Property Appraiser, certification of tax rolls

Number: INFORMAL

Date: August 31, 2009

Mr. John T. Caruso
General Counsel
Brevard County Property Appraiser
190 Fortenberry Road, Suite 107
Merritt Island, Florida 32952

Dear Mr. Caruso:

On behalf of The Honorable Jim Ford, Brevard County Property Appraiser, you ask whether a property appraiser may certify the assessment rolls as of July 1st to all taxing authorities with an entry of an estimate or any number other than the actual prior years final gross taxable value, when the value adjustment board has failed to finalize its proceedings such that the previous year's final taxable values are not known.

In sum, it would appear that the statutory scheme contemplates that the final actions of the value adjustment board will be used by the property appraiser in certifying the assessment rolls. The Department of Revenue, however, has advised that its reporting forms allow the use of the property appraiser's best known values when the rolls are certified. There also is statutory authority indicating that when the property appraiser is unable to certify the assessment rolls, an interim assessment roll may be certified pursuant to section 193.1145, Florida Statutes, through the filing of a civil action in circuit court by an affected taxing authority. In light of the lack of clear statutory direction as to the property appraiser's use of best known values in certifying the assessment roll, it would be advisable to seek legislative clarification in this matter.

This office has been advised that the value adjustment board completed its duties on July 15th and the property appraiser has certified the assessment rolls at this time. Due to the likelihood that this issue will arise again, however, you ask that this office provide guidance. The following general discussion is provided in order to be of assistance.

Section 193.023, Florida Statutes, sets forth the duties of the property appraiser in making assessments. Generally, the appraiser must complete his or her assessment of all property no later than July 1 of each year, unless the Department of Revenue (department) 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] While this office will not comment upon the actions of the value adjustment board in this instance, absent a request from a majority of the members of that board, the general provisions for the operation of the value adjustment board will be discussed.

Section 194.032, Florida Statutes, requires the value adjustment board to meet not earlier than 30 days and not later than 60 days after the notices of assessment have been provided to the

taxpayers whose property is subject to real or tangible personal ad valorem tax.[3] One of the purposes of the meeting is to hear petitions relating to assessments.[4] Section 194.032(3), Florida Statutes, in part, states, "The board shall remain in session from day to day until all petitions, complaints, appeals, and disputes are heard." In each case, except where the complaint has been withdrawn or has been acknowledged as correct by the property appraiser, the value adjustment board must render a written decision which "shall be issued within 20 calendar days of the last day the board is in session under s. 194.032."[5]

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.[6]
(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 request 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.
(5) The department shall promulgate regulations to ensure that copies of the tax rolls are distributed to the appropriate officials and maintained as part of their records for as long as is necessary to provide for the orderly collection of taxes. Such regulations shall also provide for the maintenance of the necessary permanent copies of such rolls.
(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 the 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 Legislature has provided the manner in which the property appraiser and the value adjustment board (VAB) of each county work together to certify the assessment rolls. Where the Legislature has directed the manner in which something is to be done, it generally operates as a prohibition against its being done in any other manner.[7]

This office has been advised by the Florida Department of Revenue that the department has promulgated forms DR403 and DR420 for the purposes of certifying values to the taxing authorities. In anticipation of the event that the assessment roll may not be in its final state in time to begin the local budgeting and Truth in Millage process, the department's position is that features on the form allow the property appraiser to use best known values. The form DR420 calls for using the values that are certified on the DR403. Form DR403 is completed by the property appraiser and returned to the department in November of each year when tax bills are mailed and again following final action of the VAB. Form DR420 states that the prior year final gross taxable value should be from the "applicable" Form DR403. In the event that the VAB has not completed its actions, the department considers Form DR403 to be the one returned to the department following the mailing of the tax bills.

The department states that its form promulgated through rulemaking has not been challenged and is presumed to be a legal form arising from the department's authority to promulgate such forms as described in section 195.022, Florida Statutes. In the absence of such a challenge, the department maintains that the proper treatment of a situation in which the VAB has not provided final values is contained within the aforementioned forms. As the agency charged with administration of the tax statutes, the department’s interpretation of the statutes should be given deference.[8]

As noted above, in section 193.122(1), Florida Statutes, the county commission may order the value adjustment board to certify the assessment rolls.[9] In the event the property appraiser has not certified property values pursuant to section 200.065(1), Florida Statutes, by August 1st, the Legislature has provided for interim assessment rolls. This is allowed so that "no undue restraint shall be placed on the ability of local government to finance its activities in a timely and orderly fashion, and, further, that just and uniform valuations for all parcels shall not be frustrated if the attainment of such valuations necessitates delaying a final determination of assessments beyond the normal 12-month period."[10] Section 193.1145(1), Florida Statutes, provides a method of levying and collecting ad valorem taxes which may be used if:

"(a) *The property appraiser* has been granted an extension of time for completion of the assessment of all property pursuant to s. 193.023(1) beyond September 1 or *has not certified value pursuant to s. 200.065(1) by August 1*; or
(b) All or part of the assessment roll of a county is disapproved pursuant to s. 193.1142;

provided a local taxing authority brings a civil action in the circuit court for the county in which relief is sought and the court finds that there will be a substantial delay in the final determination of assessments, which delay will substantially impair the ability of the authority to finance its activities. Such action may be filed on or after July 1. Upon such a determination, the court may order the use of the last approved roll, adjusted to the extent practicable to reflect additions, deletions, and changes in ownership, parcel configuration, and exempt status, as the interim roll when the action was filed under paragraph (a), or may order the use of the current roll as the interim roll when the action was filed under paragraph (b). When the action was filed under paragraph (a), certification of value pursuant to s. 200.065(1) shall be made immediately following such determination by the court. When the action was filed under paragraph (b), the procedures required under s. 200.065 shall continue based on the original certification of value. However, if the property appraiser recommends that interim roll procedures be instituted and the governing body of the county does not object and if conditions of paragraph (a) or paragraph (b) apply, such civil action shall not be required. The property appraiser shall notify the department and each taxing authority within his or her jurisdiction prior to instituting interim roll procedures without a court order." (e.s.)

The section further prescribes the manner in which the suit shall be filed, directs the property appraiser in the preparation and extension of the interim assessment roll, and provides various procedures and restrictions when an interim assessment roll is used.[11]

In light of the procedures that are prescribed by statute and the inability of this office to devise alternative methods to address the situation that has arisen, it would appear that this matter may require judicial resolution pursuant to section 193.1145, Florida Statutes. Due to the potential that the difficulties in this instance may arise again, it may be advisable to seek legislative clarification of these issues.

I trust that these informal comments will be of some assistance in addressing the issue you have raised.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 193.023(1), Fla. Stat. *See also* 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] Section 194.032(1)(a), Fla. Stat.

[4] Section 194.032(1)(a)1., Fla. Stat.

[5] Section 194.034(2), Fla. Stat.

[6] *See* Rule 12D-10.003(6), Fla. Admin. C., stating:

"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] *See Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[8] *See Department of Environmental Regulation v. Goldring*, 477 So. 2d 532 (Fla. 1985); *Shell Harbor Group, Inc. v. Department of Business Regulation, Division of Alcoholic Beverages and Tobacco*, 487 So. 2d 1141 (Fla. 1st DCA, 1986) (administrative construction of statute by agency responsible for its administration is entitled to great weight and should not be overturned unless clearly erroneous).

[9] Section 197.323(1), Fla. Stat., provides:

"Notwithstanding the provisions of s. 193.122, the board of county commissioners may, upon request by the tax collector and by majority vote, order the roll to be extended prior to completion of value adjustment board hearings, if completion thereof would otherwise be the only cause for a delay in the issuance of tax notices beyond November 1. For any parcel for which tax liability is subsequently altered as a result of board action, the tax collector shall resolve the matter by following the same procedures used for correction of errors. However, approval by the department is not required for refund of overpayment made pursuant to this section."

[10] Section 193.1145(1), Fla. Stat.

[11] *See* s. 193.1145(2) – (14), Fla. Stat.