

Bulletin: PTA-05-07

From: James McAdams

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To: Property Appraisers

Tax Collectors

**FLORIDA DEPARTMENT OF REVENUE
PROPERTY TAX INFORMATIONAL BULLETIN**

DEFERRED TAXES; WATERFRONT PROPERTY

The 2005 Legislature enacted Chapter 2005-157, Laws of Florida, effective January 1, 2006 (See HB 955, section 14.). This law statutes governing deferred taxes for waterfront property, sections 197.303 through 197.3047, Florida Statutes.

In summary, this new law creates section 197.303, F.S. It provides that the board of county commissioners of any county or the governing authority of any municipality may adopt an ordinance to allow for ad valorem tax deferrals for recreational and commercial working waterfront properties if the owners are engaging in the operation, rehabilitation, or renovation of the property.

The board of county commissioners or governing authority of the municipality by ordinance may authorize the deferral of ad valorem taxation and non-ad valorem assessments for recreational and commercial working waterfront properties.

The ordinance must designate the type and location of working waterfront property which may include property under s. 342.07(2) and which may further be required to be located within a particular geographic area or areas of the county.

The ordinance must specify that the deferrals apply only to the taxes levied by the unit of government granting the deferral. The deferrals do not apply to taxes levied or non-ad valorem assessments for the payment of bonds or to taxes authorized by a vote of the electors of the state.

The ordinance is required to specify that any deferral granted remains in effect regardless of any change in the authority of the county or municipality to grant the deferral. The use and ownership of the property must be maintained over the period for which the deferral is granted.

If a deferral is granted on property located in a community redevelopment area, the amount of taxes eligible for deferral will be reduced if:

The community redevelopment agency has previously issued instruments of indebtedness that are secured by increment revenues on deposit in the community redevelopment trust fund; and

The instruments of indebtedness are associated with the real property applying for the deferral.

If the community redevelopment agency has issued the instruments of indebtedness, the tax deferral can't apply to an amount of taxes equal to the amount that must be deposited into the community redevelopment trust fund by the entity granting the deferral based on the taxable value of the property for which the deferral is granted.

If the portion of the tax on a property were not eligible for deferral because of the instruments of indebtedness, the community redevelopment agency is required to notify the property owner and the tax collector 1 year before the debt instruments are no longer outstanding or otherwise defeased.

The tax collector is required to notify a community redevelopment agency of any tax deferral that has been granted on property located in the community redevelopment area.

A debt obligation issued after the date a deferral has been granted will not reduce the amount of taxes eligible for the deferral.

Creates s. 197.304, F.S. Provides tax deferral for recreational and commercial working waterfront facilities from a portion of the combined total of the ad valorem taxes and non-ad valorem assessments by filing an application with the tax collector on or before January 31 following the year in which the taxes and non-ad valorem assessments are assessed. The applicant is required to demonstrate compliance.

Approval of the deferral application defers only the taxes and no-ad valorem assessments authorized by the ordinance.

The law created sections 197.303 through 197.3047 , Florida Statutes, as follows (words stricken are deletions; words underlined are additions):

No deferral can be granted if the total amount of deferred taxes, non-ad valorem assessments, and interest plus the total amount of all other unsatisfied liens on the property exceeds 85 percent of the assessed value of the property or the primary financing on the property exceeds 70 percent of the assessed value of the property.

The amount of taxes, non-ad valorem assessments, and interest deferred will accrue interest at a rate equal to the semiannually compounded rate of one-half of 1 percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments as of the end of the quarter preceding the date of the sale of deferred payment tax certificates. The interest rate may not exceed 9.5 percent.

Taxes, non-ad valorem assessment, and interest deferred constitute and prior lien and attach on the same date and manner as provided in chapter 197, but will be due, payable, and delinquent under ss. 197.303 through 197.3047.

Creates s. 197.3041, F.S. The annual application for deferral must be on a form prescribed by the Department and signed upon oath by the applicant. The tax collector can require the applicant to submit other evidence and documentation. The application must provide notice as to the manner the interest is computed. The application is

required to contain an explanation of the conditions to be met for approval and the conditions under which deferred taxes and interest become due, payable and delinquent and must clearly state that all deferrals constitute a lien on the applicant's property.

The tax collector is required to consider each annual application within 45 days after the date the application is filed. The determinations and findings of the tax collector are not quasi judicial and are subject to exclusive review by the value adjustment board. Approved applications are filed in the permanent records. The tax collector must notify an applicant not entitled to deferral within 45 days after the date the application is filed giving reasons for disapproval. The notice must be by personal delivery or registered mail to the address given by the applicant on the application. The notice must be filed among the permanent records. The notice must advise the applicant of the right to appeal to the value adjustment board and must inform the applicant of the procedure for filing the appeal.

The appeal is required to be in writing on a form prescribed by the department and furnished by the tax collector. The appeal is to be filed with the value adjustment board within 20 days of the notice of disapproval. The board must approve or disapprove the appeal within 30 days of receipt. Action by the value adjustment board is final unless within 15 days the applicant, tax collector, or other lienholder files in circuit court a de novo proceeding for declaratory judgment or other appropriate proceeding.

Each application is required to contain a list of and the current value of all outstanding liens on the property.

The date of receipt of the application by the tax collector will be used in calculating taxes due and payable net of discounts for early payment.

If not previously furnished with the application, the applicant is required to provide proof of fire and extended coverage insurance in an amount that is in excess of all outstanding liens and deferred taxes and interest with a loss payable clause to the county tax collector.

The tax collector is required to notify the property appraiser of parcels with deferred taxes.

The property appraiser is required to notify the tax collector of changes in the ownership or use of properties that have been granted tax deferral.

Creates s. 197.3042, F.S. Requires the tax collector to notify each local governing body of the amount of taxes and non-ad valorem assessments deferred. Requires the county to strike each certificate off to the county at the tax certificate sale. Provides that the certificates will bear interest at a rate equal to the semiannually compounded rate of 0.5 percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments as of the end of the quarter preceding the date of the sale of the deferred payment tax certificates not to exceed 9.5 percent.

Creates s. 197.3043, F.S. Requires the owner of tax-deferred property to notify the tax collector if the property is no longer entitled to claim the property as a recreational and commercial working waterfront facility or if the owner fails to maintain the required fire and extended insure coverage, the total amount of deferred taxes and interest for all

previous years become due on November 1 of the year following the change in use or failure to maintain insurance and delinquent on April 1.

Requires the property appraiser to notify the tax collector in writing when he or she discovers that there has been a change in use of the property and the tax collector shall collect any taxes and interest due or delinquent.

When the total amount of deferred taxes, interest, and all other unsatisfied liens on the property exceed 85 percent of the assessed value of the property, the tax collector is required to notify the owner that the portion of taxes and interest which exceed 85 percent of the assessed value is due and payable within 30 days after receipt of notice. Failure of the owner to pay the difference causes the total amount of deferred taxes and interest to become delinquent.

If the deferred taxes become delinquent, on or before June 1 following the date the taxes become delinquent the tax collector is required to sell a tax certificate under s. 197.432. Requires the tax collector to sell tax certificates on or before June 1 following the date deferred taxes become delinquent.

Creates s. 197.3044, F.S. Provides that all or a part of deferred taxes may be paid at any time by the owner of the property. Provides for payment by the next of kin of the owner, heir of the owner, child of the owner, or any person having or claiming a legal or equitable interest in the property if the owner does not object within 30 days of being notified of the payment by the tax collector. Provides that any partial payment will be applied to interest first.

Creates s. 197.3045, F.S. Requires the tax collector to maintain a record of payments, description of the property, and amount of taxes or interest collected and the distribution of payments received. Payments received are to be distributed like ad valorem taxes or redemption moneys.

Creates s. 197.3046, F.S. Provides that deferral of the real property taxes does not prevent the collection of tangible personal property or affect any provision of any mortgage or other instrument relating to property requiring a person pay ad valorem taxes or non-ad valorem assessments.

Creates s. 197.3047, F.S. Provides penalties for willfully filing incorrect information. Requires payment of the total amount of taxes and interest; disqualification from filing for deferral for 3 years; and a penalty of 25 percent. Provides for appeal of the penalties to the value adjustment board within 30 days after the penalties are imposed.

The law creates sections 197.303 through 197.3047, Florida Statutes, as follows (words stricken are deletions; words underlined are additions):

197.303 Ad valorem tax deferral for recreational and commercial working waterfront properties.--

(1) The board of county commissioners of any county or the governing authority of any municipality may adopt an ordinance to allow for ad valorem tax deferrals for recreational and commercial working waterfront properties if the owners are engaging in the operation, rehabilitation, or renovation of such properties in accordance with guidelines established in this section.

(2) The board of county commissioners or the governing authority of the municipality by ordinance may authorize the deferral of ad valorem taxation and non-ad valorem assessments for recreational and commercial working waterfront properties.

(3) The ordinance shall designate the type and location of working waterfront property for which deferrals may be granted, which may include any property meeting the provisions of s. 342.07(2), which property may be further required to be located within a particular geographic area or areas of the county or municipality.

(4) The ordinance must specify that such deferrals apply only to taxes levied by the unit of government granting the deferral. The deferrals do not apply, however, to taxes or non-ad valorem assessments defined in s. 197.3632(1)(d) levied for the payment of bonds or to taxes authorized by a vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution.

(5) The ordinance must specify that any deferral granted remains in effect regardless of any change in the authority of the county or municipality to grant the deferral. In order to retain the deferral, however, the use and ownership of the property as a working waterfront must be maintained over the period for which the deferral is granted.

(6)(a) If an application for deferral is granted on property that is located in a community redevelopment area, the amount of taxes eligible for deferral shall be reduced, as provided for in paragraph (b), if:

1. The community redevelopment agency has previously issued instruments of indebtedness that are secured by increment revenues on deposit in the community redevelopment trust fund; and

2. Those instruments of indebtedness are associated with the real property applying for the deferral.

(b) If the provisions of paragraph (a) apply, the tax deferral shall not apply to an amount of taxes equal to the amount that must be deposited into the community redevelopment trust fund by the entity granting the deferral based upon the taxable value of the property upon which the deferral is being granted. Once all instruments of indebtedness that existed at the time the deferral was originally granted are no longer outstanding or have otherwise been defeased, the provisions of this paragraph shall no longer apply.

(c) If a portion of the taxes on a property were not eligible for deferral because of the provisions of paragraph

(b), the community redevelopment agency shall notify the property owner and the tax collector 1 year before the debt instruments that prevented said taxes from being deferred are no longer outstanding or otherwise defeased.

(d) The tax collector shall notify a community 546 redevelopment agency of any tax deferral that has been granted on property located within the community redevelopment area of that agency.

(e) Issuance of debt obligation after the date a deferral has been granted shall not reduce the amount of taxes eligible for deferral.

197.304 Tax deferral for recreational and commercial working waterfronts.-

(1) Any property owner in a jurisdiction that has adopted a tax deferral ordinance pursuant to s. 197.303 that owns recreational and commercial working waterfront facility as defined in s. 342.07 may elect to defer payment of those ad valorem taxes and non-ad valorem assessments designated in the ordinance authorizing the deferral by filing an annual application for tax deferral with the county tax collector on or before January 31 following the year in which the taxes and non-ad valorem assessments are assessed. The applicant has the burden to affirmatively demonstrate compliance with the requirements of this section.

(2) Approval of an application for tax deferral shall defer that portion of the combined total of ad valorem taxes and any non-ad valorem assessments that are authorized to be deferred by the ordinance authorizing the deferral.

(3) A tax deferral may not be granted if:

(a) The total amount of deferred taxes, non-ad valorem assessments, and interest plus the total amount of all other unsatisfied liens on the property exceeds 85 percent of the assessed value of the property; or

(b) The primary financing on the property is for an amount that exceeds 70 percent of the assessed value of the property.

(4) The amount of taxes, non-ad valorem assessments, and interest deferred shall accrue interest at a rate equal to the semiannually compounded rate of one-half of 1 percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments as of the end of the quarter preceding the date of the sale of the deferred payment tax certificates; however, the interest rate may not exceed 9.5 percent.

(5) The taxes, non-ad valorem assessments, and interest deferred pursuant to this section constitute a prior lien and shall attach as of the date and in the same manner and be collected as other liens for taxes, as provided for under this chapter, but such deferred taxes, non-ad valorem assessments, and interest shall only be due, payable, and delinquent as provided in ss. 197.303-197.3047.

197.3041 Tax deferral for recreational and commercial working waterfronts; application.--

(1) The application for deferral must be made annually upon a form prescribed by the department and furnished by the county tax collector. The application form must be signed upon oath by the applicant before an officer authorized by the state to administer oaths. The tax collector may require the applicant to submit any other evidence and documentation as deemed necessary by the tax collector in considering the application. The application form must provide notice to the applicant of the manner in which interest is computed. Each application form must contain an explanation of the conditions to be met for approval and the conditions under which deferred taxes and interest become due, payable, and delinquent. Each application must clearly state that all deferrals pursuant to ss. 197.303-197.3047 constitute a lien on the applicant's property.

(2)(a) The tax collector shall consider and render his or her findings, determinations, and decision on each annual application for a tax deferral for recreational and commercial working waterfronts within 45 days after the date the

application is filed. The tax collector shall exercise reasonable discretion based upon applicable information available under this section. The determinations and findings of the tax collector as provided for in this paragraph are not quasi judicial and are subject exclusively to review by the value adjustment board as provided by this section. A tax collector who finds that the applicant is entitled to the tax deferral shall approve the application and file the application in the permanent records. A tax collector who finds that the applicant is not entitled to the deferral shall send a notice of disapproval within 45 days after the date the application is filed, giving reasons for the disapproval to the applicant. The notice must be sent by personal delivery or registered mail to the mailing address given by the applicant in the manner in which the original notice thereof was served upon the applicant and must be filed among the permanent records of the tax collector's office. The original notice of disapproval sent to the applicant shall advise the applicant of the right to appeal the decision of the tax collector to the value adjustment board and inform the applicant of the procedure for filing such an appeal.

(b) An appeal of the decision of the tax collector to the value adjustment board must be in writing on a form prescribed by the department and furnished by the tax collector. The appeal must be filed with the value adjustment board within 20 days after the applicant's receipt of the notice of disapproval, and the board must approve or disapprove the appeal within 30 days after receipt. The value adjustment board shall review the application and the evidence presented to the tax collector upon which the applicant based his or her claim for tax deferral and, at the election of the applicant, shall hear the applicant in person, or by agent on the applicant's behalf, on his or her right to the tax deferral. The value adjustment board shall reverse the decision of the tax collector and grant a tax deferral to the applicant if, in its judgment, the applicant is entitled to the tax deferral or shall affirm the decision of the tax collector. Action by the value adjustment board is final unless the applicant or tax collector or other lienholder, within 15 days after the date of disapproval of the application by the board, files in the circuit court of the county in which the property is located a de novo proceeding for a declaratory judgment or other appropriate proceeding.

(3) Each application must contain a list of, and the current value of, all outstanding liens on the applicant's property.

(4) For approved applications, the date of receipt by the tax collector of the application for tax deferral shall be used in calculating taxes due and payable net of discounts for early payment.

(5) If such proof has not been furnished with a prior application, each applicant shall furnish proof of fire and extended coverage insurance in an amount that is in excess of the sum of all outstanding liens and deferred taxes and interest with a loss payable clause to the county tax collector.

(6) The tax collector shall notify the property appraiser 666 in writing of those parcels for which taxes have been deferred.

(7) The property appraiser shall promptly notify the tax collector of changes in ownership or use of properties that have been granted a tax deferral.

197.3042 Deferred payment tax certificates.--

(1) The tax collector shall notify each local governing body of the amount of taxes and non-ad valorem assessments

deferred which would otherwise have been collected for such governing body. The county shall then, at the time of the tax certificate sale held pursuant to s. 197.432, strike each certificate off to the county. Certificates issued pursuant to this section are exempt from the public sale of tax certificates held pursuant to s. 197.432.

(2) The certificates so held by the county shall bear interest at a rate equal to the semiannually compounded rate of 0.5 percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments as of the end of the quarter preceding the date of the sale of the deferred payment tax certificates; however, the interest rate may not exceed 9.5 percent.

197.3043 Change in use or ownership of property.--

(1) If there is a change in use or ownership of the tax-deferred property such that the owner is no longer entitled to claim the property as a recreational or commercial working waterfront facility, or there is a change in the legal or beneficial ownership of the property, or the owner fails to maintain the required fire and extended insurance coverage, the total amount of deferred taxes and interest for all previous years becomes due and payable November 1 of the year in which the change in use or ownership occurs or on the date failure to maintain insurance occurs, and is delinquent on April 1 of the year following the year in which the change in use or ownership or failure to maintain insurance occurs.

(2) Whenever the property appraiser discovers that there has been a change in the use or ownership of the property that has been granted a tax deferral, the property appraiser shall notify the tax collector in writing of the date such change occurs, and the tax collector shall collect any taxes and interest due or delinquent.

(3) During any year in which the total amount of deferred taxes, interest, and all other unsatisfied liens on the property exceeds 85 percent of the assessed value of the property, the tax collector shall immediately notify the owner of the property on which taxes and interest have been deferred that the portion of taxes and interest which exceeds 85 percent of the assessed value of the property is due and payable within 30 days after receipt of the notice. Failure to pay the amount due shall cause the total amount of deferred taxes and interest to become delinquent.

(4) If deferred taxes become delinquent under this 716 chapter, on or before June 1 following the date the taxes become delinquent, the tax collector shall sell a tax certificate for the delinquent taxes and interest in the manner provided by s. 197.432.

197.3044 Prepayment of deferred taxes.--

(1) All or part of the deferred taxes and accrued interest may at any time be paid to the tax collector by:

(a) The owner of the property.

(b) The next of kin of the owner, heir of the owner, child of the owner, or any person having or claiming a legal or equitable interest in the property, if no objection is made by the owner within 30 days after the tax collector notifies the owner of the fact that such payment has been tendered.

(2) Any partial payment made pursuant to this section shall be applied first to accrued interest.

197.3045 Distribution of payments.--When any deferred taxes or interest is collected, the tax collector shall maintain a record of the payment, setting forth a description of the property and the amount of taxes or interest collected for the property. The tax collector shall distribute payments received in accordance with the procedures for distributing ad valorem taxes or redemption moneys as prescribed in this chapter.

197.3046 Construction.--Sections 197.303-197.3047 do not prevent the collection of personal property taxes that become a lien against tax-deferred property, defer payment of special assessments to benefited property other than those specifically allowed to be deferred, or affect any provision of any mortgage or other instrument relating to property requiring a person to pay ad valorem taxes or non-ad valorem assessments.

197.3047 Penalties.--

(1) The following penalties shall be imposed on any person who willfully files information required under ss. 197.303-197.3047 which is incorrect:

(a) The person shall pay the total amount of taxes and interest deferred, which amount shall immediately become due;

(b) The person shall be disqualified from filing a tax deferral application for the next 3 years; and

(c) The person shall pay a penalty of 25 percent of the total amount of taxes and interest deferred.

(2) Any person against whom the penalties prescribed in this section have been imposed may appeal the penalties imposed to the value adjustment board within 30 days after the penalties are imposed.

This information is provided by the Department of Revenue to advise interested parties of legislative action taken during the 2005 session. If you have questions with regard to this matter and wish to discuss them, you may call Jane Marshall at 850-414-6104.