

BRIEFINGS



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New Legislative Property Tax Proposal Is a Step Backward From the Last One

The Legislature is poised to replace the proposed constitutional amendment on property taxes it passed four months ago with another one that is a step backwards. Lawmakers have called yet another special session that began today, October 12, immediately after the special session to cut the state budget ended.

The new amendment does very, very little for non-homestead property owners, who as a group have suffered the most from the property tax crisis. It could even make matters worse. It does contain some good, more minor provisions. But coupled with serious constitutionality concerns, the major parts of the new proposal do not address what is ailing the broad array of all Florida taxpayers.

In a special session last June, the Legislature passed a proposed amendment that has as its centerpiece a new super-homestead exemption, worth up to \$195,000. Taxpayers would be able to make a one-time election to choose the new exemption or the current Save Our Homes protection. New homeowner and people who move would automatically get the new exemption.

A circuit court recently ruled that the ballot summary of the proposed January 29, 2008 amendment was misleading because it did not inform the voters that Save Our Homes would eventually be phased-out. The initial reaction from the Legislature was that it would appeal the decision or attempt to fix the ballot summary. Probably acknowledging polls that show public support below the 60% needed to pass the amendment, the Legislature is now working to scrap the amendment and propose a new one. Florida TaxWatch urges the Legislature not to scrap this amendment.

The Governor and legislative leaders have developed a tentative agreement on the new amendment, based on recommendations released by the Governor earlier this week. The Speaker and President have added their input and some provisions have been added and removed. At the core of the plan are some provisions the Governor campaigned on, but were scuttled during the regular and special sessions.

The Governor has recommended doubling the homestead exemption from \$25,000 to \$50,000 and allowing “portability” of Save Our Homes savings. The proposal would also create an exemption for new homeowners of 25% of just value. All these exemptions would not apply to school tax levies. It also includes the very good \$25,000 tangible personal property tax exemption that was also in the previous proposed amendment. Florida TaxWatch recommends a higher level.

Legislative leaders have tentatively agreed to these items and want to add targeted relief for affordable housing, “working waterfronts” and low-income seniors. The House wants to totally eliminate property taxes for low-income seniors while the Senate is proposing a “significant” new exemption for them. They also want to remove the “presumption of correctness” property appraisers have in appraisal disputes with taxpayers.

The Governor had proposed a comprehensive revenue cap for local governments but has now backed off that, citing the fear that opposition to the cap could bring down the whole amendment.

Analysis of the New Proposal

The new amendment is a step backwards from the old one. The old one, while far from perfect, had a major improvement the new one lacks, the gradual phasing-out of Save Our Homes without hurting those who currently benefit from it. This is key to true long-term reform of the system for all taxpayers.

Doubling the Homestead Exemption

While cutting taxes is always worth exploring, this cut largely helps taxpayers that do not need it as much as others, while further burdening those who need relief the most.

We must remember what this property tax crisis is really about. Florida TaxWatch has been examining and issuing reports on this current crisis for more than two years. The problem has always been that Save Our Homes (SOH), coupled with unrestrained local government spending, has greatly increased taxes on only a portion of the state's taxpayers and created inequities among them. Some homesteaders have been hurt, especially those who move or buy their first home, but for homeowners that have been under SOH through these recent years of escalating property values, their real tax bills have increase little, if at all. It is the non-homesteader — landlords and renters, businesses, second and vacation homeowners, snowbirds and even homesteaders who also own non-homestead property – who has shouldered the burden of increasing property taxes.

Since it has the same effect as SOH — reducing the taxable value of a homestead —increasing the homestead exemption exacerbates the big problem with SOH. It would increase the tax shift to non-homestead properties.

When combined with changes in SOH, an increased homestead exemption could play an important role in a comprehensive reform of Florida's property tax system, such as was attempted in the Super-Homestead amendment. It can help taxpayers retain at least part of their accrued savings in the event that Save Our Homes is eliminated or modified. But without more comprehensive changes and principled reforms, the Legislature should avoid the politically expedient move of proposing an increased homestead exemption, especially without more comprehensive and complete reforms.

Portability

SOH has resulted in people feeling “trapped in their homes”. Many homeowners who want to move to another house feel they cannot due to the huge tax increases they would face when their new home is initially assessed at full market value. This “portability” issue is a real problem, but it must be remembered that allowing portability will exacerbate the problem of shifting taxes.

What's more, there are serious questions on the constitutionality of portability. The Legislature hired one of the foremost legal experts on the subject to examine the constitutionality of several proposals and his conclusion was that portability likely violated the U.S. Constitution Commerce Clause. These findings seem to have been forgotten.

A better approach from a tax reform standpoint, and likely from a legal one as well, is the one attempted by the Super Homestead Exemption amendment, which provides a measure of portability by allowing

people who move to take advantage of the new increased exemption – aiding both new and long-term homestead property owners.

New Homeowners Exemption

The new exemption for first-time homebuyers is another example of a proposal that addresses a real problem -- the tax shift to new homeowners — but also increases the tax shift to non-homestead properties.

It would be an additional homestead exemption for persons buying their first home in state (including those moving into state who have owned homes elsewhere). It would be 25% of just value of the home. The Senate wants to cap it at 25% of the county's prior year median just value and smartly phase it out as the new homesteaders' Save Our Homes differential increases.

Tangible Personal Property Exemption

There is broad consensus on the merits of the \$25,000 exemption from the tangible personal property taxes that businesses pay. Florida TaxWatch has long been a proponent of exempting small business from tangible personal property taxes, as is the case for individuals and families. Along with provisions for working waterfronts and affordable housing, this is the only benefit for non-homestead property in the proposal. While welcome and important, it is relatively minor relief and only helps some businesses, not all non-homestead property. Also, complying with the law creates a lot of work for both the public and private sector with (in the case of small businesses) relatively little return.

Other Relief

The targeted relief for affordable housing, “working waterfronts” and low-income seniors are all proposals that combine tax relief with furthering good public policy. Of course, these will also result in tax shifting, but the beneficiaries are more limited so the shift will be borne by a wider taxpayer population, including homesteads. Florida TaxWatch has been supportive of relief for low-income seniors and any commercial property that suffers excessively from “highest and best use” valuations. Florida TaxWatch recommends that the Legislature find ways to help other properties deal with “highest and best use” in ways that promote fairness, stability and predictability.

Taxpayer Fairness

Taxpayers generally have a difficult time prevailing in assessment disputes. Perhaps the major reason is that a taxpayer challenging their valuation is required to overcome government's presumption of correctness by a clear and convincing evidence standard, rather than just a preponderance of the evidence. Removing this presumption of correctness the property appraiser enjoys would help level the playing field. Florida TaxWatch has recommended this change since 1996 and strongly urges the Legislature to use the standard of “preponderance of evidence” now used predominantly in Florida's civil laws.

Inequities Created by SOH Place Constitutionality in Question

In addition to the constitutional questions surrounding portability, there are also legal concerns about the Save Our Homes amendment itself. This is important to acknowledge because the longer to state refuses to address the harm done to non-homestead property, the more likely it is to face a court challenge as a last resort. Having the amendment thrown out carries with it its own challenges. There could be huge tax increases in store for homeowners and the possibility of court-ordered refunds could hold the state liable for billions of dollars.

It is important to note that the potential challenge is likely not on the difference between what homestead and non-homestead properties pay, as was the case in a recent suit brought by a group of Alabama residents who own second homes in Florida. The preferential treatment of residents has been held to be constitutional as long as there is a rational reason for doing so.

However, the amendment has also created inequities among homesteaders, such as two similar houses in the same area having vastly different tax bills. “Similarly situated” taxpayers should have similar tax liabilities, but this is not the case under SOH. The SOH savings on the same valued house can vary greatly. The longer a person has owned their homesteaded home, the greater the SOH savings. An analysis by the Florida Department of Revenue put all houses in Florida valued between \$200,000 and \$225,000 into ten equal sized groups based on the size of their SOH differential. The 10% with the largest savings, on average, had 73.4% of their homes’ value exempted, while the lowest ten percent had only 11.7% exempted.

The unequal taxation of similarly situated taxpayers opens the door for a legal challenge for violation of the state’s equal protection clause. In Justice Ben Overton’s dissenting opinion, with concurrence of two other Justices, during the Florida Supreme Court’s pre-ballot review of SOH on October 29, 1992, he states that although the question had not been raised, “I find that the application of amendment 10 may result in a serious equal protection violation. For example, two identical condominium units in the same building could be taxed at different amounts for identical public services because the amount of the tax would be calculated on the length of time the owners owned their respective units rather than on the true present value of their units.” He raises the question of whether Amendment 10, by implication, also amends Florida’s equal protection clause without adequately notifying the voters. There remains no time limit to challenge a previously adopted amendment to the state constitution if it is found to not properly inform the voter of such significant changes in the ballot title and summary.

Conclusions and Recommendations

Florida TaxWatch recommends that the Legislature fix the ballot summary of the Super Homestead Exemption amendment. While we acknowledge that it faces an extremely uphill battle at the polls, it may be Florida's only chance to eventually get rid of Save Our Homes in a way that actually improves the tax situation of some homesteaders and not unduly harming the rest of the homesteaders. Only then can we have a system that is fair and equitable. This is not to mean that homesteaders should not receive some tax preference, and they would under this amendment. But it would be a preference that is reasonable and sustainable.

It would also be a good starting point for the Legislature and the Taxation and Budget Reform Commission to address other elements of property tax reform. If it does not pass, both bodies can try other approaches.

The new legislative proposal, while addressing some problems, could make others worse and has serious constitutional concerns. Additionally, by providing more benefits to homesteaders and attempting to fix problems Save Our Homes created for them, it would be difficult to create a future constitutional amendment to help non-homestead property that would garner enough voter support to pass. Since any changes to help non-homestead property will likely put upward pressure on homesteaders' tax burden, these homestead benefits should be part of a comprehensive property tax relief and reform proposal that has "something for everybody."

If the Legislature insists on proposing an amendment that includes its currently proposed provisions, Florida TaxWatch recommends that it include a "Save Our Taxpayer" provision. This would cap the assessment growth of all property, the same way Save Our Homes does for homesteads.

To avoid the same problems SOH created, namely tax shifting and portability, additional provisions must be included. If all property were capped under a SOH-like system, the tax shift to new construction, people who move to a new home or relocate a business and, in fact, virtually anyone who buys property, would be huge. To avoid this, and to provide a type of portability, an exemption like the 25% one being proposed for new homeowners, be provided for all property when purchased. The exemption could be capped for very expensive homes or large commercial properties. The exemption would then be phased-out, dollar for dollar, as the Save Our Taxpayer savings accrue. In fact, in order to give the same benefit to those who have recently bought property, the Legislature could propose that all property will have a certain percent of its value exempt, until Save Our Taxpayer savings exceed that amount.

Under this system, **ALL** property owners in the state would have, for example, 25% of their property's value shielded from taxation until their Save Our Taxpayers savings reached that amount, and then their savings would grow.

This treats everyone fairly, but it could not work without a cap on property tax revenue (through millage rates), which the Legislature enacted in June. When you cap everyone's assessment, there are no assurances that taxes will be capped. Save Our Homes did little to stop the growth in total taxes, but homeowners benefited by the shift to non-homesteads. When there is no one to shift to, you must have limits on revenue.

Due to the large amount of local governments that recently proposed to override this new cap, the legislature should consider making it harder to override, at least in the short term. The 10-mill cap, at least for small counties, might need to be addressed.

However, the standard exemption could cost local governments significant revenue. But this specific proposal is about tax reform, not relief. The Legislature could reduce the impact on local governments by allowing them to recoup some of the losses through higher millage rates, while being sensitive to the impact on those who already have SOH savings in excess of the exemption.

If the Legislature insists on largely ignoring non-homestead property and moves forward with its current proposal, it needs to include statutory accompaniment to ensure that more tax burden is not shifted to non-homestead properties. Similar to what it did for the Super Homestead Exempt amendment, the statutory millage cap would have to be amended to ensure that local government truly absorb the cost of the double homestead exemption, the new homeowner exemption and portability. This can be done by requiring that the rolled-back rate is calculated **before** the value of these exemptions is removed from taxable value. This is essential to ensuring that these are true tax cuts and not tax shifts.

About Florida TaxWatch

Florida TaxWatch is a statewide, non-profit, non-partisan taxpayer research institute and government watchdog that over its 28-year history has become widely recognized as the watchdog of citizens' hard-earned tax dollars. Its mission is to provide the citizens of Florida and public officials with high quality, independent research and education on government revenues, expenditures, taxation, public policies, and programs, and to increase the productivity and accountability of Florida Government.

Florida TaxWatch's research recommends productivity enhancements and explains the statewide impact of economic and tax and spend policies and practices on citizens and businesses. Florida TaxWatch has worked diligently and effectively to help state government shape responsible fiscal and public policy that adds value and benefit to taxpayers.

This diligence has yielded impressive results: in its first two decades alone, policymakers and government employees implemented three-fourths of Florida TaxWatch's cost-saving recommendations, saving the taxpayers of Florida more than \$6.2 billion -- approximately \$1,067 in added value for every Florida family, according to an independent assessment by Florida State University.

Florida TaxWatch has a historical understanding of state government, public policy issues, and the battles fought in the past necessary to structure effective solutions for today and the future. It is the only statewide organization devoted entirely to Florida taxing and spending issues. Its research and recommendations are reported on regularly by the statewide news media.

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With your help, Florida TaxWatch will continue its diligence to make certain your tax investments are fair and beneficial to you, the taxpaying customer, who supports Florida's government. Florida TaxWatch is ever present to ensure that taxes are equitable, not excessive, that their public benefits and costs are weighed, and government agencies are more responsive and productive in the use of your hard-earned tax dollars.

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