

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

Case No. 18-024961 CA01 db

JESUS PACHECO; JOSE PACHECO
and ZUNILDA PACHECO,
Plaintiffs,

v.

PEDRO J. GARCIA, as Property Appraiser
of Miami-Dade County, Florida;
MARCUS SAIZ DE LA MORA, as Tax
Collector of MIAMI-DADE COUNTY, Florida;
and LEON M. BIEGALSKI, as Executive
Director of the State of Florida Department
of Revenue,
Defendants.

COMPLAINT

Plaintiff-Taxpayers JESUS PACHECO, JOSE PACHECO and ZUNILDA
PACHECO file this Complaint against the above-named Defendants and allege as
follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. This is an action to contest property tax assessments and property tax
liens imposed against certain real property situated at 1436 Michigan Avenue,
Miami Beach, Florida, identified by property tax folio no. 02-4203-009-7010

("Subject Property").

2. At all times material to this Complaint, JESUS PACHECO, JOSE PACHECO and ZUNILDA PACHECO were the owners of and taxpayers with respect to the Subject Property. At all times material to this Complaint, the Subject Property was continuously and without interruption the permanent residence of JESUS PACHECO where he had his true, fixed and permanent home and principal establishment to which, whenever absent, he had the intention of returning.

3. This action is timely filed and all conditions precedent to the bringing of this action have been met or waived. Receipt for taxes paid on the Subject Property for 2017 representing at least the amount the taxpayers admit in good faith to be due and owing is attached to this Complaint as Exhibit A.

4. This Court has jurisdiction pursuant to section 194.171(1), Florida Statutes, which provides that the circuit courts have original jurisdiction at law of all matters relating to property taxation.

5. Defendant PEDRO J. GARCIA is the duly-elected Property Appraiser of Miami-Dade County, Florida, and is a proper defendant in this action under section 194.181(2), Florida Statutes.

6. Defendant MARCUS SAIZ DE LA MORA is the Tax Collector of Miami-Dade County, Florida, and is a proper defendant in this action under section 194.181(3), Florida Statutes, because this suit includes the collection of ad valorem

property taxes and property tax liens on the Subject Property.

7. Defendant LEON M. BIEGALSKI is the Executive Director of the State of Florida Department of Revenue and is the official of the state government responsible for overall supervision of the assessment and collection of ad valorem taxes throughout the State of Florida. §§ 195.027, 195.0012, 213.05, Florida Statutes. The Defendant LEON M. BIEGALSKI is joined herein pursuant to section 194.181(5), Florida Statutes, because certain ad valorem property tax assessments and liens are contested on the grounds that such assessments and liens are contrary to the laws and Constitution of the State of Florida and Department of Revenue rules.

COUNT I – 2016 HOMESTEAD EXEMPTION

8. Plaintiff-Taxpayers adopt paragraphs 1-7 of this Complaint as though set forth verbatim.

9. The Property Appraiser notified JESUS PACHECO by letter dated July 14, 2016, that renewal of his homestead exemption for year 2016 was “disapproved for the following reason(s)” :

“Owner not eligible for exemption.”

The “Notice of Disapproval of Application for Property Tax Exemption” is attached hereto and incorporated herein by reference as Exhibit B.

10. JESUS PACHECO filed a petition to the Miami-Dade County Value Adjustment Board (“VAB”) seeking to reverse denial by the Property Appraiser of

renewal of 2016 homestead exemption.

11. In support of the VAB petition, JESUS PACHECO asserted that the Property Appraiser's Notice of Disapproval dated July 14, 2016, was both untimely and substantively invalid pursuant to section 196.193(5)(a) and (b), Florida Statutes, which provide as follows:

"(5)(a) If the property appraiser determines that any property claimed as wholly or partially exempt under this section is not entitled to any exemption or is entitled to an exemption to an extent other than that requested in the application, he or she shall notify the person or organization filing the application on such property of that determination in writing on or before July 1 of the year for which the application was filed.

(b) *The notification must state in clear and unambiguous language the specific requirements of the state statutes which the property appraiser relied upon to deny the applicant the exemption with respect to the subject property. The notification must be drafted in such a way that a reasonable person can understand specific attributes of the applicant or the applicant's use of the subject property which formed the basis for the denial. The notice must also include the specific facts the property appraiser used to determine that the applicant failed to meet the statutory requirements. If a property appraiser fails to provide a notice that complies with this subsection, any denial of an exemption or an attempted denial of an exemption is invalid.* (Emphasis added.)

12. After a hearing on the petition, the VAB attorney Special Magistrate recommended that the Property Appraiser's exemption denial be overturned and that renewal of homestead exemption for 2016 be granted. The attorney Special Magistrate summarized the Taxpayer's evidence as follows:

"TP [TAXPAYER] PRESENTED EVIDENCE AT HEARING THAT NOTICE OF DENIAL OF HEX [HOMESTEAD EXEMPTION] BY

PA [PROPERTY APPRAISER] WAS UNTIMELY, LATE[,] INVALID AND VOID AS PER FLORIDA STATUTES."

The Special Magistrate based her recommendation to grant 2016 homestead exemption on the following findings:

"TP ESTABLISHED AT HEARING THAT PA'S DISAP[P]ROVAL OF TP'S HEX EXEMPTION DID NOT MEET THE STATUTORY REQUIREMENTS OF FLORIDA STAT 196.193 OF NOTICE AS IT WAS DATED AFTER 7/1/16 AND THE REASON FOR THE DENIAL IS EXTREM[E]LY VAGUE AND INSUFFICIENTLY COMPLETE[.] STATUTE REQUIRES TIMELY DENIAL PLEAD WITH SPECIFICITY [.]"

A conformed copy of the "Special Magistrate's Findings of Fact/Conclusions of Law and Recommendations to the Miami-Dade County Value Adjustment Board Real Property Legal Issues for Tax Year 2016" for VAB Agenda Item No. 16-33865 entered March 28, 2017, is attached hereto and incorporated herein by reference as Exhibit C.

13. On May 31, 2017, the VAB adopted the Special Magistrate's Findings of Fact, Conclusions of Law and Recommendations to the VAB and certified the results. Exhibit D. On June 22, 2017, the Miami-Dade County Property Appraiser recertified the real property assessment roll to include the VAB results. Exhibit E.

14. Based on the results of the VAB proceedings as certified by the Property Appraiser, the Tax Collector issued a corrected tax bill to the Taxpayers with respect to the Subject Property correcting the tax bill based on the renewal for 2016 of the pre-existing homestead exemption, with the following value:

Assessed Value \$922,506.

Exhibit F.

15. Upon review of the results of all VAB hearings for tax year 2016, the Property Appraiser disagreed with decisions of the VAB for 53 taxpayers within the scope of section 194.036(1)(a), Florida Statutes, which provides as follows:

Title XIV
TAXATION AND
FINANCE

Chapter 194
ADMINISTRATIVE AND JUDICIAL
REVIEW OF PROPERTY TAXES

194.036 Appeals.—Appeals of the decisions of the [value adjustment] board shall be as follows:

(1) If the property appraiser disagrees with the decision of the [value adjustment] board, he or she may appeal the decision to the circuit court if one or more of the following criteria are met:

(a) The property appraiser determines and affirmatively asserts in any legal proceeding that there is a specific constitutional or statutory violation, or a specific violation of administrative rules, in the decision of the [value adjustment] board.... (Emphasis added.)

16. As prescribed by section 193.122(2), Florida Statutes, the Property Appraiser filed suit in this Court with respect to each of the 53 such taxpayers. Composite Exhibit G. Pursuant to sections 90.202 and 90.203, Florida Statutes, this Court is authorized to and is hereby requested to take judicial notice of the 53 actions filed by the Property Appraiser and listed in Composite Exhibit G.

17. Conspicuous by its absence from the list of civil actions filed by the Property Appraiser to appeal legal or value petitions granted by the 2016 VAB is

any suit filed against the petitioning Taxpayers herein with respect to the Subject Property to reverse the 2016 homestead exemption renewal granted by the VAB, as the Legislature authorized the Property Appraiser to do, in section 194.036(1)(a) & (b), Florida Statutes, and as he did with respect to the 53 matters listed in Composite Exhibit G.

18. Instead of filing suit under section 194.036 to reverse the 2016 VAB grant of homestead exemption to the Subject Property, in the 30-day window between May 31 and June 30, 2017, the Property Appraiser filed on July 6, 2017 a homestead exemption clawback lien, purportedly pursuant to sections 196.161(1)(b) and 196.011(9)(a), Florida Statutes, after 30-day notice to the Taxpayers. Exhibit H.

19. For tax year 2017, the Property Appraiser initially issued a notice of disapproval of homestead exemption with respect to the Subject Property, but after review of the Taxpayers' VAB petition, staff-granted (i.e., stipulated to) the 2017 homestead exemption, at the same time providing notice to the Taxpayers that the VAB did not provide a forum for litigation of homestead exemption lien. Composite Exhibit I.

20. As a matter of law, the only recourse available to a Property Appraiser seeking to reverse a grant of homestead exemption by the Value Adjustment Board is the filing of suit against the taxpayer pursuant to section 194.036(1)(a), Florida

Statutes. Reversal of a VAB grant of homestead exemption cannot be lawfully effectuated through the filing of a homestead exemption clawback lien by the Property Appraiser. Consequently, the filing of a homestead exemption clawback lien in lieu of an action filed by the Property Appraiser in accordance with section 194.036(1)(a), Florida Statutes, is a nullity.

WHEREFORE, the Plaintiff-Taxpayers pray the Court to enter judgment in their favor and against the Defendant Property Appraiser, nullifying the Property Appraiser's homestead exemption clawback lien for 2016; directing the Property Appraiser to record forthwith in the public records of Miami-Dade County a vacatur of such lien; and imposing sanctions against the Property Appraiser, including costs and attorney's fees, and providing such other and further relief to the Plaintiff-Taxpayers as may be just and proper.

COUNT II – 2017 HOMESTEAD EXEMPTION “CAP”

21. Plaintiff-Taxpayers adopt paragraphs 1-7 of this Complaint as though set forth verbatim.

22. The 2016 homestead exemption was granted to the Subject Property by the VAB. Exhibits C & D. The Property Appraiser recertified the real property assessment roll to include the VAB results, Exhibit E, with the assessment of the Subject Property at a “capped” assessed value of \$922,506. Exhibit F.

23. The Property Appraiser did not file suit to contest the VAB grant of

renewed homestead exemption for 2016 or the “capped” value for 2016 of \$922,506.

Exhibit G.

24. The Property Appraiser granted renewed homestead exemption to the Subject Property for 2017. Composite Exhibit I.

25. The cost of living increase for 2017 for homestead exempt properties was 2.1%. Exhibit J. Therefore, the “capped” value of the Subject Property for 2017 is \$941,878. Section 193.155(1)(a) & (b), Florida Statutes.

26. The Property Appraiser purported to remove the “cap” on the Subject Property for 2017 by filing a homestead exemption clawback lien for tax year 2016, after 30 days’ notice, on July 7, 2017. Exhibit H. The homestead exemption clawback lien could not lawfully remove the “capped” value of \$922,506 for 2016, nor invalidate the renewed “cap” for 2017, because only the Court has authority to adjudicate and reverse a homestead exemption granted by the Value Adjustment Board, and then only through suit filed by the Property Appraiser within 30 days in accordance with sections 194.036(1)(a) and 193.122, Florida Statutes.

27. Because the Property Appraiser failed to file suit pursuant to sections 194.036(1)(a) and 193.122, Florida Statutes, to reverse the VAB grant of 2016 homestead exemption and “capped” value of \$922,506 for 2016, the Property Appraiser waived the right to contest the “capped” value of \$941,878 on the Subject Property for 2017 when he renewed the homestead exemption for 2017. Composite

Exhibit I.

28. Notwithstanding waiver of his statutory right to file suit under section 194.036(1)(a) to seek judicial review of the 2016 VAB renewal of homestead exemption and “capped” value of \$922,506, the Property Appraiser contrived to contest the “capped” value for 2017. This he did by relying not on any court decree reversing the 2016 grant of homestead exemption by the VAB--which would have been impossible, since the Property Appraiser deliberately failed to file any suit contesting the 2016 VAB grant of homestead exemption--but by filing the homestead exemption clawback lien for 2016 on July 7, 2017, after the May 31, 2017 VAB adoption of the Special Magistrate’s recommendations to grant 2016 homestead exemption and “capped” value of \$922,506, and after the Property Appraiser’s June 22, 2017 recertification of the results of the VAB determination decisions for the 2016 tax year.

29. Over the Taxpayers’ vigorous and repeated objections, the Property Appraiser sought and obtained from the 2017 VAB removal of the \$941,878 “capped” value for 2017.

30. For tax year 2017, the Property Appraiser initially issued a notice of disapproval of homestead exemption with respect to the Subject Property, but after review of the Taxpayer’s VAB petition, staff-granted (i.e., stipulated to) the 2017 homestead exemption, at the same time providing notice to the Taxpayers that the

VAB did not provide a forum for litigation of homestead exemption lien. Composite Exhibit I.

31. Provided by the Property Appraiser to the Taxpayer along with notice of staff grant of homestead exemption for 2017 were the following two attachments:

A. State of Florida Department of Revenue Property Tax Oversight Advisement Letter OPN 94-0006 (March 2, 1994). The DOR advisement letter poses the query

1) whether you may afford taxpayers the remedy of appeal to a [VAB] special master where the taxpayer's property becomes subject to lien due to improper receipt of homestead exemption.

and answers it in the negative.

B. Letter from Miami-Dade County Clerk of the Courts and VAB dated February 26, 2003. The 2003 letter from Harvey Ruvin, Clerk of the Courts, confirms and reiterates that Legal Counsel for the Miami-Dade County VAB "has advised that the VAB has no jurisdiction over cases involving the filing of a tax lien by the Property Appraiser under Fla. Stat. § 1961.161(b) *** and that the VAB is without jurisdiction to consider these cases." Composite Exhibit I (emphasis included in attachments sent by Property Appraiser to Taxpayers).

32. Notwithstanding the clarity of the two advisories prohibiting VAB

jurisdiction over Property Appraiser liens--one from the DOR and the other from the VAB itself--a Special Magistrate of the 2017 VAB proceeded explicitly to adjudicate and enforce the Property Appraiser's 2016 homestead exemption lien against the Subject Property, making the following express

**"SPECIAL MAGISTRATE'S FINDINGS OF FACT/
CONCLUSIONS OF LAW AND RECOMMENDATIONS TO
THE MIAMI DADE COUNTY VALUE ADJUSTMENT BOARD
REAL PROPERTY LEGAL ISSUES FOR TAX YEAR 2017**

17-00898

Contested: HEX [HOMESTEAD EXEMPTION] & CAP VALUE

*** * ***

**Summary: By PA: TAX LIENS FOR IMPROPER HEX ON THE
PROPERTY, TESTIMONY & LEGAL
ARGUMENTS UNDER 193.155 & 196.011
NOT NOTIFYING PA OF CHANGE IN USE".**

Exhibit J (emphasis added).

33. Under the 1994 DOR Advisement Letter and the confirming advice of VAB Legal Counsel of 2003, the 2017 VAB lacked jurisdiction to adjudicate or enforce the Property Appraiser's 2016 homestead exemption clawback lien. The Special Magistrate nonetheless assume jurisdiction and explicitly did adjudicate and enforce the homestead exemption clawback lien. Prior to the scheduled May 23, 2018 Value Adjustment Board certification meeting, the Plaintiff-Taxpayers therefore petitioned for issuance of a writ of prohibition to prevent the VAB from acting in excess of its jurisdiction by adopting the Special Magistrate's recommendation to enforce the Property Appraiser's homestead exemption

clawback lien for 2016 by removing the homestead exemption “cap” for tax year 2017.

34. The Plaintiff-Taxpayers’ petition for writ of prohibition sought to prevent the VAB from exercising jurisdiction it did not have to adjudicate and enforce the Property Appraiser’s unlawful 2016 homestead exemption clawback lien by removing the homestead exemption “cap” for 2017. A conformed copy of the final order denying petition for writ of prohibition is attached hereto as Exhibit K.

35. The Property Appraiser lacked jurisdiction to “adjudicate” through lien filed on July 7, 2017 the reversal of the 2016 VAB grant of renewal of homestead exemption to the Subject Property and “capped” value of \$922,506. The 2017 VAB lacked jurisdiction to enforce the Property Appraiser’s lien filed July 7, 2017. Consequently, removal of the “capped” value of \$941,878 for 2017 was unauthorized, unlawful, and void.

WHEREFORE, the Plaintiff-Taxpayers pray the Court to enter judgment in their favor, invalidating as void the Property Appraiser’s homestead exemption clawback lien for 2016 against the Subject Property filed July 7, 2017; requiring the Property Appraiser to file forthwith in the public records of Miami-Dade County a vacatur of such lien; reinstating the correct “capped” assessed value for 2017 of \$941,878; requiring the Tax Collector to correct his records accordingly for 2017; declaring the taxes paid and evidenced in Exhibit A as constituting 2017 taxes on

the Subject Property paid in full; correcting the 2018 and subsequent years' taxes accordingly, as required by *Nikolits v. Haney*, 221 So. 3d 725 (Fla. 4th DCA 2017); and providing Plaintiff-Taxpayers such additional relief as may be just and proper, including costs and fees and such sanctions as may be appropriate to address the Property Appraiser's abuse of process and contumacious disregard for the processes prescribed for a County Property Appraiser aggrieved by VAB grant of homestead exemption and preservation of a homestead "cap" pursuant to section 193.155(1)(a) & (b), Florida Statutes, and article VII, section (4)(d)(1)a. & b., Florida Constitution.

COUNT III – HOMESTEAD EXEMPTION
CLAWBACK LIEN 2011-2015

36. Plaintiff-Taxpayers adopt paragraphs 1-7 of this Complaint as though set forth verbatim.

37. On June 30, 2016, the Defendant Property Appraiser issued a 30-day Notice of Intent to Lien "[i]n accordance with section 196.161, Florida Statutes" in the amount of "\$21,980.02."

38. Section 196.161(1)(b) referenced by the Property Appraiser provides as follows:

196.161 Homestead exemptions; lien imposed on property of person claiming exemption although not a permanent resident.—

* * *

(b) In addition, upon determination by the property appraiser that for any year or years within the prior 10 years a person who was not entitled to a homestead

exemption was granted a homestead exemption from ad valorem taxes, it shall be the duty of the property appraiser making such determination to serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property shall be identified in the notice of tax lien. Such property which is situated in this state shall be subject to the taxes exempted thereby, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. However, if a homestead exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption shall not be assessed penalty and interest. Before any such lien may be filed, the owner so notified must be given 30 days to pay the taxes, penalties, and interest. (Emphasis added.)

39. The claim by the Property Appraiser that the Subject Property ceased to be the homestead permanent residence of JESUS PACHECO between 2011 and 2015 is false. At no time between 2011 and 2015 (or 2018) did JESUS PACHECO cease to be a permanent resident at the Subject Property or otherwise become disentitled to homestead exemption as required by section 196.161(1) & (b)--the only statute cited by the Property Appraiser in the required 30-day notice, dated June 30, 2016. Wholly absent from the records of the Property Appraiser's Office which precede filing of the lien is any evidence whatsoever that JESUS PACHECO was not a continuous permanent resident of the Subject Property between January 1, 2011, and January 1, 2015, inclusive.

40. Neither the Property Appraiser's Notice of Intent to Lien nor underlying investigative SUMMARY REPORT factually or legally supports the

lien. The SUMMARY REPORT begins with

"Summary

- 06-11-16 – parcel assigned to determine the possibility of a lien, due to a multiple exemption with folio 02-4203-009-7020."

and ends with:

"Conclusion: lien homestead exemption tax year(s) 2011-2015 with penalties and interest, 2016 will be denied."

Exhibit L ("SUMMARY REPORT").

41. The Property Appraiser's investigative findings are limited to the following:

- "06/24/2016- research began on the multiple and produced lien case#13199 for folio 02-4203-009-7020, 2006-2015, due to marriage in 2010-003115, with a move out date of 2010 to address 1872 Galleon St #4 North Bay Village FL for JESUS PACHECO and spouse GWENDY CAROLINA ANDRADE,(an exemption is not noted),2. A 2004 homestead application to the above address
2. A 2004 homestead application to the above address and rental/ and rental, as a result, a lien will be placed on the above parcel for homestead exemption tax years 2011-2015 with penalties and interest due to marriage in 2010 as already noted."

Exhibit L.

42. Thus, the SUMMARY REPORT reveals that no inquiry whatsoever was undertaken by the Property Appraiser whether the Subject Property continued to be the permanent residence of JESUS PACHECO after his marriage in 2010. The above-quoted findings constitute at most an indication that the Property Appraiser

should have inquired and investigated whether 2011-2015 and 2016 homestead exemption status of the Subject Property should be reviewed in order to ascertain whether it continued to be the permanent residence of JESUS PACHECO after his marriage in 2010. The above-quoted findings not only do not support retrospective revocation and clawback lien under the statute relied upon, but also affirmatively demonstrate that the Property Appraiser identified no evidentiary or factual basis of any sort for a finding that the Subject Property ceased to be the permanent residence of JESUS PACHECO. Therefore, the Property Appraiser's records provide no legal basis for removing JOSE PACHECO's homestead exemption on the Subject Property for 2011-2015.

43. The Property Appraiser's own records demonstrate the absence of any inquiry whatsoever whether JESUS PACHECO moved from the Subject Property at any time between January 1, 2011 and 2015. Section 192.042(1), Florida Statutes. The Property Appraiser's records contain not a scintilla of evidence that the Subject Property ceased to be JESUS PACHECO's permanent residence between 2011 and 2015. The homestead exemption revocation clawback lien is erroneous and unauthorized by sections 196.161(1)(b), Florida Statutes.

WHEREFORE, the Plaintiff-Taxpayers pray the Court to enter judgment in their favor, invalidating the Property Appraiser's homestead exemption clawback lien for 2011-2015; requiring the Property Appraiser to file forthwith in the public

records of Miami-Dade County a vacatur of such lien; requiring the Tax Collector to correct his records to show that no liens, penalty, nor interest are due on the Subject Property for 2011-2015; requiring the State of Florida Department of Revenue to recommend to the Auditor General of the State of Florida audit of the \$75,000,000-plus in retrospective exemption clawback liens imposed by the Miami-Dade County Property Appraiser for 2011-2015, inclusive, and to monitor the imposition of such liens in the future in order to limit such liens to those supported by law and fact; and imposing sanctions against the Property Appraiser, including the award of costs and fees of this action in favor of the Plaintiff-Taxpayers, along with such other and further relief as the Court may deem just and proper.

COUNT IV
FLORIDA'S RETROACTIVE AD VALOREM TAX LIEN STATUTES
ARE FACIALLY UNCONSTITUTIONAL

44. Plaintiff-Taxpayers adopt paragraphs 1 – 7 of this Complaint as though set forth verbatim.

45. In pertinent part, section 196.011(9)(a), Florida Statutes, provides as follows:

The owner of any property granted an exemption who is not required to file an annual application or statement shall notify the property appraiser promptly whenever the use of the property or the status or condition of the owner changes so as to change the exempt status of the property. If any property owner fails to so notify the property appraiser and the property appraiser determines that for any year within the prior

10 years the owner was not entitled to receive such exemption, the owner of the property is subject to the taxes exempted as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted. Except for homestead exemptions controlled by s. 196.161, the property appraiser making such determination shall record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien. Such property is subject to the payment of all taxes and penalties. Such lien when filed shall attach to any property, identified in the notice of tax lien, owned by the person who illegally or improperly received the exemption. If such person no longer owns property in that county but owns property in some other county or counties in the state, the property appraiser shall record a notice of tax lien in such other county or counties, identifying the property owned by such person or entity in such county or counties, and it shall become a lien against such property in such county or counties.

46. Section 196.161(1)(b), Florida Statutes, provides as follows:

196.161 Homestead exemptions; lien imposed on property of person claiming exemption although not a permanent resident.—

*

*

*

(b) In addition, upon determination by the property appraiser that for any year or years within the prior 10 years a person who was not entitled to a homestead exemption was granted a homestead exemption from ad valorem taxes, it shall be the duty of the property appraiser making such determination to serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property shall be identified in the notice of tax lien. Such property which is situated in this state shall be subject to the taxes exempted thereby, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. However, if a homestead exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person improperly receiving the exemption shall not be assessed penalty and interest. Before any such lien may be filed, the owner so notified must be given 30 days to pay the taxes, penalties, and interest.

47. The right to a hearing prior to final imposition of any ad valorem tax is a property right under Florida law. No opportunity is provided by either section 196.011(9)(a) or section 196.161(1)(b), Florida Statutes, to a taxpayer to be heard prior to imposition and recordation in the public records of the retroactive ad valorem tax lien, which includes back taxes, 50% per annum penalty, and 15% per annum interest, under whether the lien is imposed under section 196.011(9)(a) or 196.161(1)(b), Florida Statutes.

48. The retroactive ad valorem tax lien provisions of sections 196.011(9)(a) and 196.161(1)(b), Florida Statutes, therefore violate one or more following constitutional guarantees:

(a) article I, section 9, Florida Constitution, due process clause, which provides as follows:

“Due process.—No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.”

(b) amendment XIV, section 1, United States Constitution, due process clause, which provides in pertinent part as follows:

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process

of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

49. 42 U.S.C. section 1983 provides as follows:

“Every person who, under color of any statute...of any State...subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....”

50. 42 U.S.C. section 1988(b) provides as follows:

“Attorney’s fees[:] In any action or proceeding to enforce a provision of sections 1981...1983, 1985, and 1986 of this title...the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs....”

WHEREFORE, the Plaintiff-Taxpayers pray the Court to:

A. issue a declaration that the sections 196.011(9)(a) and 196.161(1)(b), Florida Statutes, retroactive ad valorem tax lien statutes are unconstitutional, and prohibit their further enforcement; and

B. grant the Plaintiff-Taxpayers their costs pursuant to section 194.192, Florida Statutes, and attorney’s fees and costs pursuant to 42 U.S.C. section 1988, along with such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff-Taxpayers demand a jury trial for all matters herein triable as of right before a jury. *Department of Revenue v. Printing House*, 644 So. 2d 498, 501 (Fla. 1994).

DATED: JULY 24th, 2018

Respectfully submitted,

DANIEL A. WEISS, P.A.

Fla. Bar No. 326119

Attorney for Plaintiff-Taxpayers

Museum Tower, Penthouse

150 W. Flagler Street

Miami, Florida 33130

Telephone: 305-928-2422

Facsimile: 305-517-1396

dweiss@proptaxadjust.com

jgarcia@proptaxadjust.com

slenis@proptaxadjust.com

/s/ Daniel A. Weiss

By: _____

Daniel A. Weiss, Esq.

Fla. Br No. 326119