Taxation, deadline for filing objections to assessments

Number: AGO 2010-11

Date: April 14, 2010

Subject:
Taxation, deadline for filing objections to assessments

The Honorable Gary R. Nikolits
Palm Beach County Property Appraiser
Government Center – Fifth Floor
301 North Olive Avenue
West Palm Beach, Florida 33401

RE: VALUE ADJUSTMENT BOARD – PROPERTY APPRAISER – NON-CLAIM – ASSESSMENTS – TAXATION – whether s. 194.032, Fla. Stat., is a statute of non-claim establishing a mandatory deadline for filing objections to assessments. ss. 194.011 and 194.032, Fla. Stat.

Dear Mr. Nikolits:

You have requested my opinion on substantially the following question:

Whether the Palm Beach County Property Appraiser is required to revise the tax rolls to reflect revisions made by the Palm Beach County Value Adjustment Board in connection with petitions that were filed after the statutory filing deadline in section 194.011(3)(d), Florida Statutes, and after these assessments have been "certified" to the Palm Beach County Tax Collector?

In sum:

The Palm Beach County Property Appraiser is required to revise the tax rolls to reflect revisions made by the value adjustment board in connection with late filed petitions heard for good cause. Section 194.011, Florida Statutes, is not a statute of non-claim and Rule 12D-9.015(11), Florida Administrative Code, recognizes extraordinary circumstances under which the value adjustment board may accept and consider late filed petitions if the petitioner has demonstrated good cause and the delay will not be harmful to the performance of board functions in the taxing process.

The Palm Beach County Value Adjustment Board has been contacted regarding your request and has no objection to this office issuing an Attorney General Opinion on this issue. The memorandum of law submitted with your request indicates that you believe that section 194.011(3)(d), Florida Statutes, establishes a mandatory deadline for filing a petition with the value adjustment board.

Section 193.023, Florida Statutes, describes the duties of the property appraiser in making assessments. As is generally provided in that section, the property appraiser must complete his or her assessment of all property no later than July 1 of each year, unless the Department of

Revenue has extended the time for completion of the assessment for good cause shown.[1] The property appraiser certifies to each taxing authority, as determined on the preliminary assessment rolls, the taxable value within the jurisdiction of the taxing authority.[2] It is these assessment rolls that are certified by the value adjustment boards pursuant to section 193.122, Florida Statutes.

Section 193.122, Florida Statutes, provides:

"(1) The value adjustment board shall certify each assessment roll upon order of the board of county commissioners pursuant to s. 197.323, if applicable, and again after all hearings required by s. 194.032 have been held. These certificates shall be attached to each roll as required by the Department of Revenue.
(2) After the first certification of the tax rolls by the value adjustment board, the property appraiser shall make all required extensions on the rolls to show the tax attributable to all taxable property. Upon completion of these extensions, and upon satisfying himself or herself that all property is properly taxed, the property appraiser shall certify the tax rolls and shall within 1 week thereafter publish notice of the date and fact of extension and certification in a periodical meeting the requirements of s. 50.011 and publicly display a notice of the date of certification in the office of the property appraiser. The property appraiser shall also supply notice of the date of the certification to any taxpayer who requests one in writing. These certificates and notices shall be made in the form required by the department and shall be attached to each roll as required by the department by regulation.
(3) When the tax rolls have been extended pursuant to s. 197.323, the second certification of the value adjustment board shall reflect all changes made by the board together with any adjustments or changes made by the property appraiser. Upon such certification, the property appraiser shall recertify the tax rolls with all changes to the collector and shall provide public notice of the date and fact of recertification pursuant to subsection (2).
(4) An appeal of a value adjustment board decision pursuant to s. 194.036(1)(a) or (b) by the property appraiser shall be filed prior to extension of the tax roll under subsection (2) or, if the roll was extended pursuant to s. 197.323, within 30 days of recertification under subsection (3). The roll may be certified by the property appraiser prior to an appeal being filed pursuant to s. 194.036(1)(c), but such appeal shall be filed within 20 days after receipt of the decision of the department relative to further judicial proceedings.

* * *

(6) The property appraiser may extend millage as required in subsection (2) against the assessment roll and certify it to the tax collector even though there are parcels subject to judicial or administrative review pursuant to s. 194.036(1). Such parcels shall be certified and have taxes extended against them in accordance with the decisions of the value adjustment board or the property appraiser's valuation if the roll has been extended pursuant to s. 197.323, except that payment of such taxes by the taxpayer shall not preclude the taxpayer from being required to pay additional taxes in accordance with final judicial determination of an appeal filed pursuant to s. 194.036(1).
(7) Each assessment roll shall be submitted to the executive director of the department in the manner and form prescribed by the department within 1 week after extension and certification to the tax collector and again after recertification to the tax collector, if applicable. When the

provisions of s. 193.1145 are exercised, the requirements of this subsection shall apply upon extension pursuant to s. 193.1145(3)(a) and again upon reconciliation pursuant to s. 193.1145(8)(a)."

Thus, the statutes recognize that the process of property assessment and certification is an on-going one which involves consideration and cooperation among the public officials involved in the process, including the property appraiser and the members of the value adjustment board.

Value adjustment boards, created pursuant to section 194.015, Florida Statutes, are quasi-judicial governmental bodies that hear appeals initiated by taxpayers contesting the denial of tax exemptions and/or the valuation of their properties for tax purposes by the county property appraiser. The board conducts hearings at which taxpayers and the property appraiser testify and present documentary evidence either in opposition to or in support of the tax assessment under appeal. As provided in section 194.032(1)(a), Florida Statutes, the value adjustment board shall meet not earlier than 30 days and not later than 60 days after the mailing of the notice provided in section 194.011(1), Florida Statutes,[3] for the following purposes:

"1. Hearing petitions relating to assessments filed pursuant to s. 194.011(3).
2. Hearing complaints relating to homestead exemptions as provided for under s. 196.151.
3. Hearing appeals from exemptions denied, or disputes arising from exemptions granted, upon the filing of exemption applications under s. 196.011.
4. Hearing appeals concerning ad valorem tax deferrals and classifications."

Section 194.011(3), Florida Statutes, provides for petitions to the value adjustment board. Pursuant to subsection (3)(d) of the statute:

"A petition to the value adjustment board . . . shall be filed as follows:

* * *

(d) The petition may be filed, as to valuation issues, at any time during the taxable year on or before the 25th day following the mailing of notice by the property appraiser as provided in subsection (1). With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain nonprofit purposes, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property appraiser under s. 193.461, s. 193.503, s. 193.625, or s. 196.193 or notice by the tax collector under s. 197.253."

This office has considered, in several opinions issued by my predecessors in office, whether earlier versions of this statute may be read to allow a value adjustment board to extend the filing deadline beyond that prescribed in the statute. In Attorney General Opinion 70-87, it was concluded that while the statutes do not provide for an extension of the time for filing petitions for review of assessments after timely completion of the tax roll, the failure to meet the statutory deadline by the board of tax adjustment (what is now the value adjustment board) was not an absolute bar to such late filed petitions.

In a case decided several years later, *Strickland v. Sarabay Country Club, Inc.*,[4] the court considered the effect of late filing under section 194.011(3)(d), Florida Statutes (1973). The court rejected the argument that the statute should be treated as a statute of non-claim and recognized that "there could be circumstances under which the failure to timely file a petition with the Board of Tax Adjustment would not prevent the taxpayer from asserting his objections."[5] However, in that case, the court determined that the allegations contained in the complaint were not sufficient to present such a situation. In that case, the corporate complainant had knowledge of the increased assessment but failed to act in a timely fashion upon the assessment notice. The corporation's allegations that it had difficulty in assembling all of its directors was not, in the court's opinion, an extraordinary circumstance that would excuse the corporation's failure to file the petition on time:

"To consider this a sufficient excuse could open the door to all manner of claims of inconvenience on the part of tardy taxpayers. There is a salutory purpose for requiring one who is aggrieved by an increased tax assessment to first present his case to the Board of Tax Adjustment. . . . Likewise, it is reasonable from an administrative standpoint to require the objecting petition to be filed with the Board within [the statutorily prescribed] period."[6]

In Attorney General Opinion 2003-06, this office was asked whether the language in section 194.011(3), Florida Statutes (2002), providing for the filing of petitions with the value adjustment board by a certain date, was mandatory. That opinion discusses the *Strickland* case and administrative rules of the Department of Revenue to conclude that

"while the value adjustment board may not extend the time for the filing of petitions, the failure to meet the statutory deadline for filing a petition to the board is not an absolute bar to its consideration by the board if the board determines that the petitioner has demonstrated good cause justifying consideration and the delay will not be prejudicial to the board's performance of its functions."

The administrative rule discussed in Attorney General Opinion 2003-06 was 12D-10.003(8), Florida Administrative Code, which provided:

"The [value adjustment] 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."

The current administrative rule of the Department of Revenue containing substantially similar language is Rule 12D-9.015(11), Florida Administrative Code, which contains provisions relating to late filed petitions:

"(a) The board may not extend the time for filing a petition. The board is not authorized to set and publish a deadline for late filed petitions. However, the failure to meet the statutory deadline for filing a petition to the board does not prevent consideration of such a petition by the board or special magistrate when the board or board designee determines that the petitioner has demonstrated good cause justifying consideration and that the delay will not, in fact, be harmful

to the performance of board functions in the taxing process. "Good cause" means the verifiable showing of extraordinary circumstances, as follows:
1. Personal, family, or business crisis or emergency at a critical time or for an extended period of time that would cause a reasonable person's attention to be diverted from filing; or
2. Physical or mental illness, infirmity, or disability that would reasonably affect the petitioner's ability to timely file; or
3. Miscommunication with, or misinformation received from, the board clerk, property appraiser, or their staff regarding the necessity or the proper procedure for filing that would cause a reasonable person's attention to be diverted from timely filing; or
4. Any other cause beyond the control of the petitioner that would prevent a reasonably prudent petitioner from timely filing."

The rule requires that the board clerk accept but not schedule a petition for hearing if it is submitted to the board after the statutory deadline has expired. The petition shall be submitted to the board for "good cause consideration" if the petition is accompanied by a written explanation for the filing delay.[7] The board clerk must forward copies of late filed petitions to the property appraiser or tax collector at the time they are received or upon the board's determination of good cause.[8] The board is authorized but not mandated to require good cause hearings before good cause determinations are made. The board "shall determine whether the petitioner has demonstrated, in writing, good cause justifying consideration of the petition." If good cause is found for the late filing of the petition, the board clerk shall accept the petition for filing and notify the petitioner and the property appraiser or tax collector.[9] These same parties are to be notified if good cause is not demonstrated.[10]

Thus, while the Department of Revenue administrative rule specifically recognizes that a value adjustment board may not extend the time for filing a petition, a "good cause" consideration procedure is established to accommodate tax payers who may have, because of extraordinary circumstances, been unable to timely file their objections to their assessments. This rule reflects the earlier determinations by this office and Florida courts that

"the failure to meet the statutory deadline for filing a petition to the board is not an absolute bar to its consideration by the board if the board determines that the petitioner has demonstrated good cause justifying consideration and the delay will not be prejudicial to the board's performance of its functions."[11]

I would note that, according to information supplied to this office, the Palm Beach County Value Adjustment Board has not found it unduly burdensome to accommodate the Department of Revenue directive that good cause petitions be accepted after the statutory filing deadline and has done so during the past two tax seasons. However, accomplishment of the taxing process involves the cooperative action of a number of officials and the value adjustment board may wish to take into consideration the statutory deadlines established for the property appraiser and tax collector in certifying tax rolls when considering whether acceptance of late filed petitions may be harmful to the timely accomplishment of the taxing process.

In sum, it is my opinion that section 194.011, Florida Statutes, is not a statute of non-claim and that Rule 12D-9.015(11), Florida Administrative Code, recognizes extraordinary circumstances under which the failure to timely file a petition with the value adjustment board would not prevent

a taxpayer from asserting his objections. In consequence, the Palm Beach County Property Appraiser is required to revise the tax rolls to reflect revisions made by the value adjustment board in connection with late filed petitions heard for good cause.

Sincerely,

Bill McCollum
Attorney General

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[1] Section 193.023(1), Fla. Stat. *And see* s. 193.1142, Fla. Stat., requiring each assessment roll to be submitted to the executive director of the department for review in the manner and form prescribed by the executive director on or before July 1.

[2] Section 200.065(1), Fla. Stat. *See also* s. 200.065(6), Fla. Stat., providing that prior to the extension of the assessment rolls pursuant to s. 193.122, Fla. Stat., the property appraiser must notify each taxing authority of the aggregate change in the assessment roll "from that certified pursuant to subsection (1), including, but not limited to, those changes which result from actions by the value adjustment board or from corrections of errors in the assessment roll."

[3] While s. 194.032(1)(a), Fla. Stat., provides no board hearing shall be held before approval of all or any part of the assessment rolls by the Department of Revenue, subsections (1)(b) and (c) provide:

"(b) Notwithstanding the provisions of paragraph (a), the value adjustment board may meet prior to the approval of the assessment rolls by the Department of Revenue, but not earlier than July 1, to hear appeals pertaining to the denial by the property appraiser of exemptions, agricultural and high-water recharge classifications, classifications as historic property used for commercial or certain nonprofit purposes, and deferrals under subparagraphs (a)2., 3., and 4. In such event, however, the board may not certify any assessments under s. 193.122 until the Department of Revenue has approved the assessments in accordance with s. 193.1142 and all hearings have been held with respect to the particular parcel under appeal.
(c) In no event may a hearing be held pursuant to this subsection relative to valuation issues prior to completion of the hearings required under s. 200.065(2)(c)."

[4] 301 So. 2d 129 (Fla. 2d DCA 1974).

[5] *Id.* at 130. The court relied on its earlier decision in *Jasper v. St. Petersburg Episcopal Community, Inc.*, 222 So. 2d 479 (Fla. 2d DCA 1969), which considered whether a nonprofit corporation owning property qualified to receive an exemption from taxation could receive an exemption notwithstanding its failure to file an application for the exemption within the time period prescribed by s. 192.062, Fla. Stat. The court concluded that the circumstances which justified the waiving of the filing requirements in *Jasper* were far different than those in *Strickland* . In *Jasper*, no notice had been sent to the taxpayer, the tax assessor had openly declared he

would not grant such an exemption and the parties were actually litigating the point. *Cf. Gamma Phi Chapter of Sigma Chi Building Fund Corporation v. Dade County*, 199 So. 2d 717 (Fla. 1967) in which the Court in affirming the denial of a tax exemption concluded that while statute was purely administrative measure calculated to produce orderly and efficient preparation of tax roll, Gamma Phi's indifference had ripened into laches.

[6] 301 So. 2d at 130.

[7] Rule 12D-9.015(11)(b), Fla. Admin. C.

[8] Rule 12D-9.015(11)(c), Fla. Admin. C.

[9] Rule 12D-9.015(11)(d), Fla. Admin. C.

[10] Rule 12D-9.015(11)(e), Fla. Admin. C.

[11] *And see* s. 194.034(1)(b), Fla. Stat., providing that an aggrieved taxpayer may contest his or her assessment in circuit court whether or not a proceeding before the value adjustment board has been initiated.