

PROPERTY TAX REFORM UPDATE

- May 5, 2007 -

*By Warren Husband
Metz, Husband & Daughton*

While all legislators seem to agree that Floridians need property tax relief as soon as possible, legislators were ultimately unable to come up with a “fix” during the 60 days of the 2007 Regular Session.

As a result, the House, Senate, and Governor have announced that a special session to deal with property tax reform will be convened, tentatively scheduled for June 12-22.

During the last two weeks of the Regular Session, the property tax reform plans of the respective chambers were turned over to a “conference committee” of appointed Senators and Representatives. Despite frequent meetings, both early in the morning and late into the evening, no significant progress was made and the two sides remained very far apart.

The reform proposals of the Governor, House, and Senate will no doubt serve as a starting point for the upcoming special session and are outlined below. For more historical background on Florida’s property tax system and the factors contributing to the current demands for reform, please see prior versions of this report.

The Governor’s Plan

Recognizing that the Senate and House might need some “encouragement” if there was to be any chance of bringing property tax reform in for a landing, Governor Crist finally announced his own plan for property tax reform on Thursday, April 26. The Governor’s proposal generally borrowed more from the Senate plan and did not include the House’s proposed sales tax increases to “buy-out” residential property taxes. In announcing his plan, the Governor observed, “The revenues of local governments have ballooned over \$17 billion beyond a responsible growth rate during the past five years . . . we must give the people of Florida hope that relief from this tax burden is on the way.”

Governor Crist’s plan has four principal components:

- Immediately roll back local government revenues to 2003 levels, with annual increases capped by inflation and local growth. This move would produce a 12% property tax cut for Florida homeowners in 2007 and a 21.5% cut in 2008. The owner of a \$290,000 home would receive a savings of \$340 on their 2007 property taxes. Over five years, each existing homeowner would save \$1,987 in property taxes.
- Provide an additional homestead exemption of \$25,000. This measure would provide an additional average savings of \$238. If passed by voters in 2007, this property tax savings would begin in 2008.
- Make save our homes portable while also providing assistance to first-time home buyers. Governor Crist proposes making the Save Our Homes cap portable statewide so that homeowners can take their current tax savings with them when they move. In the first year

alone, an existing homeowner who purchases an average-priced home of \$290,000 could expect to save an additional \$923 in property taxes. If passed by voters in 2007, this property tax savings would apply to individuals who buy homes in 2007 and would affect their 2008 taxes. Because portability of the Save Our Homes cap applies only to existing homeowners, an additional measure would ensure that first-time home buyers in Florida and new residents to the state would also benefit. Governor Crist recommends providing a 25% exemption for first-time home buyers, which would provide a savings of \$546, or 11.9%.

- Exempt the first \$25,000 of business tangible personal property from property taxation. Businesses would save \$200 million annually. If passed by voters in 2007, this property tax savings would also begin in 2008. By 2011, this exemption will save businesses a total of \$800 million. This component of the Governor's plan is the only one that would affect funding for schools.

The House Proposal

The key components of the House tax reform plan received varying levels of support from House members. Estimates are that the House plan would result in \$25 billion in tax savings over its first five years of operation, with the average family saving \$2,300 per year.

The first part of the House plan (HB 7001) passed the House on a vote of 118-0. Starting in fiscal year 2007-08, HB 7001 would require local governments to reduce their property tax rates so that revenues going forward will be no greater than if fiscal year 2000-01 property tax revenues had grown at the rate of inflation, along with the addition of tax revenues associated with net new construction. A local government would be able to override the property tax revenue cap with a two-thirds vote of its governing board. Commercial properties would reap much of the tax savings generated by the property tax "rollback," because commercial properties have never benefited from the effects of Save Our Homes or any parallel to the homestead exemption.

Hospital and health care districts, children's services districts, "fiscally constrained" counties, cities in those counties, and cities in rural areas of "critical economic concern" would be exempt from the rollback to fiscal year 2000-01 revenue levels, but would be subject to the cap in annual increases going forward. The rollback and cap would not apply to property taxes levied by school districts, property taxes levied for the payment of certain bonds, or property taxes levied for periods not longer than 2 years when authorized by a voter referendum. New taxing authorities that began levying property taxes after January 1, 1996, and newly created taxing authorities, would have five years to establish themselves before the cap would apply.

The second part of the House plan is a proposed constitutional amendment (HJR 7089) that would have originally eliminated property taxes on homestead properties in exchange for a 2.5-cent increase in the state sales tax. This would have produced an 8.5% state sales tax, the highest statewide rate in the nation. With local option sales taxes, this measure would have pushed the sales tax rate in some areas to as much as 10%. A sales tax increase is controversial, in part, because the sales tax is viewed as more regressive, with proportionally higher impacts on middle and lower income families. Privately, even some House Republicans have voiced concern over the sales tax "buy-out," which they fear many voters will view as a tax increase.

The sales tax buy-out of residential property taxes has also generated some concern in the business community as it would leave commercial property as the primary remaining source of property tax revenue. Commercial property would thus be an attractive future target for local governments hungry for revenue, which could override the proposed property tax revenue caps by a super-majority vote of the city or county commission. In turn, local governments are concerned about reliance upon sales tax as a primary revenue source, because sales tax collections can fluctuate dramatically in response to economic downturns. The sales tax buy-out also presents the difficult task of creating a formula to distribute the new sales tax revenue to local governments throughout the state, with counties and cities striving to ensure that they do not wind up as “donors” to other local governments.

The House ultimately passed a revised constitutional amendment (HJR 7089), on a vote of 78-40. As revised, the key components of this portion of the House plan are as follows:

- Beginning in fiscal year 2009-10, rollback city and county property tax revenues to fiscal year 2003-04 levels, allowing for annual growth at no more than the rate of increase in the Consumer Price Index plus the net value of new construction. The cap could be exceeded only by a unanimous vote of the city council or county commission. The rollback would cut an estimated \$5.1 billion from local government budgets, trimming the average homeowner’s property tax bill by 15%, and providing even larger savings to owners of non-homestead property. The proposed amendment provides for several exemptions from the rollback: school districts, independent special districts, “fiscally-constrained” rural counties, cities located in those counties and in a “rural area of critical economic concern,” hospital districts, and children’s services councils.
- Provide a \$25,000 property tax exemption on personal property for businesses.
- Exempt all homestead property from the state-mandated portion of school property taxes, replacing this lost revenue with a 1-cent increase in the statewide sales tax. This state-mandated portion of the property tax for schools makes up about 30% of the average homeowner’s tax bill.
- Allow voters, at an election held no later than November 2010, to choose whether to replace all remaining school property taxes on homestead property with a 0.5-cent county-wide sales tax increase.
- Allow voters, at an election held no later than November 2010, to choose whether to replace all remaining property taxes on homestead property with a 1-cent county-wide sales tax increase.

The Senate Plan

The Senate tax reform plan is estimated to result in tax savings of \$12.36 billion over its first five years of operation, less than half of the tax savings claimed by the House proposal. Here are the highlights of the Senate plan:

- Rate Freeze and Rollback (SB 1020) – In fiscal year 2007-08, county and city property tax levies would be limited to the greater of: (a) the property tax revenues levied in the 2006-07

fiscal year; or (b) the fiscal year 2005-06 revenues, increased by new construction and by the growth in per capita Florida personal income for 2 years. In fiscal year 2008-09, county and city property tax levies would be limited to the greater of: (a) the 2007-08 levy, increased by new construction; or (b) 85% of the revenue that would be levied if the 2006-07 millage rates were applied to the 2008-09 tax roll. Starting in fiscal year 2009-10, increases in the city and county property tax revenues are limited to growth in population (measure by new construction) and growth in per capita Florida personal income. The cap imposed in fiscal year 2009-10 may be exceeded by a 2/3-vote of the governing body or by a voter referendum. Per capita Florida personal income grew by 4.5 percent in 2005 and 4.8 percent in 2006. Expected growth rates for 2007 through 2010 are 3.9 percent, 4.5 percent, 5.2 percent, and 5.4 percent. Taxes levied for payment of bonds or levied for up to 2 years when authorized by the voters, and taxes levied by a municipality or municipal services taxing unit that has been levying property taxes for less than 5 years, are not subject to the millage cap.

- Tangible Personal Property Tax (SJR 3034) – Like the House and the Governor, the Senate would create a \$25,000 exemption from the tangible personal property tax levied on business equipment and furnishings.
- Truth in Spending (SB 560) – The Senate plan would require local governments to post detailed revenue and expenditure documents on their websites, beginning in 2009 and phased-in over a 3-year period. Local governments would also be required to post on their websites all contracts that they enter into over a specified value, e.g., contracts valued at \$25,000 or more for large counties.
- Homestead Plus (SJR 3034) – To make homes more affordable for first-time homebuyers, the Senate plan would give a new homesteader an additional \$25,000 exemption. This exemption would be reduced over time as the homestead's value increases and the resulting Save Our Homes tax savings grow. The exemption would disappear once the fair market value of the home exceeds the assessable value under Save Our Homes by more than \$25,000.
- Save Our Homes Portability (SJR 3034) - The Senate plan would allow the owner of a homesteaded property to transfer up to \$500,000 of tax savings to a new homestead property. Those who benefit from portability will have a higher permissible growth rate in their assessed value (10% per year) as opposed to the standard Save Our Homes growth rate (3% per year). The 10% annual growth rate would continue until the assessed value of the homestead equals the just value of the new homestead at the time it was purchased, increased by the standard 3% Save Our Homes cap over that period. The 10% cap would then be eliminated in favor of the standard 3% Save Our Homes cap, which would apply to the homestead's tax value from that point forward.
- Appraisal of Affordable Housing (SB 1022) – Affordable rental housing for low-income families would have to be appraised based upon rent collected rather than market value.
- Assessment Appeals Process (SB 560) - The Senate plan calls for a study of the assessment appeals process to ensure fair and uniform treatment of taxpayers, with recommendations to be made in advance of the 2008 legislative session

Supermajority Vote for Non-Ad Valorem Tax and Fee Increases

The House also voted out, on a vote of 98-18, a late-emerging concept (HB 1483) that would require a super-majority vote whenever a local government takes any action to increase taxes or fees. Under the bill, beginning July 1, 2007, the governing board of a county, municipality, school board, or special district could not take the following actions unless the action is first approved by at least a 3/5 vote of the governing board's membership:

- Levy a new tax, special assessment, non-ad valorem assessment or impact fee;
- Increase the rate of an existing tax, special assessment, non-ad valorem assessment, or impact fee;
- Expand a tax base or a geographic area subject to a tax, special assessment, non-ad valorem assessment, or impact fee; or
- Eliminate an exemption from a tax, special assessment, non-ad valorem assessment, or impact fee

The voter approval threshold for “involuntary” municipal annexations would also be increased under the bill from a simple majority to a three-fifths majority of the voting electors

The bill would not: (a) apply to ad valorem taxes or to fees other than impact fees, license fees, penalties, fines, or charges for services; (b) impose a cap on the amount of future revenues that may be raised from non-ad valorem taxes, special assessments, and impact fees; (c) reduce current local government revenues; or (d) apply to a tax, special assessment, non-ad valorem assessment, or impact fee levied or increased for the exclusive purpose of funding repair or replacement of public infrastructure damaged in a natural or man-made disaster that resulted in a declaration of emergency by the Governor

A companion bill in the Senate, SB 2584, was introduced several weeks ago, but was never heard in any Senate committees.

Valuation – Present Use vs. “Highest and Best Use”

Another idea in the mix involves consideration of a property’s “highest and best use” in assessing its value. The Florida Constitution requires that all property be assessed at “just value.” For these purposes, “just value” is the equivalent of “fair market value.” As codified in statute, an appraiser’s determination of just value includes consideration of the property’s present use and its “highest and best use,” followed by consideration of three approaches to arrive at an estimate of the property’s fair market value: (a) the sales comparison approach (examining what similar properties have recently sold for); (b) the cost approach (adding together the value of the land and the cost of improvements); and (c) the income approach (estimating how much rental revenue the property would generate). Appraisers often use a combination of these three approaches to arrive at a property’s fair market value.

The House bill on this topic, HB 261, was passed by the House on a vote of 117-1. Having been pared back over the last few weeks, HB 261 would make modest changes to the criteria used in

assessing the present cash value of a property, the highest and best use of a property, and the condition of a property. The bill also limits the factors property appraisers can consider in appraising income-producing residential rental property and certain commercial property. Further, HB 261 provides limitations on the assessment of certain deed-restricted property which provides affordable housing, multi-unit commercial rental property, marinas, and property rented for use by mobile homes.

The bill also revises assessment appeal procedures to enhance the ability of taxpayers to challenge the assessed value of their property. Among other things, the bill would provide that the taxpayer's burden of proof in administrative and judicial challenges is always to show by a preponderance of the evidence that the assessment is incorrect. This would eliminate from present law a requirement that the taxpayer must prove by clear and convincing evidence, in some circumstances, that an assessment exceeds just value.

The Senate work-shopped two aggressive measures early in the Session aimed at addressing this issue (SB 508 and SB 722), but thereafter took no further action on the bills. SB 508 would have eliminated "highest and best use" as a valuation factor, limiting appraisers to an assessment based upon the property's present use. SB 722 added to this mix the idea of requiring the appraisal of income-producing properties to be based solely on the income approach.

The Senate now seems to have settled on keeping "highest and best use" as a factor in valuing a piece of property for tax purposes, but an examination of "highest and best use" under the Senate plan (SB 560) would be limited to a future use that is "reasonably probable, physically possible, and legally permissible, as well as financially feasible and maximally productive." Further, in considering the "present use" of the property to help determine taxable value, the property appraiser would be limited to the present zoning of the property.