

DEPARTMENT OF TAXATION 2010 Fiscal Impact Statement

1. **Patron** Sal R. Iaquinto

3. **Committee** Senate Finance

4. **Title** Local Taxes; Burden of Proof to Appeal
Assessments

2. **Bill Number** HB 570

House of Origin:

☐ **Introduced**

☐ **Substitute**

☐ **Engrossed**

Second House:

☒ **In Committee**

☐ **Substitute**

☐ **Enrolled**

5. Summary/Purpose:

This bill would shift the burden of proof from the taxpayer to the assessor when a taxpayer appeals the assessment of real property to a Board of Equalization or to a circuit court, and would remove the presumption that the assessor's valuation of real property is correct. The assessor would have the burden of proving that the property in question is valued at its fair market value or that the assessment is uniform in its application, or that the assessment is otherwise valid or legal. This bill would also shift the burden of proof from the taxpayer to the locality when the taxpayer appeals an assessment of any other local tax to the circuit.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Not available (See Line 8.)

7. **Budget amendment necessary:** No.

8. Fiscal implications:

This bill would have no impact on state revenues. To the extent that shifting the burden of proof to the locality results in more appeals, this bill may increase the costs to localities of defending local tax appeals. To the extent that shifting the burden of proof to the locality results in more successful appeals, this bill may result in a decrease in local tax revenues.

9. Specific agency or political subdivisions affected:

All localities

10. **Technical amendment necessary:** No.

11. Other comments:

Current Law

Circuit courts within each county or city are authorized to appoint a Board of Equalization of real estate assessments, whose purpose is to hear complaints regarding a lack of uniformity or errors in acreage in a real property assessment, and complaints that real property is assessed at more than fair market value. Under current law, the valuation determined by the assessor is presumed to be correct and the taxpayer has the burden of proving that the property in question is valued at more than its fair market value, that the assessment is not uniform in its application, or that the assessment is otherwise not equalized. The taxpayer is required to produce substantial evidence that the valuation determined by the assessor is erroneous and was not arrived at in accordance with generally accepted appraisal practice in order to receive relief. Mistakes of fact, including computations that affect the assessment are deemed not to be in accordance with generally accepted appraisal practice. It is not necessary for the taxpayer to show that the assessment is a result of manifest error or disregards controlling evidence.

In addition to the Real Property Tax appeals process through the local Board of Equalization, any person assessed with any local tax may appeal the assessment to the local circuit court. In these proceedings, the taxpayer has the burden of proving that the property in question is assessed at more than its fair market value, the assessment is not uniform in its application, or the assessment is otherwise invalid or illegal. The taxpayer is not required to show that intentional, systematic and willful discrimination has been made.

Taxpayers may also appeal assessments of certain local taxes to TAX. In an appeal of a local assessment of Business, Professional, and Occupation License (BPOL) tax; Machinery and Tools Tax, business Tangible Personal Property Tax and Merchants' Capital Tax (Local Business Tax); or the Tangible Personal Property tax on airplanes, boats, campers, recreational vehicles, and trailers (Local Mobile Property Tax), the assessment is presumed to be correct. In any appeal of the TAX's determination on the matter, the burden is on the party challenging TAX's determination to show that the ruling is erroneous.

Proposal

This bill would shift the burden of proof from the taxpayer to the assessor when a taxpayer appeals the assessment of real property to a Board of Equalization or to a circuit court, and would remove the presumption that the assessor's valuation of real property is correct. The assessor would have the burden of proving that the property in question is valued at its fair market value or that the assessment is uniform in its application, or that the assessment is otherwise valid or legal. This bill would also shift the burden of proof from the taxpayer to the locality when the taxpayer appeals an assessment of any other local tax to the circuit.

As this proposal does not modify the current statutory presumption of correctness afforded the Tax Commissioner's rulings in circuit court appeals of assessments of BPOL Tax, Local Business Tax, or Local Mobile Property Tax that have been upheld in the administrative appeals process through the local commissioner of the revenue and TAX, it is not clear whether the taxpayer or the locality bears the burden of proof in such matters.

The effective date of this bill is not specified.

Similar Legislation

House Bill 233 and **Senate Bill 273** (identical) would require that real property that is generating income as affordable housing be assessed using the income approach based on the property's current use, any income restrictions on the property, and any arms length contract provisions entered into with respect to the real property.

House Bill 430 would provide 1) that the fair market value of certain affordable housing be determined using the income approach, based on the property's current use, restrictions, and applicable contract provisions; 2) that a locality's real property sales assessment ratio higher than 130% is prima facie proof that the locality has failed to assess at 100% of fair market value; 3) additional requirements for real estate assessors; 4) additional taxpayer access to certain information and notice concerning hearings related to assessments; and 5) additional requirements related to Boards of Equalization.

cc : Secretary of Finance

Date: 2/23/2010 KP
DLAS File Name: HB570FE161