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## MEMORANDUM

TO: Members of 2019 Orange County Value Adjustment Board & VAB Clerk

FROM: Aaron Thalwitzer, Esq., Board Counsel

RE: 2019 Legislative Update

DATE: May 21, 2019

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I have summarized certain authorities and guidance relevant to Value Adjustment Boards (“VAB”) which became available or effective since last year’s Organizational Meeting, focusing on the portions relevant to the Orange County VAB. I would be happy to provide more in-depth analysis at the Board’s request.

## CASE LAW

1. Sowell v. Faith Christian Family Church of Panama City Beach, Inc., 249 So. 3d 1323 (Fla. 1st DCA 2018), review denied. After becoming delinquent, church challenged tax assessment. Appellate court held that the trial court lost jurisdiction over the challenge because the church failed to file timely challenge to the tax assessment before delinquency.
2. Joiner v. Pinellas County, 44 Fla. L. Weekly D1189a (Fla. 2d DCA 2019). Appeals court held that county-owned land in a different county is taxable by the county in which the land is situated; the land is not entitled to immunity.
3. Darden Restaurants, Inc. v. Singh, 266 So. 3d 228 (Fla. 5th DCA 2019). Darden appealed VAB’s ruling reinstating TPP assessments at corporate headquarters. Appeals court held that PAO was required to present evidence that it calculated obsolescence of Darden’s TPP in accordance with professionally-accepted appraisal practices.
4. Crapo v. Gainesville Area Chamber of Commerce, 2019 WL 1941241 (Fla. 1st DCA 2019). Chamber appealed VAB’s denial of chamber’s exemption from AV taxation based on charitable purpose. Trial court agreed with chamber, and appeal court affirmed, holding that chamber’s activities were “charitable” under F.S. 196.012(7) and Fla. Const. art. 7 s. 3(a).
5. Crapo v. Academy for Five Element Acupuncture, 2018 WL 4139276 (Fla. 1st DCA 2018). Appeal court affirmed trial court’s finding that non-profit school was entitled to educational exemption as an “educational institution” as defined in F.S. 196.012(5), and held that PAO’s challenge to the school’s exemption was barred by administrative finality, barring re-litigation of the exemption absent changed circumstances.

## **ENACTED LEGISLATION**

6. **F.S. 193.4517. Assessment of agricultural equipment rendered unable to be used due to Hurricane Michael.** For assessment purpose, farm equipment damaged by Hurricane Michael to the extent that the market value of the equipment must be assessed at salvage value where it was unable to be used for at least 60 days because of Hurricane Michael. Deadline is August 1, 2019. Only effects counties in the Panhandle.

7. **F.S. 195.096. Review of Assessment Rolls.** Regarding property taxes, the bill includes the following, effective May 15, 2019:

- The requirements for hospitals to qualify for a charitable tax exemption are amended to require them to document the value of charitable services they provide, and their current charitable tax exemption would be limited to the value of that charity care.
- Additional flexibility is granted to the Department of Revenue in conducting in-depth reviews of property assessment rolls in counties affected by natural disasters.

## **PENDING LEGISLATION**

8. **2019 House Bill No. 1261 & 2019 Senate Bill 710 – Value Adjustment Boards.** Authorizes certain people to file petition with VAB late for good cause; specifies circumstances that are not considered good cause for purposes of rescheduling value adjustment board hearing, adding subsection (h) to F.S. 194.011: “A person may file a petition late for good cause if the county has voted to extend the roll under F.S. 197.323(1). As used in this paragraph, "good cause" means circumstances beyond the control of the person seeking to file the petition late. A late filed petition must be filed within 55 days after the mailing of the notice by the property appraiser.”

## **DEPT. OF REVENUE PROPERTY TAX INFORMATIONAL BULLETINS<sup>1</sup>**

9. **PTO TM #1803.**<sup>2</sup> Advised that AGO 2018-02, dated May 31, 2018 on the subject of value adjustment board and substantial completion, considered a special magistrate’s authority to hear taxpayer appeals from assessment valuations based on the disputed status of improvements to real property as substantially completed, and gave the following opinions:

- Whether improvements to property were “substantially completed” as of January 1 is a valuation issue and a value adjustment board has authority to hear petitions of such issue under sections 192.042(1), and 194.011(3)(d), F.S.
- For real property governed by section 193.1555, F.S., whether improvements were “substantially completed” as of January 1 is an issue that must be heard by an attorney special magistrate if, pursuant to the challenged assessment, the subject improvement increases the just value of the real property by at least 25 percent.

F.S. 193.1555(5) sets forth a general rule, subject to exceptions: “property assessed under this section shall be assessed at just value as of January 1 of the year following a qualifying

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<sup>1</sup> DOR Bulletins are non-binding on the VAB. However, they are included in this memorandum because they provide insight into the DOR’s interpretation of various laws.

<sup>2</sup> The undersigned requested this opinion on behalf of the Volusia County VAB.

improvement or change of ownership or control.” For real property governed by F.S. 193.1555, a qualifying improvement means any substantially completed improvement that increases the just value of the property by at least 25%.

10. **PTO TM #1804, #1805, and #1806-06.** The Department amended rules to incorporate statutory changes from 2018. These changes are ministerial and will not have a direct VAB impact; the statutes amended in 2018, which were discussed in last year’s legislative update. The Department also announced that the 2018 Constitutional Amendments 1 (rejected) and 2 (passed) do not require the Department to take any immediate action.

Sincerely,

**GORDON & THALWITZER**



Aaron Thalwitzer, Esq.

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