Government Efficiency & Accountability Council

Wednesday, January 9, 2008
3:00 PM – 5:00 PM
Morris Hall (17 HOB)

Marco Rubio
Speaker

Frank Attkisson
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Government Efficiency & Accountability Council

Start Date and Time:	Wednesday, January 09, 2008 03:00 pm
End Date and Time:	Wednesday, January 09, 2008 05:00 pm
Location:	Morris Hall (17 HOB)
Duration:	2.00 hrs

Discussion regarding property tax reform measures including:

1. Elimination of the presumption of correctness standard applied to property appraisers in determining the just valuation of property;
2. Eligibility requirements for property owners in obtaining homestead exemptions; and
3. Exemptions for educational institutions and the impact of partial use by non-exempt entities.

NOTICE FINALIZED on 01/02/2008 16:04 by MXE

PRESUMPTION OF CORRECTNESS

SECTION 25. Taxpayers' Bill of Rights.—

~~(a)~~ By general law the legislature shall prescribe and adopt a Taxpayers' Bill of Rights that, in clear and concise language, sets forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers under the laws of this state. ~~This section shall be effective July 1, 1993.~~

(b) Every taxpayer or other person contesting the assessment of any tax is entitled to a full and fair opportunity to challenge the government's assessment of the value of the property for purposes of all taxation. In any challenge to an assessment brought by the taxpayer or person contesting the assessment:

(1) the property appraiser's assessment shall enjoy no presumption of correctness and the appraiser shall bear the burden of proving by a preponderance of the evidence that its assessment does not exceed the property's just value;

(2) evidence that an assessment is based upon appraisal practices that differ from those applied to comparable property within the state shall be relevant in determining whether the assessment exceeds just value; and

(3) the taxpayer or other person contesting the assessment shall be entitled to receive its reasonable attorney's fees and costs incurred in the challenge under appropriate circumstances to be specified by general law.

Following voter approval of this measure, the legislature shall adopt legislation implementing this section and having an effective date no later than January 1, 2009.

HOMESTEAD EXEMPTION ELIGIBILITY

s. 196.015/Permanent residency

Chapter 196—EXEMPTION

Title XIV TAXATION AND FINANCE

196.015 Permanent residency; factual determination by property appraiser.—Intention to establish a permanent residence in this state is a factual determination to be made, in the first instance, by the property appraiser. Although any one factor is not conclusive of the establishment or nonestablishment of permanent residence, the following are relevant factors that may be considered by the property appraiser in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence in this state:

(1) Formal declarations of the applicant.

(2) Informal statements of the applicant.

(3) The place of employment of the applicant.

(4) The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.

(5) The place where the applicant is registered to vote.

(6) The place of issuance of a driver's license to the applicant.

(7) The place of issuance of a license tag on any motor vehicle owned by the applicant.

(8) The address as listed on federal income tax returns filed by the applicant.

History.—s. 2, ch. 81-219; s. 990, ch. 95-147; s. 8, ch. 2006-312.

EXEMPS./EDUCATIONAL INSTITUTIONS

s. 196.012/Definitions

Chapter 196—EXEMPTION

Title XIV TAXATION AND FINANCE

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

(1) "Exempt use of property" or "use of property for exempt purposes" means predominant or exclusive use of property owned by an exempt entity for educational, literary, scientific, religious, charitable, or governmental purposes, as defined in this chapter.

(2) "Exclusive use of property" means use of property solely for exempt purposes. Such purposes may include more than one class of exempt use.

(3) "Predominant use of property" means use of property for exempt purposes in excess of 50 percent but less than exclusive.

(4) "Use" means the exercise of any right or power over real or personal property incident to the ownership of the property.

(5) "Educational institution" means a federal, state, parochial, church, or private school, college, or university conducting regular classes and courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Schools, or the Florida Council of Independent Schools; a nonprofit private school the principal activity of which is conducting regular classes and courses of study accepted for continuing postgraduate dental education credit by a board of the Division of Medical Quality Assurance; educational direct-support organizations created pursuant to ss. 1001.24, 1004.28, and 1004.70; facilities located on the property of eligible entities which will become owned by those entities on a date certain; and institutions of higher education, as defined under and participating in the Higher Educational Facilities Financing Act.

(6) Governmental, municipal, or public purpose or function shall be deemed to be served or performed when the lessee under any leasehold interest created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, special district, authority, or other public body corporate of the state is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds. For purposes of the preceding sentence, an activity undertaken by a lessee which is permitted under the terms of its lease of real property designated as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration and which real property is used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed base operation which provides goods and services to the general aviation public in the promotion of air commerce shall be deemed an activity which serves a governmental, municipal, or public purpose or function. Any activity undertaken by a lessee which is permitted under the terms of its lease of real property designated

as a public airport as defined in s. 332.004(14) by municipalities, agencies, special districts, authorities, or other public bodies corporate and public bodies politic of the state, a spaceport as defined in s. 331.303, or which is located in a deepwater port identified in s. 403.021(9)(b) and owned by one of the foregoing governmental units, subject to a leasehold or other possessory interest of a nongovernmental lessee that is deemed to perform an aviation, airport, aerospace, maritime, or port purpose or operation shall be deemed an activity that serves a governmental, municipal, or public purpose. The use by a lessee, licensee, or management company of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for admission. If property deeded to a municipality by the United States is subject to a requirement that the Federal Government, through a schedule established by the Secretary of the Interior, determine that the property is being maintained for public historic preservation, park, or recreational purposes and if those conditions are not met the property will revert back to the Federal Government, then such property shall be deemed to serve a municipal or public purpose. The term "governmental purpose" also includes a direct use of property on federal lands in connection with the Federal Government's Space Exploration Program or spaceport activities as defined in s. 212.02(22). Real property and tangible personal property owned by the Federal Government or Space Florida and used for defense and space exploration purposes or which is put to a use in support thereof shall be deemed to perform an essential national governmental purpose and shall be exempt. "Owned by the lessee" as used in this chapter does not include personal property, buildings, or other real property improvements used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed based operation which provides goods and services to the general aviation public in the promotion of air commerce provided that the real property is designated as an aviation area on an airport layout plan approved by the Federal Aviation Administration. For purposes of determination of "ownership," buildings and other real property improvements which will revert to the airport authority or other governmental unit upon expiration of the term of the lease shall be deemed "owned" by the governmental unit and not the lessee. Providing two-way telecommunications services to the public for hire by the use of a telecommunications facility, as defined in s. 364.02(15), and for which a certificate is required under chapter 364 does not constitute an exempt use for purposes of s. 196.199, unless the telecommunications services are provided by the operator of a public-use airport, as defined in s. 332.004, for the operator's provision of telecommunications services for the airport or its tenants, concessionaires, or licensees, or unless the telecommunications services are provided by a public hospital.

(7) "Charitable purpose" means a function or service which is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or service. It is not necessary that public funds be allocated for such function or service but only that any such allocation would be legal.

(8) "Hospital" means an institution which possesses a valid license granted under chapter 395 on January 1 of the year for which exemption from ad valorem taxation is requested.

(9) "Nursing home" or "home for special services" means an institution which possesses a valid license under chapter 400 on January 1 of the year for which exemption from ad valorem taxation is requested.

(10) "Gross income" means all income from whatever source derived, including, but not limited to, the following items, whether actually owned by or received by, or not received by but available to, any person or couple: earned income, income from investments, gains derived from dealings in property, interest, rents, royalties, dividends, annuities, income from retirement plans, pensions, trusts, estates and inheritances, and direct and indirect gifts. Gross income specifically does not include payments made for the medical care of the individual, return of principal on the sale of a home, social security benefits, or public assistance payments payable to the person or assigned to an organization designated specifically for the support or benefit of that person.

(11) "Totally and permanently disabled person" means a person who is currently certified by two licensed physicians of this state who are professionally unrelated, by the United States Department of Veterans Affairs or its predecessor, or by the Social Security Administration, to be totally and permanently disabled.

(12) "Couple" means a husband and wife legally married under the laws of any state or territorial possession of the United States or of any foreign country.

(13) "Real estate used and owned as a homestead" means real property to the extent provided in s. 6(a), Art. VII of the State Constitution, but less any portion thereof used for commercial purposes, with the title of such property being recorded in the official records of the county in which the property is located. Property rented for more than 6 months is presumed to be used for commercial purposes.

(14) "Renewable energy source device" or "device" means any of the following equipment which, when installed in connection with a dwelling unit or other structure, collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

(a) Solar energy collectors.

(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

(c) Rockbeds.

(d) Thermostats and other control devices.

(e) Heat exchange devices.

(f) Pumps and fans.

(g) Roof ponds.

(h) Freestanding thermal containers.

(i) Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.

(j) Windmills.

(k) Wind-driven generators.

(l) Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.

(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

"Renewable energy source device" or "device" also means any heat pump with an energy efficiency ratio (EER) or a seasonal energy efficiency ratio (SEER) exceeding 8.5 and a coefficient of performance (COP), exceeding 2.8; waste heat recovery system; or water heating system the primary heat source of which is a dedicated heat pump or the otherwise unused capacity of a heat pump heating, ventilating, and air-conditioning system, provided such device is installed in a structure substantially complete before January 1, 1985, and whether or not solar energy, wind energy, or energy derived from geothermal deposits is collected, transmitted, stored, or used by such device.

(15) "New business" means:

(a)1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant;

2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; or

3. An office space in this state owned and used by a corporation newly domiciled in this state; provided such office space houses 50 or more full-time employees of such corporation; provided that such business or office first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business.

(b) Any business located in an enterprise zone or brownfield area that first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business.

(c) A business that is situated on property annexed into a municipality and that, at the time of the annexation, is receiving an economic development ad valorem tax exemption from the county under s. 196.1995.

(16) "Expansion of an existing business" means:

(a)1. A business establishing 10 or more jobs to employ 10 or more full-time employees in this state, which manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or

2. A business establishing 25 or more jobs to employ 25 or more full-time employees in this state, the sales factor of which, as defined by s. 220.15(5), for the facility with respect to which it requests an economic development ad valorem tax exemption is less than 0.50 for each year the exemption is claimed; provided that such business increases operations on a site colocated with a commercial or industrial operation owned by the same business, resulting in a net increase in employment of not less than 10 percent or an increase in productive output of not less than 10 percent.

(b) Any business located in an enterprise zone or brownfield area that increases operations on a site colocated with a commercial or industrial operation owned by the same business.

(17) "Permanent resident" means a person who has established a permanent residence as defined in subsection (18).

(18) "Permanent residence" means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

(19) "Enterprise zone" means an area designated as an enterprise zone pursuant to s. 290.0065. This subsection expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

(20) "Ex-servicemember" means any person who has served as a member of the United States Armed Forces on active duty or state active duty, a member of the Florida National Guard, or a member of the United States Reserve Forces.

History.—s. 1, ch. 71-133; s. 1, ch. 72-367; s. 1, ch. 73-340; s. 14, ch. 74-234; s. 13, ch. 76-234; s. 1, ch. 77-447; s. 6, ch. 80-163; s. 1, ch. 80-347; s. 2, ch. 81-219; s. 85, ch. 81-259; s. 9, ch. 82-119; s. 29, ch. 84-356; s. 1, ch. 88-102; s. 45, ch. 91-45; s. 87, ch. 91-112; s. 1, ch. 91-121; s. 1, ch. 91-196; s. 3, ch. 92-167; s. 58, ch. 92-289; s. 9, ch. 93-132; s. 3, ch. 93-233; s. 61, ch. 93-268; s. 67, ch. 94-136; ss. 59, 66, ch. 94-353; s. 1472, ch. 95-147; s. 4, ch. 95-404; s. 3, ch. 97-197; s. 25, ch. 97-255; s. 2, ch. 97-294; s. 109, ch. 99-251; s. 11, ch. 99-256; s. 29, ch. 2001-79; s. 2, ch. 2002-183; s. 907, ch. 2002-387; s. 20, ch. 2003-32; s. 1, ch. 2005-42; s. 20, ch. 2005-132; s. 17, ch. 2005-287; s. 52, ch. 2006-60; s. 4, ch. 2006-291; s. 14, ch. 2007-5.

s. 196.192/Ad Valorem

Chapter 196—EXEMPTION

Title XIV TAXATION AND FINANCE

196.192 Exemptions from ad valorem taxation.—Subject to the provisions of this chapter:

(1) All property owned by an exempt entity and used exclusively for exempt purposes shall be totally exempt from ad valorem taxation.

(2) All property owned by an exempt entity and used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use.

(3) All tangible personal property loaned or leased by a natural person, by a trust holding property for a natural person, or by an exempt entity to an exempt entity for public display or exhibition on a recurrent schedule is exempt from ad valorem taxation if the property is loaned or leased for no consideration or for nominal consideration.

For purposes of this section, each use to which the property is being put must be considered in granting an exemption from ad valorem taxation, including any economic use in addition to any physical use. For purposes of this section, property owned by a limited liability company, the sole member of which is an exempt entity, shall be treated as if the property were owned directly by the exempt entity. This section does not apply in determining the exemption for property owned by governmental units pursuant to s. 196.199.

History.—s. 3, ch. 71-133; s. 2, ch. 88-102; s. 2, ch. 89-122; s. 3, ch. 2007-106.

s. 196.193/Property Appraiser

Chapter 196—EXEMPTION

Title XIV TAXATION AND FINANCE

196.193 Exemption applications; review by property appraiser.—

(1)(a) All property exempted from the annual application requirement of s. 196.011 shall be returned, but shall be granted tax exemption by the property appraiser. However, no such property shall be exempt which is rented or hired out for other than religious, educational, or other exempt purposes at any time.

(b) The property appraiser may deny exemption to property claimed by religious organizations to be used for any of the purposes set out in s. 196.011 if the use is not clear or if the property appraiser determines that the property is being held for speculative purposes or that it is being rented or hired out for other than religious or educational purposes.

(c) If the property appraiser does deny such property a tax exemption, appeal of the determination to the value adjustment board may be made in the manner prescribed for appealed tax exemptions.

(2) Applications required by this chapter shall be filed on forms distributed to the property appraisers by the Department of Revenue. Such forms shall call for accurate description of the property, the value of such property, and the use of such property.

(3) Upon receipt of an application for exemption, the property appraiser shall determine:

(a) Whether the applicant falls within the definition of any one or several of the exempt classifications.

(b) Whether the applicant requesting exemption uses the property predominantly or exclusively for exempt purposes.

(c) The extent to which the property is used for exempt purposes.

In doing so, the property appraiser shall use the standards set forth in this chapter as applied by regulations of the Department of Revenue.

(4) The property appraiser shall find that the person or organization requesting exemption meets the requirements set forth in paragraphs (3)(a) and (b) before any exemption can be granted.

(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.

(c) All notifications must specify the right to appeal to the value adjustment board and the procedures to follow in obtaining such an appeal. Thereafter, the person or organization filing such application, or a duly designated representative, may appeal that determination by the property appraiser to the board at the time of its regular hearing. In the event of an appeal, the property appraiser or the property appraiser's representative shall appear at the board hearing and present his or her findings of fact. If the applicant is not present or represented at the hearing, the board may make a determination on the basis of information supplied by the property appraiser or such other information on file with the board.

History.—s. 5, ch. 71-133; s. 15, ch. 76-133; s. 1, ch. 77-102; s. 1, ch. 77-174; s. 8, ch. 86-300; s. 157, ch. 91-112; s. 998, ch. 95-147; s. 4, ch. 2007-106.

s. 196.198/Educational Property

Chapter 196—EXEMPTION

Title XIV TAXATION AND FINANCE

196.198 Educational property exemption.—Educational institutions within this state and their property used by them or by any other exempt entity or educational institution exclusively for educational purposes shall be exempt from taxation. Sheltered workshops providing rehabilitation and retraining of disabled individuals and exempted by a certificate under s. (d) of the federal Fair Labor Standards Act of 1938, as amended, are declared wholly educational in purpose and shall be exempted from certification, accreditation, and membership requirements set forth in s. 196.012. Those portions of property of college fraternities and sororities certified by the president of the college or university to the appropriate property appraiser as being essential to the educational process shall be exempt from ad valorem taxation. The use of property by public fairs and expositions chartered by chapter 616 is presumed to be an educational use of such property and shall be exempt from ad valorem taxation to the extent of such use. Property used exclusively for educational purposes shall be deemed owned by an educational institution if the entity owning 100 percent of the educational institution is owned by the identical persons who own the property. If legal title to property is held by a governmental agency that leases the property to a lessee, the property shall be deemed to be owned by the governmental agency and used exclusively for educational purposes if the governmental agency continues to use such property exclusively for educational purposes pursuant to a sublease or other contractual agreement with that lessee. If the title to land is held by the trustee of an irrevocable inter vivos trust and if the trust grantor owns 100 percent of the entity that owns an educational institution that is using the land exclusively for educational purposes, the land is deemed to be property owned by the educational institution for purposes of this exemption. Property owned by an educational institution shall be deemed to be used for an educational purpose if the institution has taken affirmative steps to prepare the property for educational use. Affirmative steps means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate commitment of the property to an educational use.

History.—s. 10, ch. 71-133; s. 1, ch. 77-102; ss. 35, 37, ch. 90-203; s. 2, ch. 91-121; s. 1, ch. 99-283; s. 4, ch. 2000-26

s. 196.1987/Bibical history display

Chapter 196—EXEMPTION

Title XIV TAXATION AND FINANCE

196.1987 Biblical history display property exemption.—The use of property owned by an organization exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code to exhibit, illustrate, and interpret Biblical manuscripts, codices, stone tablets, and other Biblical archives; provide live and recorded demonstrations, explanations, reenactments, and illustrations of Biblical history and Biblical worship; and exhibit times, places, and events of Biblical history and significance, when such activity is open to the public and is available to the public for no admission charge at least 1 day each calendar year, subject to capacity limits, and when such organization has received written correspondence from the Internal Revenue Service stating that the conduct of the organization's activities does not adversely affect the organization's exempt status under s. 501(c)(3) of the Internal Revenue Code, constitutes religious use of such property, which is hereby defined as property within the purview of s. 3(a), Art. VII of the State Constitution and is exempt from ad valorem taxation to the extent of such use pursuant to s. 196.192(2). Any portion of such property used for nonexempt purposes may be valued and placed upon the tax rolls separately from any portion entitled to exemption pursuant to this section.

History.—s. 1, ch. 2006-164.

Florida AG's Opinion

Florida Attorney General
Advisory Legal Opinion

Number: AGO 2007-20
Date: March 30, 2007
Subject: Taxation, educational property

The Honorable Lori Parrish
Broward County Property Appraiser
115 South Andrews Avenue
Room 111
Fort Lauderdale, Florida 33301

RE: TAXATION - AD VALOREM TAXATION - EDUCATION - exemption of educational property partially used for non-educational purposes. ss. 196.192, 196.198, Fla. Stat.

Dear Ms. Parrish:

You ask substantially the following question:

May an educational institution receive an ad valorem taxation exemption pursuant to section 196.198, Florida Statutes, on improved real property which is partially leased at market rate to non-exempt commercial parties whose use is unrelated to educational purposes?

You state that a for-profit educational institution owns a parcel of land improved with a ten-story building.[1] The first two floors are leased at the market rate to various commercial parties whose activities are unrelated to education. The remaining eight floors are used for educational purposes by the institution.

Generally, section 196.192, Florida Statutes, states in pertinent part:

"Subject to the provisions of this chapter:
(1) All property owned by an exempt entity and used exclusively for exempt purposes shall be totally exempt from ad valorem taxation.
(2) All property owned by an exempt entity and used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use.

* * * *

For purposes of this section, each use to which the property is being

put must be considered in granting an exemption from ad valorem taxation, including any
economic use in addition to any physical use. This section shall not apply in determining the exemption for property owned by governmental units pursuant to s. 196.199."

Relative to educational institutions, however, section 196.198, Florida Statutes, provides:

"Educational institutions within this state and their property used by them or by any other exempt entity or educational institution *exclusively for educational purposes* shall be exempt from taxation. . . ." (e.s.)

You have cited *Walden v. University of South Florida Foundation*,[2] as addressing the issue in general, but under dissimilar facts. In *Walden*, the Second District Court of Appeal reviewed the lower court's determination that a five-acre orange grove producing income for the foundation and included in a thirty-acre tract owned by the foundation should be severed and taxed separately as it was not used for educational purposes. Citing the provision in section 196.192(2), Florida Statutes, stating that property used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio of the predominant use to the nonexempt use, the appellate court concluded that the trial court should have made a determination of such ratio and applied it accordingly.

Notably, at the time of the *Walden* decision, section 196.192, Florida Statutes, did not contain the qualifying language "[s]ubject to the provisions of this chapter."[3] This language was added in 1988.[4] The addition of this language would appear to make application of the general provisions in section 196.192, Florida Statutes, subject to the more specific exemption for educational property set forth in section 196.198, Florida Statutes.[5]

The plain language of section 196.198, Florida Statutes, exempts from taxation property used exclusively for educational purposes. The absence of language allowing a prorated exemption for property owned by the educational institution, but partially used for non-educational purposes, is significant in that other sections of Chapter 196 recognize that for specified exempt property, any portion of the property used for nonexempt purposes may be valued and placed on the tax rolls separately.[6]

For example, section 196.1983, Florida Statutes, providing an exemption for charter schools from ad valorem taxation, states that "[a]ny facility, *or portion thereof*, used to house a charter school whose charter has been approved by the sponsor and the governing board pursuant to s. 1002.33(7) shall be exempt from ad valorem taxes." (e.s.) Section 196.1975, Florida Statutes, allows an

exemption for property used by non-profit homes for the aged when they meet specified criteria. The statute states, however, that "[a] ny portion of such property used for nonexempt purposes may be valued and placed upon the tax rolls separately from any portion entitled to exemption pursuant to this chapter."[7] Thus, the Legislature has provided exemptions from ad valorem taxation for specified property and, in some instances, recognized that portions of the property used for nonexempt purposes may be valued and placed upon the tax rolls separately from the property entitled to the exemption.

It is well established that tax exemptions are "strictly construed and carefully scrutinized."[8] Exemptions, therefore, must be clear and definite and may not be based on implication or be enlarged by construction. Nothing in section 196.198, Florida Statutes, which totally exempts property used exclusively for education, authorizes the separate valuation and taxation of portions of the property used for nonexempt purposes.

In Attorney General Opinion 93-72 this office concluded that real property owned by a private organization operating a commercial truck driving school was exempt from taxation pursuant to section 196.198, Florida Statutes, only if it was used solely for educational purposes. The opinion cited to the language in section 196.198, Florida Statutes, that property used by educational institutions be "exclusively for educational purposes" in order to be exempt from taxation and recognized that the property appraiser must make the factual determination of exclusive use to apply the exemption.

Accordingly, it is my opinion that an educational institution may receive an ad valorem taxation exemption pursuant to section 196.198, Florida Statutes, only on property that is used exclusively for educational purposes. Improved real property owned by an educational institution which is partially leased at market rate to non-exempt commercial parties whose use is unrelated to educational purposes would not fall within this exemption.

Sincerely,

Bill McCollum
Attorney General

BM/tals

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[1] For purposes of this opinion, it is assumed that you have made a determination that the for-profit educational entity qualifies as an exempt educational entity pursuant to
Chapter 196, Florida Statutes.

[2] 328 So. 2d 460 (Fla. 2d DCA 1976), *cert. denied* 336 So. 2d 605

(Fla. 1976).

[3] *See* s. 196.192, Fla. Stat. (1975).

[4] *See* s. 2, Ch. 88-102, Laws of Fla.

[5] *See generally McKendry v. State*, 641 So. 2d 45 (Fla. 1994); *Gretz v. Florida Unemployment Appeals Commission*, 572 So. 2d 1384 (Fla. 1991) (specific statute stating no fee for transcript preparation in unemployment compensation appeals controls over general statute requiring agency to provide transcripts at actual cost); *Barnett Banks, Inc. v. Department of Revenue*, 738 So. 2d 502 (Fla. 1st DCA 1999).

[6] *See* ss. 196.1977(3), Fla. Stat. (portion of property in proprietary continuing care facility used for nonexempt purpose valued and taxed separately); 196.1985 (portion of labor organization property used for nonexempt purposes valued and placed upon tax rolls separately from any portion entitled to exemption); 196.1986 (portion of community center property used for nonexempt purposes valued and placed upon tax roll separately); and 196.1987 (portion of biblical history display property used for nonexempt purposes may be valued and placed upon tax roll separately).

[7] Section 196.1975(11), Fla. Stat.

[8] *Genesee Corporation v. Owens,* 20 So. 2d 654, 656 (Fla. 1945). *See also* Op. Att'y Gen. Fla. 88-60 (1988); *Adams Construction Equipment Co. v. Hausman,* 472 So. 2d 467 (Fla. 5th DCA, 1985); *Jones v. Life Care of Baptist Hospital, Inc.*, 476 So. 2d 726 (Fla. 1st DCA, 1985).

The article below is from the "Florida Education Law" newsletter

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Volume 6, Issue 1, September 2007

Under Attack: Partial Property Tax Exemptions for Educational Institutions

by Patrick M. Whitehead, Esq.[1]

On March 30, 2007, Attorney General Bill McCollum issued Florida Attorney General Opinion 2007-20 ("AGO 2007-20").[2] The opinion responds to a question put forth by the Honorable Lori Parrish, Broward County Property Appraiser.[3] Ms. Parrish asked whether an educational institution may receive an ad valorem taxation exemption pursuant to F.S. §196.198 on improved real property which is partially leased at market rate to non-exempt commercial parties whose use is unrelated to educational purposes.[4] By way of background, since 1976 educational institutions have enjoyed partial ad valorem tax exemptions on property used by them predominately for educational purposes.[5] The opinion concludes that an educational institution may receive an ad valorem taxation exemption pursuant to F.S. §196.198 but only on property that is used exclusively for educational purposes; therefore, improved real property owned by an educational institution which is partially leased at market rate to non-exempt commercial parties whose use is unrelated to educational purposes would not qualify for a partial exemption.[6]

Summary of Attorney General's Analysis

The Attorney General first cites as applicable statutory authority F.S. §196.192.

> Generally, §196.192, Florida Statutes, states in pertinent part: 'Subject to the provisions of this chapter: (1) All property owned by an exempt entity and used exclusively for exempt purposes shall be totally exempt from ad valorem taxation. (2) All property owned by an exempt entity and used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use . . . . For purposes of this section, each use to which the property is being put must be considered in granting an exemption from ad valorem taxation, including any economic use in addition to any physical use . ... .[8]

The Attorney General next states that "[r]elative to educational institutions, however, §196.198, Florida Statutes, provides: 'Educational institutions within this state and their property used by them or by any other exempt entity or educational institution exclusively for educational purposes shall be exempt from taxation . . . .'"[9]

The Attorney General next cites to *Walden v. University of South Florida Foundation*[10] to support his conclusion.[11] Walden involved an ad valorem tax exemption on a 30 acre tract of land owned by the University of South Florida Foundation.[12] Of the 30 acres, 25 were used for educational purposes and 5 were used as an orange grove which provided citrus sale revenue to the foundation.[13] The trial court initially held that the 5 acre orange grove would have to be severed in order to obtain an exemption on the remaining 25 acres.[14] The Second District reversed this decision citing F.S. §196.192(2) stating that the trial court should have determined the ratio of the predominate use to the non-exempt use to arrive at the exempt portion.[15]

continued, next page

The Attorney General then distinguished the Walden decision by citing to a statutory change in 1988 ("1988 Amendment"). He states that "[n]otably, at the time of the Walden decision, §196.192, Florida Statutes, did not contain the qualifying language 'subject to the provisions of this chapter.'"[16] He further states that "[t]he addition of this language would appear to make application of the general provisions in §196.192, Florida Statutes, subject to the more specific exemption for educational property set forth in §196.198, Florida Statutes."[17]

The Attorney General next states that it is important to note that F.S. §196.198 does not provide for partial exemptions as under F.S. §196.192(2).[18] He then states that "[t]he absence of language allowing a prorated exemption for property owned by the educational institution, but partially used for non-educational purposes, is significant in that other sections of Chapter 196 recognize that for specified exempt property, any portion of the property used for nonexempt purposes may be valued and placed on the tax rolls separately."[19]

The Attorney General next states that "[i]t is well established that tax exemptions are 'strictly construed and carefully scrutinized' [and] therefore, must be clear and definite and may not be based on implication or be enlarged by construction."[20]

Finally, the Attorney General cites to Attorney General Opinion 93-72. He states that in such opinion his office "concluded that real property owned by a private organization operating a commercial truck driving school was exempt from taxation pursuant to §196.198, Florida Statutes, only if it was used solely for educational purposes."[21] He states that AGO 93-72 cited to the language in F.S. §196.198 requiring that property used by educational institutions be used 'exclusively for educational purposes' in order to be exempt from taxation."[22]

Critical Analysis of AGO 2007-20

The Attorney General's conclusion that real property is not entitled to a partial ad valorem taxation exemption under F.S. §196.192(2) if owned by an educational institution and not exclusively used for educational purposes does not follow established case precedent and proper rules of statutory construction. The Second District Court's decision in Walden controls.

The Attorney General improperly relies on the 1988 Amendment[23] to distinguish *Walden*. The 1988 Amendment to F.S. §196.192 was the direct response of the Florida Legislature to *Daniel v. T.M. Murrell Co.*[24] In *Daniel*, the court addressed whether under F.S. §196.192 actual ownership of real property by an educational institution was required or whether the mere use of real property by an educational institution qualified for the exemption. The *Daniel* court concluded that F.S. §196.192 requires only that the property be used for educational purposes. The 1988 Amendment to F.S. §196.192 added the language "owned by an exempt entity" in subsections (1) and (2). It also added the introductory language cited by the Attorney General in the instant case, "Subject to the provisions of this chapter." The legislative intent of the 1988 Amendment was to overrule the judicial construction of *Daniel*, not *Walden*.[25]

Further, at the time of the *Walden* decision, F.S. §196.198 existed, in pertinent part, as it does today. At the time of *Walden*, F.S. §196.198 provided that "[e]ducational institutions within this state and their property used exclusively for educational purposes shall be exempt

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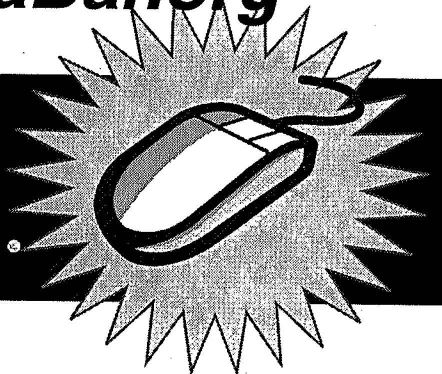

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from taxation."[26] The *Walden* court, by not addressing F.S. §196.198, by implication did not read it as limiting the application of F.S. §196.192(2) to educational institutions. The *Walden* court affirmed the availability of the partial exemption for the educational institution under F.S. §196.192(2) without regard to F.S. §196.198. Notably, the tax assessor in *Walden* requested appeal of the decision to the Florida Supreme Court but *certiorari* was denied.[27]

A well settled Florida rule of statutory construction holds that "the legislature is presumed to know the judicial constructions of a law when enacting a new version of that law and the legislature is presumed to have adopted prior judicial constructions of a law unless a contrary intention is expressed in the new version."[28] The legislature therefore is deemed to have known of the judicial construction in *Walden* regarding the availability of partial exemptions for educational institutions under F.S. §196.192, despite F.S. §196.198. If the intent of the legislature was to overrule *Walden*, it would have expressed an intention to do so in the 1988 reenactment of the statute. No such language was included in the reenactment. By comparison, the 1988 Amendment clearly overruled *Daniel*.

Finally, the Attorney General's reliance on AGO 93-72 is also unpersuasive. AGO 93-72 held that educational institutions are entitled to ad valorem taxation exemption only if the property is used exclusively for educational purposes, citing only to F.S. §196.198.[29] AGO 93-72 did not address any precedent case law with respect to F.S. §196.198.[30] Had the Attorney General in AGO 93-72 applied the holding in *Walden* the conclusion would have allowed for partial exemptions under F.S. §196.192(2).

The Attorney General's conclusion that real property is not entitled to a partial ad valorem taxation exemption under F.S. §196.192(2) if owned by an educational institution and not exclusively used for educational purposes is not a valid construction of the statute. The Second District Court's decision in *Walden* sets forth the proper judicial construction. *Walden* holds that an educational institution is entitled to an exemption on property that is predominately used for exempt purposes based on the ratio that such predominate use bears to the nonexempt use.

Educational Institutions and Affiliates Affected

The exemption under F.S. §196.198 extends to "educational institutions."[31] Educational institution is defined as "a federal, state, parochial, church, or private school, college, or university conducting regular classes and courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Schools, or the Florida Council of Independent Schools . . . [,and] educational direct-support organizations" for public pre-kindergarten through 12th grade institutions, state universities, and state community colleges.[32] Although the foregoing definition includes all forms of public schools and universities, according to *Markham v. Broward County*,[33] such institutions are immune from property taxation as bodies performing a function of the State. In *Markham*, the court stated that the "State," which enjoys constitutional immunity from property taxation, includes counties and entities providing the public system of education.[34] Accordingly, the educational institutions affected by AGO 2007-20 are private schools, colleges and universities and their direct support organizations, as well as, the direct support organizations of public schools, colleges, universities and community colleges.

Conclusion

Since 1976 all educational institutions in Florida have enjoyed partial and total property tax exemptions. The new interpretation offered by the Attorney General in AGO 2007-20 departs from this longstanding position for no valid reason of law or apparent reason of public policy. There is no reasonable basis for treating public and private educational institutions differently; the exempt purpose and function of each are the same.

Endnotes:

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[2] Fl. AGO 2007-20.
[3] *Id.*
[4] *Id.*
[5] *Walden v. University of S. Fla. Found.*, 328 So.2d 460 (Fla. 2d Dist. Ct. 1976).
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.* (emphasis added in original).
[10] 328 So.2d 460 (Fla. 2d Dist. Ct. 1976).
[11] Fla. AGO 2007-20.
[12] Walden, 328 So.2d at 460.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] Fl. AGO 2007-20.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] 1988 Fla. Sess. Law Serv. 88-102.
[24] 445 So.2d 587 (Fla. 2d DCA 1984).
[25] *See Leon County Educ. Facilities Auth. v. Hartsfield*, 698 So.2d 526, 530 (1997)(stating "[t]he Senate Staff analysis reflects that [the 1988] amendment was intended to overrule the effect of such cases as [Daniel]").
[26] F.S. §196.198 (1971).
[27] 336 So.2d 605 (Fla. 1976).
[28] *Jones v. ETS of New Orleans, Inc.*, 793 So.2d 912, 917 (Fla. 2001) (citing *City of Hollywood v. Lombardi*, 770 So.2d 1196 (Fla. 2000)).
[29] Fl. AGO 93-72.
[30] *Id.*
[31] F.S. §196.198.
[32] F.S. §196.012(5).
[33] 825 So.2d 472 (Fla. 2d DCA 2002).
[34] *Id.* (citing *Canaveral Port Auth. v. Department of Revenue*, 690 So.2d 1226 (Fla. 1996).