Status: **Rule 12D-16.002, F.A.C., was amended January 9, 1992, discontinuing Form DR-405E.**

OPN 91-0050

Sep 25, 1991

The Honorable Ronald J. Schultz, C.F.A.
Citrus County Property Appraiser
110 North Apopka Avenue, Room 200
Inverness, Florida 32650-4294

RE: Personal Property Tax Returns:
Your letter of August 19, 1991

Dear Mr. Schultz:

This is in response to your letter to Mr. John Everton of August 19, 1991, regarding the DR-405E and DR-405R, personal property tax returns. Mr. Everton asked that I respond.

You ask whether filing the DR-405E is "in lieu of the filing of a DR-405R or a supplement thereto?" The short answer is that the DR-405E appears to be personal property tax return which can be filed to satisfy the provisions of Sections 193.052(1)(a), and 193.062(1), so as to avoid the penalties in Section 193.072, F.S., although I am unable to locate administrative history to support this conclusion. You should note that the DR-405E is titled "Personal Property Tax Return" with an adjacent caption advising taxpayers to return the DR-405E by April 1 to avoid penalties." I am aware of no statutory requirement that more than one return be filed, supplemental or otherwise. See Sections 193.052 and 193.072.

You then ask if the DR-405E is in lieu of the DR-405R, does the DR-405E contemplate the level of detail of the DR-405R? It is the Department's position that the level of detail is the same for both forms. The DR-405R contains a printed schedule for itemized identification and the DR-405E requires (in the instructions on the back of the form) the taxpayer to attach a

separate statement showing how the estimate of value was determined. Obviously, key elements to the determination of the value of personal property are the number of items of property being referenced, their costs and condition. This would be true whether or not the property is described as a class of property pursuant to Subsections 195.027(4)(a)1, and 195.027(4)(b), or listed individually. Note that the instructions on the back of the DR-405E condition your acceptance of the form on the taxpayer completing all applicable spaces on the form and attaching supporting schedules. As I indicated, these schedules are to show how the taxpayers estimate of value was determined, which in turn would require itemization and description of the property being valued. See Section 195.027. See also the recent Opinion of the Attorney General, 91-57, where the term "return of property" was defined as referring to a "list, schedule, or inventory of property made by a taxpayer and returned to the property appraiser for the purpose of tax assessment."

Finally, you ask if a DR-405E indicates a significant change from the previous year, can "the Property Appraiser demand a listing of the removed property at the detail level of the DR-405R (i.e. description, age, year acquired, taxpayer's estimate of value, original cost,) if it appears to the property appraiser that such a listing is necessary to meet his responsibilities in the preparation of the Tangible Personal Property Tax Roll." (sic). I am not aware of any statutory requirement that a taxpayer provide a listing of property removed from the taxing jurisdiction. However, you should be aware of the provisions of Section 195.027(3), recently re-enacted by the legislature in section 154, Ch. 91-112, Laws of Florida. This re-enactment provides:

> The rules and regulations shall provide procedures whereby the property appraiser, the Department of Revenue, and the Auditor General shall be able to obtain access, where necessary, to financial records relating to nonhomestead property which records are required to make a determination of the proper assessment as to the particular property in question. Access to a taxpayer's records shall be provided only in those instances in which it is determined that such records are necessary to determine either the

classification or the value of the taxable nonhomestead property. Access shall be provided only to those records which pertain to the property physically located in the taxing county as of January 1 of each year and to the income from such property generated in the taxing county for the year in which a proper assessment in made.

Section 192.011, F.S., requires the property appraiser to assess "all property located in his county," with certain exceptions not relevant here. Section 195-027(3) quoted above, along with Rule 12D-1.005, Florida Administrative Code, are some of the tools you may be required to use to fulfill your constitutional and statutory duty to assess all property at its just value. Article VII, Section 4, Florida Constitution.

As stated, by law you, as Property Appraiser, are required to assess all taxable personal property in your County. This Constitutional requirement assures an equitable tax system. The Florida Supreme Court has shown little patience with taxpayers who have attempted to play shell games with property appraisers over their property or records dealing with the just value of their property. In holding that a property appraiser can obtain access to a taxpayer's records both during and after the assessment period under the above quoted Section 195.027, F.S., the Florida Supreme Court in Bystrom v. Whitman, 488 So.2d 520 (Fla., 1986), ruled that it would be "fundamentally unjust" to permit a taxpayer "to challenge an assessment while preventing the appraiser from obtaining the information needed to defend the assessment."

Finally, including circumstances where taxpayers do not cooperate with your office in assuring that all property in the county is assessed at its full just value, you should be careful not to omit or understate the value of the taxpayer's property in your county. To do so would be a disservice to all other taxpayers in your county. As Justice Overton stated, specially concurring in Redford v. Department of Revenue, 478 So.2d 808 (Fla. 1985), "(b)ecause a given amount of tax revenue is needed to operate the government, it should be recognized that one person's tax exemption will become another person's tax." Should a taxpayer believe the assessment to be unauthorized or

excessive, he has the right to present proof that negates every reasonable hypothesis of the correctness of the assessment. Powell v. Kelly, 223 So.2d 305(Fla. 1969).

Sincerely,

Jeff Kielbasa
Ad Valorem Tax Counsel
Florida Department of Revenue