

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 265 Property Taxation
SPONSOR(S): Economic Development & Community Affairs Policy Council
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 664

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Economic Development & Community Affairs Policy Council		Fudge	Tinker
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

Chapter 197, F.S., governs tax collections, sales, and liens.

The bill clarifies that the economic development ad valorem tax exemption authorized by s. 196.1995, F.S., may be renewed for additional 10-year periods upon approval by referendum. The bill also revises ch. 197, F.S., by removing archaic language, removing reference to outdated laws, combining certain sections for consistency, and clarifying definitions. The bill provides specific guidelines for the approval of a homestead tax deferral.

The bill also authorizes the tax collector to establish branch offices to conduct state business or, if authorized to do so by resolution of the county governing body pursuant to s. 1(k), Art. VIII of the State Constitution, conduct county business.

The bill decreases the amount of the opening bid in a tax deed sale of homestead property from one-half of the assessed value to the amount required to redeem the applicant's tax certificate and all other costs and fees paid by the applicant, plus all tax certificates sold subsequent to the filing of the tax deed application and omitted taxes, if any. The bill provides that code enforcement liens survive only as to the amount expended by the governmental entity to correct the code deficiency and the amount of the surviving lien may not include interest, penalties, fines, or attorney's fees.

The bill also increases the minimum amount of a tax certificate from \$100 to \$250; authorizes a 5% interest rate for refunds requested after the 15 day time period; and increases the highest bidder deposit from \$200 to 5% of the bid.

The bill provides legislative intent that property tax collection should be free from the influence or the appearance of influence of the local governments who levy property taxes and receive property tax revenues.

The bill is effective July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Economic Development Ad Valorem Tax Exemption

The board of county commissioners of any county or the governing authority of any municipality may call a referendum to determine whether its respective jurisdiction may grant an economic development tax exemption under s. 3, Art. VII of the State Constitution.¹ Upon a majority favorable vote in a referendum, the governing body of the county or municipality may exempt up to 100 percent of the assessed value of all improvements to real property made by or for the use of a new business and all tangible personal property of such new business, or up to 100 percent of the added improvements to real property and net increases in tangible personal property of an expanding business. Property acquired to replace existing property is not considered a business expansion. The exemption applies only to the taxes levied by the unit of government granting the exemption, and does not apply to taxes levied for the payment of bonds. The exemption remains in effect for up to 10 years for any particular facility, regardless of any change in the authority of the county or municipality to grant the exemption. The authority to grant an exemption expires 10 years after the date it was approved in an election, but such authority may be renewed for another 10-year period by a referendum.

Tax Collections, Sales, and Liens

Chapter 197, F.S., governs tax collections, sales, and liens. Property taxes are due and payable on November 1 of each year or when the certified tax roll is received by the tax collector. Taxes are considered delinquent if they are not paid by April 1 following the year in which they are assessed.² On April 30, the tax collector sends an additional tax notice to taxpayers, whose payment has not been received, notifying the taxpayer that a tax certificate on the property will be sold for delinquent taxes that are not paid in full.³

Tax certificates on property with delinquent taxes are considered up for sale on or before June 1 or 60 days after the date of delinquency.⁴ Unsold tax certificates are issued to the county at the maximum

¹ Section 196.1995, F.S.

² Section 197.333, F.S.

³ Section 197.343, F.S.

⁴ Section 197.432(5), F.S.

interest rate (18%). The Tax certificate acts as a first lien on the property superior to all other liens, but does not convey any property rights.⁵

A tax certificate can be redeemed anytime before a tax deed is issued or the property is placed on the list of lands available for sale either by redeeming a tax certificate from the investor or by purchasing a county held tax certificate. The person redeeming or purchasing the tax certificate is required to pay the investor or county “all taxes, interest, costs, charges, and [any] omitted taxes” and a \$6.25 fee to the tax collector.”⁶

A tax certificate holder may apply for a tax deed on the property two years after the tax certificate is issued by filing the certificate with the county tax collector and paying all amounts required to redeem or purchase the certificate, plus interest and any taxes currently due. The property is then placed on the list of lands available for sale and sold to the highest bidder at a public auction held by the clerk of the circuit court.⁷ If property placed on the list of lands available for sale is not sold three years after the public auction, the land escheats to the county in which the property is located free and clear of all liens.⁸ Tax certificates that are not redeemed or for which a tax deed has not been applied for after a period of seven years is considered to be null and void.⁹

Effect of Proposed Changes

Economic Development Ad Valorem Tax Exemption

The bill clarifies that the economic development ad valorem tax exemption authorized by s. 196.1995, F.S., may be renewed for additional 10-year periods if approved by referendum.

Tax Collections, Sales, and Liens

The bill also revises ch. 197, F.S., by removing archaic language, removing reference to outdated laws, combining certain sections for consistency, and clarifying definitions. Some of the noteworthy changes in the bill are:

Mistake of Fact

Current Law

If a material mistake of fact relating to an essential condition of a property is discovered, it is within the property appraiser’s discretion whether that mistake is corrected.¹⁰

Proposed Changes

The bill requires the property appraiser to correct the material mistake of fact. The bill clarifies that tax payments also include the payment of interest, fees and any costs due. The sale or conveyance of real property that is being sold for nonpayment of taxes may be held invalid if it was redeemed before the clerk of court received full payment for a tax deed, including all recording fees and documentary stamps.

Uncollectible Personal Property Taxes

Current Law

Current law does not provide procedures when delinquent personal property tax accounts are determined to be uncollectible.

⁵ Section 197.122, F.S., *see also* s. 197.432, F.S.

⁶ Section 197.472, F.S.

⁷ Section 197.542, F.S.,

⁸ Section 197.502(8), F.S.

⁹ Section 197.482, F.S.

¹⁰ § 197.122(3), F.S.

Effect of Proposed Changes

The bill authorizes the tax collector, who determines that a tangible personal property account is uncollectible, to issue a certificate of correction for the current tax roll and any prior tax rolls. The bill also requires the tax collector to notify the property appraiser that an account is invalid when the account is determined to be uncollectible, and the assessment may not be certified for a future tax roll. An uncollectible account includes, but is not limited to: an account on property that was originally assessed but cannot be found to seize and sell for the payment of taxes, and other personal property of the owner for which a tax warrant may be issued.

Corrections resulting in refunds

Current Law

When a correction results in a refund of more than \$400, the tax collector must submit a claim for refund with the department.

Effect of Proposed Changes

The bill increases the threshold amount to \$2,500 before the tax collector must seek approval from the department. The bill also shortens the time a demand for reimbursement can be made because of an erroneous payment, from 24 to 12 months. The minimum amount of refund for overpayment increases from \$5 to \$10 and limits the time period from 4 years to 12 months. Any refund issued after 15 business days bears an interest rate of 5 percent.

Property Tax Deferrals

Current Law

Property tax deferrals for homestead¹¹, recreational and commercial working waterfront¹² and affordable rental housing¹³ properties are contained within separate sections of ch. 197, F.S.

Effect of Proposed Changes

Section 197.2421, F.S., is created and combines the tax deferral provisions for homestead, recreational and commercial working waterfront and affordable rental housing properties. Section 197.2423, F.S., is also created to prescribe the process for determining the approval or denial of a property tax deferral by the tax collector. Section 14 of the bill also provides specific guidelines for the approval of a homestead tax deferral.

Appeal of Denied Tax Deferral

Current Law

Section 197.253, F.S., prescribes the procedure for applying for a homestead tax deferral. The application must be on a form prescribed by the department. The tax collector must consider the application for homestead tax deferral within 30 days of the application. A denial of the tax deferral can be appealed to the value adjustment board. The decision of the value adjustment board may be appealed to the circuit court by a petition for a declaratory judgment or other appropriate proceeding.

Effect of Proposed Changes

The bill moves the application procedure to s. 197.2423, F.S., and provides new time requirements for the process. If the tax collector disapproves a tax deferral he must send notice of the disapproval within 45 days after the application is filed. Section 197.253, F.S., is renumbered to s. 197.2425, F.S., and prescribes the appeal process. The time for appeal increases from 20 days to 30 days after the notice of disapproval is sent to the applicant. An appeal of the value adjustment board decision is by a de novo proceeding for a declaratory judgment or other appropriate proceeding in circuit court.

Deferred Payment Tax Certificates

¹¹ § 197.252, F.S.

¹² § 197.304, F.S.

¹³ § 197.307, F.S.

Current Law

Section 197.262, F.S., requires tax collectors to notify each local governing body of the amount of taxes and non ad-valorem assessments deferred which would otherwise have been collected by the governing body. The interest rate on tax certificates held by counties shall not exceed 9.5 percent.

Effect of Proposed Changes

The bill removes the required notice to local governing bodies and provides that the maximum interest rate on certificates may not exceed 7 percent.

Notice to Taxpayers of Tax Bill

Current Law

The tax collector is required to send by mail to each taxpayer a tax notice stating the amount of current taxes due.

Effect of Proposed Changes

The bill authorizes the tax collector to send such notices electronically, with the express consent of the property owner, or by mail. However, if a notice sent electronically is returned as undeliverable, a second notice may be sent by mail but the original electronic notice is the official mailing. The bill also provides that other notices may be by electronic means and deletes requirements that certain information be provided or stored in the form prescribed by the Department of Revenue.

Branch Offices

Current Law

Article VIII, section 1(k), of the Florida Constitution, requires a resolution of the governing body of the county to establish a branch office for the conduct of county business outside of the county seat.

Effect of Proposed Changes

The bill authorizes the tax collector to establish branch offices to conduct state business or, if authorized to do so by resolution of the county governing body pursuant to s. 1(k), Art. VIII of the State Constitution, conduct county business.

The bill also authorizes the tax collector to perform collection duties through the use of contracted services or products or by electronic means.

Installment Payment Program

Current Law

The tax collector may implement an installment payment program for the payment of delinquent personal property taxes. If implemented, the program must be available to each delinquent personal property taxpayer whose delinquent personal property taxes exceed \$1,000.

Effect of Proposed Changes

The bill deletes the mandatory availability of the program to taxpayers whose delinquent personal property taxes exceed \$1,000 and makes the program available to all delinquent personal property taxpayers.

Tax Certificates on Homestead Property

Current Law

A tax certificate of less than \$100 in delinquent taxes on homestead property cannot be sold at public auction, but must be issued to the county and bear a maximum interest of 18%.¹⁴

Effect of Proposed Changes

¹⁴ § 197.172, F.S.

The bill increases the certificate amount to \$250 and reduces the maximum interest rate to the maximum rate allowed under s. 197.252(4), F.S., which is currently 7%. The bill authorizes the use of proxy bidding for tax certificate sales and the use of a random number generator to determine a winner. This would generally be used for electronic bidding, so that a winning bidder's bid amount would be increased to the next lowest bid amount.

Opening Bid on Homestead Property

Current Law

An opening bid on homestead property must include an amount equal to one-half of the latest assessed value of the homestead. The "assessed value" of homestead property is the fair market value, or "just value," as limited by Save Our Homes.¹⁵

Effect of Proposed Changes

The bill removes the distinction between homestead and nonhomestead property so that the opening bid on all individual certificates is the amount required to redeem the applicant's tax certificate and all other costs and fees paid by the applicant, plus all tax certificates sold subsequent to the filing of the tax deed application and omitted taxes, if any.

Tax Certificates

Current Law

Once a tax deed is issued no right, interest, restriction, or covenant survives except for liens held by municipal or county governmental unit, special district, or community development district.

Effect of Proposed Changes

The bill specifies that only certain described liens survive the issuance of a tax deed. Those include tax certificates not incorporated in the tax deed application, code enforcement liens only to the amount expended by the governmental entity to correct the code deficiency and cannot include interest, penalties, fines, or attorney's fees. However, those liens surviving the issuance of a tax deed cannot provide a basis for foreclosure against the interest of the tax deed owner unless the owner is reimbursed for the price of acquiring the tax deed, including recording fees and documentary stamps. If a foreclosure sale results in insufficient funds to satisfy a surviving lien and reimburse the tax deed owner, the proceeds of the foreclosure sale are distributed pro rata.

Sale at Public Auction

Effect of Proposed Changes

The bill deletes outdated language regarding sale at public outcry. The bill requires all delinquent tax amounts accrued after filing an application for tax deed to be included in the minimum bid. The highest bidder deposit is increased from \$200 to 5% of the bid to be consistent with foreclosure sales. The tax deed applicant has the option of placing the property on list of lands available for taxes in lieu of paying any additional sums due as a result of the increased minimum bid, documentary stamps, or recording fees. The bill also prohibits the cancellation of a tax deed sale without the consent of the tax deed applicant unless the tax deed application has been redeemed, collection has been stayed by the filing of a bankruptcy petition, an error has been discovered in the assessment record, or an error has been demonstrated in the process. The sale process must be repeated until the property is sold and the clerk receives full payment or the clerk does not receive any bids other than that of the certificateholder.

Notice to Owner when application for tax deed is made

Current Law

When an application for a tax deed is made, the clerk of the circuit court must notify, by certified mail or registered mail, the persons listed in the tax collector's statement.

¹⁵ § 192.001(2), F.S.

Effect of Proposed Changes

In addition to the notice provided by the clerk of the circuit court, the sheriff must serve notice to the legal titleholder of homestead property that a tax certificate is outstanding on the property. All notices must also state that affected property will be sold at public auction unless back taxes are paid, notwithstanding its classification as homestead property.

Legislative Intent

The bill provides legislative intent that property tax collection should be free from the influence or the appearance of influence of the local governments who levy property taxes and receive property tax revenues.

Repealed Acts

- Section 197.202, F.S., dealing with destruction of 20-year-old tax receipts is repealed as obsolete.
- Section 197.242, F.S., providing short title "Homestead Property Tax Deferral Act" is repealed.
- Section 197.3042, F.S., dealing with notices to local governments regarding tax deferrals for recreational and commercial working waterfronts and s. 197.3072, F.S., dealing with notices to local governments regarding tax deferral for affordable rental housing properties are repealed.
- Section 197.307, F.S., dealing with procedures for adopting ordinance for tax deferrals for affordable rental housing is moved to s. 197.2524, F.S.
- Sections 197.304 and 197.3041, F.S. dealing with applying for tax deferral for recreational and commercial working waterfronts; and ss. 197.3072 and 197.3073, F.S., applying for tax deferral for affordable rental housing property are now contained within s. 197.2423, F.S.
- Sections 197.3043 and 197.3075, F.S., governing change in use or ownership of property is now covered by 197.263, F.S.
- Sections 197.3044 and 197.3076, F.S., governing prepayment of deferred taxes and non-ad valorem assessments is now governed by 197.272, F.S.
- Sections 197.3045 and 197.3077, F.S., governing distribution of payments is now governed by 197.282, F.S.
- Sections 197.3046 and 197.3088, F.S., providing for construction of the section dealing with the collection of personal property taxes is provided for in 197.292, F.S.
- Sections 197.3047 and 197.3079, F.S., providing for penalties is provided for in s. 197.301, F.S.
- Section 197.433, F.S., relating to duplicate tax certificates if the original is lost or destroyed is repealed.

B. SECTION DIRECTORY:

Section 1: Creates paragraph (h) in s. 95.051(1), F.S., to toll the statute of limitations for proceedings related to tax lien certificates or tax deeds under chapter 197, F.S., by the period of an intervening bankruptcy.

Section 2: Amends s. 196.1995, F.S., to clarify that an economic development ad valorem tax exemption may be renewed for additional 10-year periods, upon approval by a referendum.

Section 3: Amends s. 197.102, F.S., providing definitions related to electronic auction.

Section 4: Amends s. 197.122, F.S., regarding liens.

Section 5: Amends s. 197.123, F.S., requiring the tax collector to notify the property appraiser if a taxpayer has filed an erroneous or incomplete personal property statement or has failed to disclose all of the property subject to taxation.

Section 6: Creates s. 197.146, F.S., providing for correction of tax roll and procedure for uncollectable personal property taxes.

Section 7: Amends s. 197.162, F.S., revising language and clarifies that discount will apply only to payments made before delinquency.

Section 8: Amends s. 197.172, F.S., changing the title of the section and specifies that discounts will apply only to payments made before delinquency.

Section 9: Amends s. 197.182, F.S., renumbers section, makes grammatical changes, increases the minimum amount of a refund for overpayment to \$10, and shortens the time a demand for reimbursement can be made for reimbursement can be because of a payment made in error from 24 to 12 months.

Section 10: Amends s. 197.222, F.S., removes reference to Department of Revenue forms and requires the tax collector to send quarterly statements to those participating in the prepayment installment plan.

Section 11: Amends s. 197.2301, F.S., increases minimum amount of bill or refund for underpayment or overpayment to \$10.

Section 12: Creates s. 197.2421, F.S., combines all tax deferral statutes.

Section 13: Creates s. 197.2423, F.S., providing procedure for approval or denial of tax deferral.

Section 14: Renumbers s. 197.253, F.S., as s. 197.2425, F.S., and provides procedure for appeal of denial of tax deferral.

Section 15: Amends s. 197.243, F.S., removing "Act" from title.

Section 16: Amends s. 197.252, governing procedures for tax deferrals.

Section 17: Renumbers s. 197.303 as s. 197.2524, F.S., dealing with tax deferrals for recreational and commercial working waterfront properties and includes provisions for tax deferral of affordable rental housing property.

Section 18: Renumbers s. 197.3071, F.S., as s. 197.2526, F.S., and provides for tax deferral eligibility of affordable rental housing property.

Section 19: Amends s. 197.254, F.S., removing back of envelope notice requirements.

Section 20: Amends s. 197.262, F.S., removes requirement that tax collector notify local governing body of taxes that are deferred and reduces amount of interest on tax certificates from 9.5 to 7 percent.

Section 21: Amends s. 197.263, F.S., clarifying sections and provides that if there is a change in ownership to a surviving spouse the spouse may maintain the tax deferral if the spouse is eligible.

Section 22: Amends s. 197.272, F.S., removing section allowing prepayment by certain individuals.

Section 23: Amends s. 197.282, F.S., making minor rewording changes.

Section 24: Amends s. 197.292, F.S., making minor rewording and numbering changes.

Section 25: Amends s. 197.301, F.S., to include deferred taxes and non-ad valorem assessments subject to penalties.

Section 26: Amends s. 197.312, F.S., making minor rewording changes.

- Section 27: Amends s. 197.322, F.S., authorizing tax collector to send notice of taxes electronically or by mail.
- Section 28: Amends s. 197.332, F.S., authorizing tax collector to establish branch offices.
- Section 29: Amends s. 197.343, F.S., authorizing tax collector to send additional notice of taxes electronically or by mail. Removing duplicate notices to condominium and homeowner associations.
- Section 30: Amends s. 197.344, F.S., making minor rewording changes and authorizing notice to be sent electronically or by mail.
- Section 31: Amends s. 197.3635, F.S., removes requirement for partition between ad valorem taxes and non ad-valorem assessments.
- Section 32: Amends s. 197.373, F.S., changes the 15 day notice requirement to 45 days.
- Section 33: Amends s. 197.402, F.S., provides additional day if deadline falls on weekend or legal holiday.
- Section 34: Amends s. 197.403, F.S., makes minor rewording changes and removes form provided by Department of Revenue.
- Section 35: Amends s. 197.413, F.S., increases fee to delinquent taxpayer for notices.
- Section 36: Amends s. 197.414, F.S., removes requirement that record be kept in a form prescribed by the Department of Revenue.
- Section 37: Amends s. 197.4155, F.S., requires that delinquent personal property tax program be available to all taxpayers if a payment program is implemented.
- Section 38: Amends s. 197.416, F.S., removes requirement that tax collector maintain action to collect delinquent taxes for seven years.
- Section 39: Amends s. 197.417, F.S., authorizing notice to be posted on the Internet.
- Section 40: Amends s. 197.432, F.S., increases minimum amount of tax certificate from \$100 to \$250 and authorizes use of proxy bidding and random number generators.
- Section 41: Amends s. 197.4325, F.S., making minor rewording changes. Repeals requirement that tax collector retain copy of the cancelled tax receipt and dishonored check and that tax collector retain bidder's forfeited deposit and resell the certificate.
- Section 42: Amends s. 197.442, F.S., making minor rewording changes.
- Section 43: Amends s. 197.443, F.S., authorizes tax collector to make tax certificate corrections or cancellations without order from the Department of Revenue.
- Section 44: Amends s. 197.462, F.S., making minor rewording changes and repealing requirement that tax collector endorse tax certificate.
- Section 45: Amends s. 197.472, F.S., requires certificate redeemer to pay all interest, costs, and charges.
- Section 46: Creates s. 197.4725, F.S., provides for the purchase of county-held tax certificates.
- Section 47: Amends. s. 197.473, F.S., revises procedure for unclaimed redemption money.

Section 48: Amends s. 197.482, F.S., removes reference to Act of 1973 Legislature.

Section 49: Amends s. 197.492, F.S., allowing electronic submission of report.

Section 50: Amends s. 197.502, F.S., allows clerk to seek reimbursement for costs associated with electronic tax deed applications. Provides timelines and procedures for tax deed applications. The number of years a property shall be offered for sale before it escheats to the county is increased from 3 to 7 years.

Section 51: Amends s. 197.542, F.S., revises requirements for sale at public auction.

Section 52: Amends s. 197.522, F.S. by requiring the sheriff to serve notice the legal titleholder of homestead property that a tax certificate is outstanding on the property.

Section 53: Amends s. 197.552, F.S., to describe which liens survive tax deeds and provides for pro rata distribution of proceeds from foreclosure sale if funds insufficient.

Section 54: Amends s. 197.582, F.S., requires tax collector to distribute funds to pay taxes.

Section 55: Amends s. 197.602, F.S., requiring reimbursement in challenges to the validity of a tax deed.

Section 56: Amends s. 192.0105, F.S., to correct cross-reference and change "mailed" to "sent".

Section 57: Amends s. 194.011, F.S., to correct cross-reference.

Section 58: Amends s. 194.013, F.S., to correct cross-reference.

Section 59: Amends s. 196.011, F.S., to correct cross-reference.

Section 60: Creates s. 197.603, F.S., to provide legislative intent.

Section 61: Repeals various sections of ch. 197, F.S.

Section 62: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Tax collectors will be able to charge a fee to cover the costs of electronic tax deeds.

2. Expenditures:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers may receive their tax notices sooner and may also receive refunds under \$2,500 without having to wait for approval by the Department of Revenue.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue may repeal some rules implementing certain forms no longer required.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES