



# GORDON & THALWITZER

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## MEMORANDUM

TO: Members of the 2020 Orange County Value Adjustment Board and VAB Clerk

FROM: Aaron Thalwitzer, Esq., Board Counsel

RE: Legislative Update for 2020 Tax Cycle

DATE: April 8, 2021

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The below summarizes of the new, amended, or proposed legal authorities of significance to value adjustment boards which have been released since last year's legislative update. I would be happy to provide additional analysis or copies of the legal authorities upon request.

## STATUTES

1. **F.S. 193.155(1) Homestead Assessments.** The law includes measures: (i) extending to three years from two years the time for which the homestead exemption benefit is transferable from a prior homestead to a new homestead; (ii) extending to three years from two years the time for an owner of homestead property significantly damaged or destroyed by a named tropical storm or hurricane must establish a new homestead to make a certain election; (iii) removing obsolete provisions; (iv) providing that the law applies beginning with the 2021 tax roll; and (v) providing a contingent effective date. The law took effect Jan. 1, 2021.

## ADMINISTRATIVE RULES

1. **Rule 12D-16.002 Petition; Form and Filing Fee.** This housekeeping revision incorporates amended Forms DR-490PORT, DR-501, DR-501DV and DR-501RVSH. The purpose of the proposed revisions to these forms and the Certificate for Transfer of Homestead Assessment Difference, and Form DR-501, Original Application for Homestead and Related Tax Exemptions forms is to update the reference to the time limit to transfer the assessment difference from two to three years. Additional changes to Form DR-501 update social information and add information that the disabled veteran discount carries over to the surviving spouse. The purpose of the proposed revisions to Form DR-501DV, Application and Return for Homestead Tax Discount, Veterans Age 65 and Older with a Combat-Related Disability and Surviving Spouse, is to align the form to the amended requirements of F.S. 196.082, which provided for the surviving spouse to receive the veteran's disability discount. The proposed revisions added the spouse's name to the application for discount and removed obsolete language.

## PROPOSED LEGISLATION

1. **HB 649/S.B. 996. Petition for Objection to Assessment.** This bill authorizes a condominium or cooperative association to defend its members in ad valorem tax suits brought by a property appraiser after a VAB decision and to appeal such decisions on the owners' behalf. This bill requires an association to notify, in a specified manner, its members of its intention to petition the VAB and that, by not opting out of the petition, the owner agrees that the association may represent him or her in any subsequent

proceedings. This bill is a response to the Third District Court of Appeal's decision in Central Carillon Beach Condo. Ass'n Inc. v. Garcia, 245 So. 3d 869 (Fla. 3d DCA 2018), which held that an association could not defend its members in a circuit court appeal of a VAB decision filed by the property appraiser, because current law requires the individual taxpayers to be named as defendants. This created a perceived disconnect with the current law, which allows a condominium, cooperative, or mobile home homeowners' association to challenge an ad valorem tax assessment on behalf of its members by filing a single joint petition with the VAB, but did not allow the association to defend its members in a circuit court appeal.

2. **HB 1555/S.B. 1702. Government Property Tax Exemptions.** This bill would expand the definition of "governmental function" for leases to include private tenants leasing property from Federal, state, or local governments as long as they perform a function that would be a valid use of public funds. Specifically expands the scope of private businesses that would qualify as "governmental function" by using such property for aviation-related activities and adds an exemption from ad valorem taxes for such use. Also adds exemption from ad valorem taxes for existing "governmental functions" of aviation, airport, aerospace, maritime, or port purpose or operation. Also includes numerous clarifications to the existing law.

### **CASE LAW**

1. **Singh v. Walt Disney Parks and Resorts US, Inc., 45 Fla. L. Weekly D1873 (Fla. 5th DCA 2020).** The Orange County Property Appraiser ("PA") appealed the trial court's holding setting aside Disney's 2015 tax assessment on the Disney Yacht & Beach Club Resort. The appellate court held that the "Rushmore" method used by the PA improperly included intangible business value. The court explicitly rejected the Rushmore method and directed the PA to reassess the property without using it.

2. **Ed Crapo v. Univ. Cove Partners, Ltd., No. 1D19-2894, 2020 WL 3443483, at \*3 (Fla. 1st DCA 2020).** The affordable housing exemption requires a taxpayer to, among other things, be subject to an agreement with the Florida Housing Finance Corporation ("FHFC") recorded in the official records of the county in which the property is located to provide affordable housing. The discount terminates if the property no longer serves extremely-low-income, very-low-income, or low-income persons pursuant to the recorded agreement, as would occur if the agreement terminated. The taxpayer argued that the "term" of the FHFC agreement meant the date on which FHFC signed the agreement. The property appraiser argued that the "term" referred to the "Extended Use Period", which was the period during which the taxpayer's property was restricted to providing affordable housing. The court held that the plain language of the statute referred to the "Extended Use Period".

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