

PROPERTY APPRAISERS' ASSOCIATION OF FLORIDA, INC.



PAAF - March 2, 1976

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July 19, 2010

Honorable Jeff Atwater
President of the Senate
409 Capitol
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Honorable Larry Cretul
Speaker of the House of Representatives
420 Capitol
402 S. Monroe Street
Tallahassee, Florida 32399-1300

Re: Potential Oil Spill Property Tax Legislation

Gentlemen:

The members of the Property Appraisers' Association of Florida (PAAF) would like to provide their input regarding the discussion of potential property tax relief options for owners of properties adversely impacted by the Deepwater Horizon/British Petroleum Oil Spill. While the broader policy questions of whether to provide property tax relief and, if authorized, who should ultimately pay for the relief are particularly within the legislature's province, PAAF's members would like to be actively involved in the discussion of the potential administrative mechanism for such relief.

Historical Background

Historically, properties damaged by fire, tornado, tropical storms, and even sinkholes after January 1 have been the subject of legislation authorizing an abatement or refund of taxes in the following year. See Ch. 2004-474, § 1, Laws of Fla. (2004) (named tropical storm); Ch. 99-190, § 7, Laws of Fla. (1990) (forest fires, hurricanes, tropical storms, sinkholes, or tornados); Ch. 98-185, § 1, Laws of Fla. (1998) (tornado); Ch. 88-101, § 4, Laws of Fla. (1988) (windstorm or tornado); Ch. 85-322, § 7, Laws of Fla. (1985) (fire). The statutes were limited to houses or other residential buildings that were rendered completely uninhabitable by the specified calamity. The basic process involved:

1. Application in the year following the calamity and documentation of the damage and date thereof. The failure to timely file was a waiver of any refund or abatement.
2. Review by the property appraiser to verify the damage.
3. The property appraiser's calculation of the amount of the refund or abatement, i.e., the house was destroyed for 8 months of the last year, $8/12 \times$ property taxes for that year = amount of refund/abatement.
4. Payment of a refund or abatement of current taxes due by the tax collector or, in the case of the 2004 named tropical storm statute, the State of Florida.
5. Repeal of the authorizing statute in the following year.

Suggested Mechanism for Property Tax Relief

Here, the damage caused by the oil spill is markedly different. To begin with, properties have not been totally destroyed or rendered uninhabitable. Moreover, there is no physical damage to be verified. Instead, any damage is presented in the form of reduced business income for commercial properties (hotels, restaurants, marinas, etc.) or a diminution in property value for residential or vacant properties because of the presence of oil on the beaches or in the water.

In keeping with the historical treatment of properties damaged by a calamity subsequent to January 1, PAAF's members respectfully submit the following suggestion as an administrative mechanism for potential property tax relief. This suggestion attempts to resolve two fairly certain but disparate concerns: (1) owners of property adversely impacted by the oil spill will want property tax relief this November, when taxes become due and payable for the 2010 tax year; and (2) property appraisers simply will not have sufficient data to objectively analyze and quantify any diminution in property value until the next tax year. Any attempt to determine a diminution in value at the present time would most likely be arbitrary because the information regarding the impact of the oil spill on business income is preliminary and incomplete and comparable sales data of residential and vacant properties in coastal counties subsequent to the oil spill is virtually non-existent.

1. Identification of properties entitled to property tax relief.

The first step in the process will be for the legislature to decide what properties are entitled to property tax relief. In this regard, it would be appropriate for property tax relief to be provided to a specified category of *qualifying properties* within *affected named counties*. Certainly, the legislature will need to define the qualifying properties and name the affected counties. In past legislation, relief has been confined to residential properties even though a broader category of properties may have been rendered uninhabitable or unusable by, for example, the named tropical storms in 2004.

It may be that the legislature will decide that all properties within an affected county are entitled to relief. Relief also could be restricted to properties located on barrier islands, waterfront properties, or broader categories of all residential or all commercial properties. Another concept would be to define the category of properties qualifying for relief in relationship to a geographic proximity to the waterfront. There are many options in this respect; however, it would be necessary to provide a clear and concise definition of the qualifying properties.

Once the legislature determines the categories of qualifying properties and affected counties, the administrative mechanism for tax relief has the following components, consistent with previous legislation:

2. Application for tax refund or abatement.

For the 2010 tax year, property taxes are due and payable on November 1 and, if unpaid, become delinquent on April 1, 2011. § 197.333, Fla. Stat. (2009). Property owners paying their taxes in full in November are entitled to a 4 percent discount; the amount of the discount decreases by 1 percent each month thereafter. § 197.162, Fla. Stat. (2009).

During the 2009 session, the legislature authorized property owners to make partial payments of taxes. § 197.374, Fla. Stat. (2009). Under the statute, the tax collector has the discretion to “accept one or more partial payments of any amount per parcel for payment of current taxes and assessments on real property or tangible personal property as long as such payment is made prior to the date of delinquency. The remaining amount of tax due, when paid, must be paid in full.” Id.

Under the current statutory framework, therefore, property owners either may pay their taxes in full or, in the tax collector’s discretion, submit a partial payment or payments until taxes are paid in full by April 1. These payment options may be incorporated with an application requirement as follows:

A. Between November 1 and January 1, owners of “qualifying properties” within “affected counties” must submit an application for tax refund/abatement with the property appraiser in the county where the property is located. Failure to file such application by January 1 constitutes a waiver of any claim for refund/abatement. The application must be submitted under oath. For commercial properties, the application must include verified documentation of the business income and operations thereof for calendar years 2008, 2009, and 2010. In connection with their application, property owners would be required to make either a full or partial payment of taxes.

B. To provide the maximum flexibility in payment options for property owners, tax collectors should be required to accept partial payments from applicants. In such manner, property owners that cannot pay the total taxes due may make a partial payment. The partial payment is a particularly important aspect of suggested mechanism and provides an immediate method in which property owners may temporarily defer their property tax payments. Discount periods also could be temporarily extended along with the April 1 delinquency date.

3. Analysis of property damage.

In prior legislation, property appraisers were required to verify the physical damage to the property. Here, property appraisers will be required to determine the “damage” by analyzing the diminution in value caused by the oil spill. Importantly, any analysis of a diminution in property value *solely* due to the impact of the oil spill – and without regard to other economic and market factors influencing property values – is particularly difficult, if not impractical, to objectively quantify.

Rather, it seems more practical to measure property damage by comparing the 2011 market value of the property with the 2010 market value. If there were a reduction in value, it could be legislatively declared as “primarily” resulting from the impact of the oil spill. “Qualifying properties” within “affected counties” could then receive a refund/abatement of their 2010 property taxes due to the diminution in value primarily caused by the impact of the oil spill.

Every year, property appraisers are required to prepare their preliminary assessment rolls and submit them to the Department of Revenue (department) by July 1. § 193.1142, Fla. Stat. (2009). The department has 50 days, measured from a complete submission of the rolls, in which to review

and approve or disapprove the rolls. § 193.1142(3), Fla. Stat. (2009). Typically, the department's approval occurs in the later part of July or early August. Property appraisers then mail the Notice of Proposed Property Taxes in August. See § 200.069, Fla. Stat. (2009). Property owners may administratively contest their property value by filing a VAB petition within 25 days of the mailing of the notice. § 194.011, Fla. Stat. (2009).

For those applicant property owners filing a VAB petition and making only a partial payment of taxes, it is suggested that some suspension of the delinquency date for final payment until resolution of the petition may be appropriate. Notably, the VAB process also was incorporated into the 2004 named storm legislation

Applicant property owners that remain dissatisfied with their 2011 valuation would continue to have the right to contest the assessment in circuit court in accordance with section 194.171, Florida Statutes (2009). That statute also allows a "good faith" partial payment of taxes to be made as a condition precedent to filing suit. § 194.171(3), Fla. Stat. (2009). Thus, it is conceivable that an applicant owner of a qualifying property could make only a partial payment of the 2010 taxes and a partial payment of the 2011 taxes if suit were filed.

4. Calculation of tax refund or abatement.

Under the suggested mechanism, the property appraiser will determine the 2011 valuation of the property and compare it with the 2010 valuation. Any decline in value would have been legislatively declared as primarily resulting from the oil spill. The amount of refund/abatement of taxes would be calculated by prorating the number of months in 2010 that the property was impacted by the oil spill (refund/abatement percentage). It seems appropriate for the legislature to declare a uniform refund/abatement percentage for all "affected counties" for ease in the administrative mechanism and clarity for property owners. For example, if the 2010 value was \$100,000 and the 2011 value was \$80,000, the refund/abatement would be calculated by multiplying \$20,000 (\$100,000 - \$80,000) by the number of months (say 6) divided by 12. The resulting value would be applied against the 2010 millage levied against the "qualifying property" in an "affected county" to determine the amount of the refund/abatement.

Using the above example and assuming that the 2010 millage was 15 mills, the property owner would be entitled to a refund/abatement of \$150 ($\$20,000 \times 6/12 \times .015$).

5. Payment of refund or allowance of abatement.

Upon receipt of the necessary calculations from the property appraiser, the tax collector would issue a refund to those applicant property owners that paid their 2010 property taxes in full. For those property owners making a partial payment, the tax collector would abate the original 2010 taxes due and, instead, accept the reduced amount.

Mid-Year Assessment

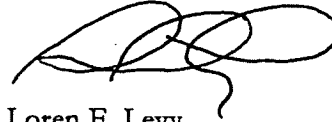
Another suggestion that PAAF's members have discussed is the concept of a mid-year assessment. Under that mechanism, property appraisers would be required to prepare an assessment of certain types of properties as of, for example, July 1 instead of the traditional January 1 date set forth in section 192.042, Florida Statutes (2009). Presumably, the mid-year assessment of non-homestead properties would be authorized in accordance with language in Article VII, Section 4(g)(1) of the Florida Constitution, which provides that assessments of non-homestead property "shall be changed annually on the date of assessment provided by law." In contrast, assessment of homestead property is required to be made as of January 1. See Art. VII, § 4(d), Fla. Const.

PAAF's members unanimously agreed at a recent conference call that a mid-year assessment would be not be an appropriate administrative mechanism for property tax relief due to the oil spill. The following is a brief discussion of the difficulties of a mid-year assessment:

- A mid-year assessment would almost certainly be inherently arbitrary. If property appraisers were tasked with deriving assessments as of July 1, the available data regarding the impact of the oil spill on business income would be preliminary and incomplete and comparable sales data of residential and vacant properties in coastal counties subsequent to the oil spill would be virtually non-existent.
- The timing of a mid-year assessment, to be performed in the fall of 2010, also would coincide with the TRIM and VAB process. Property appraisers will not have sufficient staff resources to accomplish a mid-year assessment and respond to taxpayer inquiries during the TRIM and VAB process.
- A mid-year assessment of all non-homestead properties will essentially result in a complete revaluation of all properties. For example, property appraisers oftentimes examine the uniformity and equality of assessments in neighborhoods and market areas. Those areas will include both homestead and non-homestead properties. The mass appraisal system does not focus on a specific property but, instead, values groups and types of properties.
- A mid-year assessment also could result in the assessment of properties that were not substantially complete on January 1 but were completed by July 1. Improvements on properties that were not substantially complete on January 1 are not assessed until the following year. Here, the tax bill of a large beachfront hotel that was not completed until April would actually increase due to the assessment of the completed improvement.
- There also may be constitutional uniformity of assessments and equal protection issues regarding a mid-year assessment of non-homestead properties when homestead properties are assessed as of January 1.

PAAF's members would like to be actively involved in the discussion of the potential administrative mechanism for potential property tax relief in the upcoming special session. Hopefully, these preliminary comments and suggestions are helpful. If you have any questions, or if we can provide any additional information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Loren E. Levy', with a stylized, cursive flourish.

Loren E. Levy

LEL/gls

cc: Honorable Thad Altman, Senate Finance & Tax Chair
Honorable Ellyn Bogdanoff, House Finance & Tax Chair
Honorable Don Gaetz, Florida Senate District 4
Honorable Matthew Gaetz, Florida House, District 4
Robert McKee, Senate Finance & Tax Committee Director
Jose Diez-Arguelles, House Finance & Tax Council
All PAAF members