percent, and centrally assessed .1 percent of the state tax rolls;
- Over 64,000 petitions were filed with Value Adjustment Boards (VAB) in 1994 (39.1 percent reduced for \$59 million), and in 1995, over 30,000 petitions were filed with VABs (29.7 percent reduced for \$19 million);
- The average number of petitions state-wide was .83 percent of the assessments; and
- At the circuit court level, most cases were settled, but the taxpayer prevailed in only 16.7 percent of these cases.

The Task Force working with the Governor’s office and the Legislature recommended a compromise which became law in 1997 and is s. 194.301, F.S.

The evidence rule in Florida has always been among the most difficult to overcome. More than 18 states provide for a mere preponderance of the evidence to overcome the presumption of correctness without regard to the property appraiser’s actions.² Although

² Kent Wetherell, *The New Burdens of Proof in Ad Valorem Tax Valuation Cases*, Florida State University Law Review Winter, 1998.

Florida Statutes require the presumption of correctness to be overcome prior to the presentation of just value issues, the degree of evidence that is to be presented to overcome is not uniform throughout the state.

Currently, attorney's fees and costs are not granted. Interest can be awarded against the taxpayer in some instances, but interest is not available to the taxpayer who receives a reduction.

III. Effect of Proposed Changes:

Because of the presumption of correctness, jurisdictions have provided evidence rules to overcome the presumption. The evidence rule in Florida has always been among the most difficult to overcome. The majority of states place the taxpayer and the property appraiser equal in the presenting of evidence. Although Florida Statutes require the presumption to be overcome prior to the presentation of just value issues, each county sets their own standard as to the degree of the evidence that is to be presented to overcome the presumption.

With the repeal of the presumption of correctness, taxpayers will continue to present evidence that an assessment is greater than just value if relief is to be granted. This measure presents two changes in current appeals. First, the requirement that a taxpayer must prove that the property appraiser did not properly consider one or more of the eight criteria in s. 193.011 F.S. will no longer be required. Secondly, the weight of evidence for both the taxpayer and the property appraiser will be the same. The property appraiser will present value evidence that the assessment supports just value; then the taxpayer presents value evidence that the assessment does not meet just value. The just value requirement in Article VII section 4, Florida Constitution, will still be the test of a legal assessment.

Appeals will center on value issues rather than the legal issue of whether a property appraiser properly considered the criteria in s. 193.011, F.S. This will have an impact on county appraisers. With the reduction on the reliance of attorneys in appeals, there will be a greater need for property appraisers to present value evidence. This would result in a shift in personnel and may increase the cost of support for appeals.

In Miami-Dade County, where there are a significant number of court challenges by the property appraiser, the award of fees and costs would have the effect of reducing that number of cases. The cost of litigation is very high in these types of cases. Most cases are on a contingent fee basis because of the costs. Generally, prior to litigation, there must be the anticipation of a one million dollar reduction of assessed value to support such litigation. Small value cases are rarely litigated due to the cost out weighing any reduction.

IV. Constitutional Issues:**A. Constitutional or Legislative Matter:**

The effect of this measure is within the power of the Legislature to accomplish by law.

B. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

This measure may result in reduced property tax revenues.

B. Private Sector Impact:

By reducing the level of evidence, more value adjustment boards will be able to conduct hearings based on appraisal evidence rather than point of law. This would have the effect of reducing the number of circuit court cases. Further, it would reduce the costs of representation at such boards. It would allow the taxpayer to be reimbursed costs in a successful challenge at court.

C. Government Sector Impact:

By addressing only the level of evidence, the outcome of a VAB is not affected. The taxpayer would still have to support a case for a reduction from an assessment by the property appraiser. A shift from legal personnel to appraisal personnel could increase an appraiser's budget. The award of attorneys' fees and costs would have an impact on local appraisers' budgets. This measure may increase costs of property appraisers by requiring the payment of attorneys' fees in successful challenges of an assessment. The measure does not authorize the payment of attorneys' fees to a property appraiser when an assessment is upheld.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.