

AGENDA
FLORIDA DEPARTMENT OF REVENUE

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MEMBERS

Governor Rick Scott
Attorney General Pam Bondi
Chief Financial Officer Jeff Atwater
Commissioner Adam H. Putnam

August 16, 2011

Contacts: Lisa Vickers, Executive Director
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9:00 A.M.
LL-03, The Capitol
Tallahassee, Florida

ITEM	SUBJECT	RECOMMENDATION
1.	Respectfully request approval of the minutes of June 16, 2011. (ATTACHMENT 1)	RECOMMEND APPROVAL
2.	Respectfully request adoption and approval to file and certify with the Secretary of State under Chapter 120, Florida Statutes, for the following rule: Value Adjustment board; Scheduling and Notice of Hearing. In response to a Joint Administrative Procedure Committee objection the Department proposes amendments to the rules procedures related to the rescheduling of Value Adjustment Board Hearings. The rule will provide that a reasonable time shall not exceed four (4) hours for a petitioner to wait under any circumstance before the petitioner may request to be heard immediately or rescheduled. [Rule 12D-9.019, F.A.C.] (ATTACHMENT 2)	RECOMMEND APPROVAL

THE CABINET
STATE OF FLORIDA

Representing:

DIVISION OF BOND FINANCE
FINANCIAL SERVICES COMMISSION, FINANCIAL REGULATION
FINANCIAL SERVICES COMMISSION, INSURANCE REGULATION
DEPARTMENT OF REVENUE
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
FLORIDA LAND AND WATER ADJUDICATORY COMMISSION
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

The above agencies came to be heard before
THE FLORIDA CABINET, the Honorable Governor Scott
presiding, in the Cabinet Meeting Room, LL-03, The
Capitol, Tallahassee, Florida, on Thursday, June 16,
2011, commencing at approximately 9:08 a.m.

Reported by:

MARY ALLEN NEEL
Registered Professional Reporter
Florida Professional Reporter
Notary Public

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APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

ADAM PUTNAM
Commissioner of Agriculture

* * *

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(Presented by BELINDA MILLER)

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(Presented by LISA VICKERS)

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1 GOVERNOR SCOTT: Okay. The next agenda is the
2 Department of Revenue presented by Lisa Vickers.
3 Good morning.

4 MS. VICKERS: Good morning. Item 1, we
5 request approval of the minutes from the April 19th
6 and May 3rd meetings.

7 GOVERNOR SCOTT: Is there a motion on Item 1?

8 ATTORNEY GENERAL BONDI: Move to approve.

9 GOVERNOR SCOTT: Is there a second?

10 CFO ATWATER: Second.

11 GOVERNOR SCOTT: Moved and seconded. Show
12 Item 1 approved without objection.

13 MS. VICKERS: Item 2, we request approval and
14 authority to publish Rule 12E-1.0051. This rule
15 relates to undistributable collections for child
16 support and provides the method by which the
17 Department will determine when funds cannot be
18 distributed and are required to become program
19 income.

20 GOVERNOR SCOTT: Are there any questions?

21 All right. Is there a motion on Item 2?

22 ATTORNEY GENERAL BONDI: Move to approve.

23 GOVERNOR SCOTT: Is there a second?

24 CFO ATWATER: Second.

25 GOVERNOR SCOTT: Moved and seconded. Show

1 Item 2 approved without objection.

2 MS. VICKERS: Item 3, we request approval of
3 the following rules for final adoption: Rule
4 12B-5.130 and 12B-5.150 related to refunds of tax
5 paid on fuel used for pumping off cargo; Rule
6 12A-1.018 and Rule 12A-1.074 related to trade-ins
7 when price is reduced as a result of trade-in of
8 used property; and Rule 12C-1.013 related to
9 corporate income tax, removing an obsolete example
10 referencing the Michigan single business tax that
11 has been repealed.

12 GOVERNOR SCOTT: All right. Is there a motion
13 on Item 3?

14 ATTORNEY GENERAL BONDI: Move to approve.

15 GOVERNOR SCOTT: Is there a second?

16 CFO ATWATER: Second.

17 GOVERNOR SCOTT: Moved and seconded. Show
18 Item 3 approved without objection.

19 MS. VICKERS: Finally, Item 4, we request
20 approval for final adoption and approval of Rule
21 12A-1.061. This rule is related to timeshares and
22 provides for the tax treatment of timeshare
23 programs in the industry.

24 GOVERNOR SCOTT: Is there a motion on Item 4?

25 CFO ATWATER: So moved.

1 GOVERNOR SCOTT: Is there a second?

2 ATTORNEY GENERAL BONDI: Second.

3 GOVERNOR SCOTT: Moved and seconded. Show
4 item 4 approved without objection.

5 MS. VICKERS: Thank you.

6 GOVERNOR SCOTT: Thanks, Lisa.

7 ATTORNEY GENERAL BONDI: Governor, may I bring
8 up an issue?

9 GOVERNOR SCOTT: Sure.

10 ATTORNEY GENERAL BONDI: Thank you. I know
11 we've heard a lot lately about the issue of how to
12 impose taxes on the markup of hotel rooms sold by
13 Internet intermediaries. We know that some
14 legislative action did not pass last session.

15 Can you take a couple of moments as our
16 executive director to give us some history on this,
17 a very brief history?

18 MS. VICKERS: Certainly. The issue of tax on
19 what is known as travel intermediary sales of hotel
20 rooms has been around for a very long time. In
21 fact, I'm sure even Commissioner Putnam probably
22 recalls efforts at the federal level in Congress
23 with respect to taxation of those transactions.

24 The issue first arose back in about 2003, sort
25 of a burgeoning industry where hotel rooms were now

1 being offered through Internet sites. And the
2 issue is really whether tax is due on the markup of
3 the price of the hotel room when they're sold by an
4 online company.

5 Tax has been paid and collected since the
6 beginning of this industry on the sale of the hotel
7 room from the hotel to the online company. To give
8 you an example, a hotel room might be sold by a
9 local hotel to an online company for \$100. That
10 hotel room is resold to an ultimate customer for
11 \$130 by the online company. Tax has been paid to
12 the hotel and remitted to the State and the local
13 government on the \$100, but not on the \$30 markup.
14 In a county that might have a 12 percent tax
15 between the state transit rental tax and local
16 taxes, you're talking about \$3.60 on that
17 transaction that's not being remitted.

18 The Department, when we originally looked at
19 the issue, one of the things we recognized right
20 away is that the sales tax statute was written in
21 1949, and it really hasn't been updated to reflect
22 some of new ways of doing business and even some of
23 the new products.

24 I always tell the story about my daughters in
25 the back seat of the car arguing with each other,

1 and I turn to them and tell them they sound like a
2 broken record, and they ask me, "What's a record?"
3 You know, my kids have never bought music in a
4 tangible form, digital downloads. We tax CDs,
5 cassettes, you know, tapes. We don't tax digital
6 downloads.

7 The sales tax statute has not kept up with
8 some of the new forms of transactions, and this is
9 an area where that is an issue. The statutes were
10 written at a time when -- for example, references
11 in the statute refer to things like rooming houses.
12 You know, it hasn't been updated.

13 So the question is, is this new way of doing
14 business subject to tax under our existing statute?
15 And that has been debated a lot. Local governments
16 have been pretty strong coming out and taking the
17 position that they believe it is taxable under the
18 current statute.

19 And there's a little difference in the
20 language between the statute that the State
21 administers, Chapter 212, and local government
22 taxes under Chapter 125 on these same transactions,
23 under the tourist development tax and the
24 convention development tax. And there have been a
25 lot of lawsuits filed between local governments and

1 the online intermediaries trying to resolve those
2 issues that really have not made much progress.

3 The Legislature has had multiple opportunities
4 to look at this issue. I think there has been a
5 bill filed every year, with the exception of 2007,
6 on this issue, some years to clarify that it's
7 taxable, some years to clarify that it's not
8 taxable, but it has never been resolved. There has
9 never been legislation passed.

10 So the issue continues to hang out there. It
11 is not a Florida-specific issue. This is being
12 litigated all over the United States. And every
13 state's laws are a little different, so the
14 outcomes have been different in places where it has
15 been resolved, and those are very few. In most
16 places, it's still a pending issue like it is here
17 in Florida.

18 ATTORNEY GENERAL BONDI: And for my fellow
19 Cabinet members, back in '09, my predecessor filed
20 a lawsuit that was never served. It was filed, but
21 not served, under the Unfair and Deceptive Trade
22 Practices Act. And that's what I wanted to ask
23 you. In your opinion, are there other avenues that
24 would settle this quicker? Do you have an opinion
25 as to a quicker resolution and how we can handle

1 this?

2 MS. VICKERS: Well, as I mentioned, there are
3 about ten lawsuits that have been filed. You know,
4 I hear from time to time that the parties are
5 pushing those further.

6 As you mentioned, the previous administration
7 had filed a lawsuit under unfair trade practices.
8 That has been an issue that has been talked about
9 at some length. Originally the online companies,
10 the way they portray how much you book the room for
11 on the websites, they'll put the price, \$130, and
12 then they put taxes and fees, and they'll put a
13 dollar amount. And if you click on that, it gives
14 you an explanation that what that represents is
15 reimbursement for the taxes that they pay to the
16 hotels and additional charges, service charges that
17 they make. And so I think Attorney General
18 McCollum was very concerned about the visibility of
19 that and whether consumers knew what they were
20 paying.

21 But at the heart of all of this is the issue
22 of whether the transaction is taxable or not. The
23 Department has not taken a position on it, hopeful
24 that the Legislature would, you know, bring clarity
25 to the issue, because that's certainly the

1 quickest, fastest way to bring certainty to an
2 issue, is to make sure that the statute is very
3 clear for taxpayers, but that hasn't happened.

4 One of the options that we could pursue that
5 we haven't is for the Department to begin
6 rulemaking on the issue and try and, you know,
7 finally determine what we think the statute means
8 in terms of the transit rental tax for the state.
9 You know, I think people have gone back and forth.
10 I think people have spent a lot of time debating on
11 whether it should be taxable or not, and we really
12 haven't looked at the statute and said, "Okay.
13 This is the statute we've got. Does it apply or
14 not?" There of rules of statutory construction
15 when things are unclear. There's certainly the
16 fact that the later-written statutes, the local
17 government statutes, use language that's a little
18 stronger than the state statute uses in terms of
19 taxing it. So that is definitely an option that's
20 available. You know, we could go down the
21 rulemaking route.

22 ATTORNEY GENERAL BONDI: Would you prepare a
23 recommendation to us about rulemaking and provide
24 it to us next Cabinet meeting?

25 MS. VICKERS: I would be happy to.

1 ATTORNEY GENERAL BONDI: Thank you.

2 GOVERNOR SCOTT: Lisa, would you -- what we
3 would do if we did a rule, you're not going to
4 impact what the local counties are doing; is that
5 right?

6 MS. VICKERS: We would. If we --

7 GOVERNOR SCOTT: How would you interpret --
8 how would you deal with their statute then?

9 MS. VICKERS: The way the two chapters work
10 is, they basically use the same transaction as a
11 tax base, the sale of a transient accommodation,
12 and they impose taxes at two levels, the state tax
13 under Chapter 212, the transient rental tax,
14 tourist development tax, convention development
15 tax, and the local taxes under Chapter 125.

16 When the State has not taken a position on an
17 issue, the local governments are free to take a
18 position on their statutes. But once the State has
19 taken a position with respect to Chapter 212, the
20 transient rental tax, that position becomes binding
21 on the local government. So if we had a rule,
22 whether it said it's taxable or not taxable, that
23 rule would be binding with respect to those local
24 transactions.

25 GOVERNOR SCOTT: Even if their statute is

1 written differently than ours?

2 MS. VICKERS: Right. I mean, specifically,
3 our statute talks about the rental charged, and
4 theirs talks about the consideration charged. So
5 ours seems to focus on the rental of the room,
6 where theirs focuses on the total consideration for
7 the rental of that room. So it's just very slight
8 wording differences, but it's one of the things
9 that the local governments have really focused in
10 on in terms of enforcing their statute.

11 ATTORNEY GENERAL BONDI: And given that our
12 statute was written in 1949 and nothing has been
13 able to go before the Legislature, would you agree
14 that rulemaking -- is that what you said,
15 rulemaking would be an appropriate venue for us to
16 discuss a solution to this matter?

17 MS. VICKERS: Rulemaking will give us the
18 opportunity to hold workshops, let everybody come
19 forward and make their best arguments under the
20 various statutes, you know, apply the rules of
21 statutory construction, and bring back to you a
22 recommendation in terms of what we believe the
23 correct application of the statute is, you know,
24 given all of these various debates.

25 The rule would definitely, I think, under the

1 new provisions cause the economic impact that would
2 require them to go to the Legislature to be
3 ratified. So the rule would end up back in front
4 of the Legislature for ratification, so they would
5 get a final say.

6 GOVERNOR SCOTT: So, Attorney General Bondi,
7 you're asking for her to come back, Lisa to come
8 with a proposal as far as the process, or a
9 recommendation as far as the rule?

10 ATTORNEY GENERAL BONDI: A recommendation,
11 just a recommendation.

12 GOVERNOR SCOTT: You're asking for a
13 recommendation as far as the rule?

14 ATTORNEY GENERAL BONDI: The rulemaking, yes.

15 MS. VICKERS: I would recommend, you know,
16 coming back with a proposal on what that process
17 would look like and not on a particular position.
18 I mean, I think it's really important to listen to
19 all sides and get that public input and have the
20 workshops before we decide, you know, what we think
21 the statute means.

22 ATTORNEY GENERAL BONDI: Governor, just the
23 process.

24 GOVERNOR SCOTT: Has the Legislature -- has
25 the Legislature been holding hearings every year?

1 CFO ATWATER: There have been -- in the last
2 few years that I have been a part of the
3 Legislature, as was mentioned, there have been
4 bills that have been proposed on either side of
5 this that have been debated. And I think what you
6 can take from the fact that they haven't passed one
7 way or the other in ten years is that the majority
8 of legislators believe that the present statute,
9 though maybe aged, is still being applied
10 correctly. That would be my interpretation.

11 Someone would say there's been inaction. I
12 would say that they've seen the case that has been
13 made, and they see the statute, and they believe
14 it's being applied correctly.

15 ATTORNEY GENERAL BONDI: As a tax lawyer,
16 would you agree with that?

17 MS. VICKERS: Well, the current application is
18 that tax is not being collected on those
19 transactions today. It is being collected on the
20 room rate. There certainly is a lot of debate on
21 both sides, on multiple sides. You even see this
22 year hotels, our local hotels lining up in a
23 different position from the online intermediaries,
24 and others that represent sort of the bigger resort
25 areas that use some of these online forums and also

1 operate under other statutes related to the sale of
2 travel lining up with the online companies, and the
3 counties lining up against the online companies.
4 So you see multiple parties all disagreeing over
5 what this statute means.

6 And it sort of gets back to that earlier point
7 I made. I think it kind of gets back to how should
8 we tax this, or should we tax it? You know, should
9 we tax it at all? Is it, you know, an industry
10 that we want to encourage this new form of
11 transaction in, or is it so much like the old way
12 of doing business that we think we're putting our
13 hotels at a competitive disadvantage?

14 You hear the same arguments with the respect
15 to streamlined sales tax, you know, the online
16 companies versus the bricks and mortar stores. You
17 know, I think it is really us reaching a point
18 where, you know, we have statutes that were written
19 before all of these new technologies were around
20 and us debating about how we want to tax those or
21 not as a policy position.

22 So, you know, I think even -- I want to make
23 sure that you understand that even if we do a rule,
24 which will definitely at least have us looking at
25 the statutes and saying this is how we think it

1 applies or not, that rule will be challenged. It
2 will end up in court also, because the parties are
3 very, you know, opposed --

4 GOVERNOR SCOTT: There's a lot of money there.

5 MS. VICKERS: They're lined up on either side
6 of the issue.

7 GOVERNOR SCOTT: So is everybody all right if
8 we ask Lisa to come back with a proposal on the
9 process of rulemaking?

10 ATTORNEY GENERAL BONDI: This is the process.

11 CFO ATWATER: Sure.

12 GOVERNOR SCOTT: Are you all right,
13 Commissioner?

14 COMMISSIONER PUTNAM: I'm still not sure what
15 she's going to walk out of here -- do you know what
16 we're asking you to do? Because I'm not totally
17 sure what we're asking you to do.

18 MS. VICKERS: I think you're asking me to put
19 this on as a future agenda item at the next Cabinet
20 meeting. And what I would be proposing is that the
21 Department -- or getting your permission that the
22 Department begin rulemaking on this issue and do
23 that with a plan, you know, to hold a series of
24 workshops to gather public input.

25 GOVERNOR SCOTT: What I think we're asking is,

1 you're going to come back and say, "If we were
2 going to do this, if we decided we wanted to go
3 forward, this is what we would do."

4 Step 1 is, we decide we wanted to do it. Step
5 2 is, you would propose something. Step 3, I
6 assume you're going to go through this number of
7 workshops and how you would do it. And then
8 understanding that, the next step is, it's still
9 has to be approved by the Legislature, and it's
10 going to get challenged?

11 MS. VICKERS: Right.

12 GOVERNOR SCOTT: Okay. So based on that?

13 COMMISSIONER PUTNAM: Based on that, we ought
14 to just let the Legislature keep doing their thing,
15 whether their thing is to do something or to do
16 nothing. But if it's going to end up either in
17 court or back in the Legislature, what role are we
18 playing in that process? I mean, this is not a
19 technical clarification of a statute. This is a
20 significant policy matter that one way or the other
21 the Legislature is going to have to speak to.

22 So I think you're probably putting your agency
23 in an unfair position. This isn't splitting hairs
24 about the collection of delinquent child support.
25 This is essentially a larger question about the

1 modernization of the state tax code, just like the
2 streamlined sales tax. And it is, in my view, an
3 inherently legislative responsibility, because it
4 is such a significant policy question. That's just
5 my view.

6 ATTORNEY GENERAL BONDI: And I'm not trying to
7 put the Cabinet nor you in a compromising position,
8 but as you said, this has gone before the
9 Legislature multiple years with no action. We have
10 to have a resolution. What would be your
11 recommendation that we do? If it's not rulemaking,
12 it's not rulemaking, but we've got to get this
13 resolved sooner than later.

14 GOVERNOR SCOTT: So if it's okay -- we won't
15 make a decision today about whether we're going
16 forward with anything. You're going to come back
17 and just say, "Look, if we had interest in trying
18 to move this discussion along, how would we do it?"
19 That's basically what you're going to do.

20 MS. VICKERS: Right. I think if you had it on
21 a future agenda, that would give an opportunity for
22 -- anybody who wants to have some input into your
23 decision process could come forward and testify.

24 But I think the issue that you've got is, do
25 you want the Department of Revenue to take a

1 position on the statute. We have not done that.
2 We have been very careful to just sort of sit on
3 the sidelines and say, "We think the statute is
4 unclear. We think the Legislature should clarify
5 it." You know, we have opposing parties who take
6 very strong views, and the Department has not taken
7 a position on the statute.

8 COMMISSIONER PUTNAM: But by failing to
9 collect revenue on the delta between the two
10 prices, you've taken a position, haven't you?

11 MS. VICKERS: The transactions are still open
12 to audit. You know, we could go in and audit a
13 taxpayer. If you're not registered, you have an
14 open statute of limitations. So it hangs out there
15 as an uncertainty because we have not taken a
16 position.

17 And in my personal view, because I've also --
18 over the course of all of these years, it's been
19 suggested, "Well, why doesn't the Department just
20 go out and audit the taxpayers and make an
21 assessment, and then you can fight about that?"
22 And I am very -- it is important to me that the
23 taxing power never be used in a way to try and, you
24 know, resolve unclear issues. You know, something
25 is either taxable or not. And if it is taxable, we

1 go in and we make assessments, and that's what we
2 do.

3 If we're not sure if something is taxable or
4 not, it doesn't seem fair to me that we put
5 taxpayers through that burden of issuing an
6 assessment and telling them to come challenge it in
7 court if they don't agree with it so that we can
8 get that resolved. And so we decided not to go
9 that route, and we really thought we would go the
10 legislative route in terms of trying to get it
11 resolved, given that there are some very diverse
12 views on this. But we have not taken a position on
13 the statute.

14 GOVERNOR SCOTT: So if it's okay with
15 everyone, all we're going to ask you to do is,
16 you're going to come back and tell us the process.
17 We're not going to make a decision today that we
18 want you to do anything different than what you're
19 doing. Is that all right?

20 Thank you very much.

21
22
23
24
25



Executive Director
Lisa Vickers

August 16, 2011

MEMORANDUM

TO: The Honorable Rick Scott, Governor
Attention: Doug Darling, Chief of Staff/Cabinet Affairs Director
Rachel Goodson, Cabinet Aide

The Honorable Jeff Atwater, Chief Financial Officer
Attention: Robert Tornillo, Chief Cabinet Aide

The Honorable Pam Bondi, Attorney General
Attention: Kent Perez, Associate Deputy Attorney General
Rob Johnson, Cabinet Affairs

The Honorable Adam Putnam, Commissioner of Agriculture and Consumer Services
Attention: Jim Boxold, Chief Cabinet Aide
Brooke McKnight, Cabinet Aide

FROM: French Brown, Deputy Director, Technical Assistance and Dispute Resolution

SUBJECT: Requesting Adoption and Approval to File and Certify Proposed Rules:
• Value Adjustment Board; Scheduling and Notice of Hearing

Statement of Sections 120.54(3)(b) and 120.541, F.S., Impact. No impact.

The Department has reviewed the proposed rule for compliance with HB 1565. The proposed rule will not have an adverse impact on small business, small counties, or small cities, and the rule is not likely to have an increased regulatory cost in excess of \$200,000 within 1 year. Additionally, the proposed rule is not likely to have an adverse impact or increased regulatory costs in excess of \$1,000,000 within 5 years.

What is the Department Requesting?: The Department requests final adoption and approval to file and certify with the Secretary of State Rule 12D-9.019, F.A.C. (*Scheduling and Notice of a Hearing*).

ATTACHMENT #2

Child Support Enforcement – Ann Coffin, Director • General Tax Administration – Jim Evers, Director
Property Tax Oversight – James McAdams, Director • Information Services – Tony Powell, Director

www.myflorida.com/dor
Tallahassee, Florida 32399-0100

Value Adjustment Board; Scheduling and Notice of Hearing

Why is the proposed rule necessary?: Chapter 2008-197, L.O.F., requires the Department to adopt uniform procedures to be used by value adjustment boards, special magistrates, and taxpayers in hearings before the boards. Rule 12D-9.019(7)(b), F.A.C., was promulgated on March 30, 2010, to adopt the required procedures. The Department received an objection from the Joint Administrative Committee (JAPC) dated April 5, 2011, on this Rule and is amending the Rule in response to that objection.

What does this proposed rule do?: The Rule currently states that a petitioner appearing before a value adjustment board is not required to wait more than a reasonable amount of time to be heard or rescheduled. Section 194.032(2), F.S., gives a maximum wait time of four hours before the petitioner may request to be heard immediately or rescheduled. Based on the JAPC objection, the proposed amendment to the Rule provides that a “reasonable time shall not exceed four hours.”

Were comments received from external parties?: During initial promulgation of the Rule, three public meetings and numerous workshops were held. Section 120.545(3), F.S., provides that a Notice of Rule Development and a rule workshop are not required when a JAPC objection to a rule is received. Accordingly, following the receipt of the JAPC objection, a proposed amendment to the Rule was prepared, and the Department immediately requested the right to post a Notice of Proposed Rule. A comment has been received in opposition concerning the JAPC objection and the proposed rule. A public hearing was held on June 15, 2011. That public hearing was simultaneously broadcast over the Internet via WebEx. No comments were received as a result of the hearing.

Attached are copies of:

- Summary of the proposed rule, which include:
 - Statements of facts and circumstances justifying the rule;
 - Federal comparison statement; and
 - Summaries of rule hearings.
- Rule text
- JAPC Objection Correspondence

STATE OF FLORIDA
DEPARTMENT OF REVENUE
PROPERTY TAX OVERSIGHT
CHAPTER 12D-9, FLORIDA ADMINISTRATIVE CODE
AMENDING RULE 12D-9.019(7)(b)

SUMMARY OF PROPOSED RULES

In response to the objection to Rule 12D-9.019(7)(b), F.A.C., as filed by the Joint Administrative Procedures Committee of the Florida Legislature, the Department is amending the rule to reflect the statutory language in s. 194.032(2), F.S., to address the Committee objections.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

Rule 12D-9.019(7)(b), F.A.C. (Scheduling and Notice of a Hearing), provides a maximum time frame for a petitioner waiting for a hearing before the Value Adjustment Board. The purpose of the proposed amendment to this rule is to clarify the length of “a reasonable time” to reflect the stated maximum time limit of four hours in s. 194.032(2), F.S.

FEDERAL COMPARISON STATEMENT

The provisions contained in these rules do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

In response to the Joint Administrative Procedures Committee objection to Rule 12D-9.019(7)(b), F.A.C., the Department did not hold a rule development workshop. According to s. 120.545(3), F.S., a Notice of Rule Development does not have to be posted in the Florida Administrative Weekly and a workshop does not have to be held.

SUMMARY OF RULE HEARING

HELD ON MAY 3, 2011

The Governor and Cabinet, sitting as head of the Department of Revenue, met on May 3, 2011, and approved the publication of the Notice of Proposed Rule for the amendment to Rule 12D-9.019, F.A.C. (Scheduling and Notice of a Hearing). A notice for a public hearing was published in the Florida Administrative Weekly on May 20, 2011 (Vol. 37, No. 20, pp. 1325-1326). A comment was received in opposition to the proposed amendment.

SUMMARY OF RULE HEARING

A notice for a public hearing was published on May 20, 2011 and the Department held a public hearing on June 15, 2011. An email was sent on May 16, 2011, to the Value Adjustment Board Clerks, county property appraisers, and other parties that have previously shown interest in value adjustment board rules. On May 20, 2011, a second email was sent to all persons who have subscribed to the Department's email publication list for proposed rules. There were no public attendees at the public hearing. Seven attended by WebEx through the internet. No comments were received by the Department.

STATE OF FLORIDA
DEPARTMENT OF REVENUE
PROPERTY TAX OVERSIGHT PROGRAM
CHAPTER 12D-9, FLORIDA ADMINISTRATIVE CODE
AMENDING RULE 12D-9.019

12D-9.019 Scheduling and Notice of a Hearing.

(1) – (6) No change.

(7)(a) No change.

(b) In no event shall a petitioner be required to wait more than a reasonable time from the scheduled time to be heard. A reasonable time shall not exceed four hours. The board clerk is authorized to find that a reasonable time has elapsed based on other commitments, appointments or hearings of the petitioner, lateness in the day, and other hearings waiting to be heard earlier than the petitioner’s hearing with the board or special magistrate. If his or her petition has not been heard within a reasonable time, the petitioner may request to be heard immediately. If the board clerk finds a reasonable time has elapsed and petitioner is not heard, the board clerk shall find good cause is present and shall reschedule the petitioner’s hearing.

(c) No change.

(8) No change.

Rulemaking Authority 194.011(5), 194.034(1), 195.027(1), 213.06(1) FS. Law Implemented 194.011, 194.015, 194.032, 194.034, 195.022, 213.05 FS. History-New 03/30/2010, Amended.