

Millage Authority in 2008-09 and Offset for Fiscally Constrained Counties

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Several officials from small, fiscally constrained counties have asked for an explanation of the millage limitations that will be in effect for the 2008-09 fiscal year and about the likelihood for an appropriation to offset the reduction in tax base loss from provisions in Amendment 1 doubling of the homestead exemption, allowing portability of the Save Our Homes benefit, and exempting the first \$25,000 of tangible personal property.

The millage limitation language that governs the upcoming fiscal year is set forth in section 200.185(5), Florida Statutes, which provides in pertinent part:

5) In the 2008-2009 fiscal year, a county, municipal service taxing units of that county, and special districts dependent to that county; a municipality and special districts dependent to that municipality; and an independent special district may levy a maximum millage determined as follows:

(a) The maximum millage rate that may be levied shall be the rolled-back rate calculated pursuant to s. 200.065 and adjusted for growth in per capita Florida personal income, except that ad valorem tax revenue levied in the 2007-2008 fiscal year shall be reduced by any tax revenue resulting from a millage rate approved by a super majority vote of the governing board of the taxing authority in excess of the maximum rate that could have been levied by a majority vote as provided in this section. . .

(b) A rate of not more than 110 percent of the rate in paragraph (a) may be levied if approved by a two-thirds vote of the governing body.

(c) A rate in excess of the millage rate allowed in paragraph (b) may be levied if approved by a unanimous vote of the governing body or by a three-fourths vote if the governing body has nine or more members or if approved by a referendum of the voters.

Simply said, by a simple majority vote the governing body of a county may levy a millage that will generate on the 2008-09 tax base (minus new

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construction) the same revenues as generated in 2007-08 plus the growth in per capita Florida personal income, minus any revenue that was a result of a super majority vote of the governing body in 2007-08. That millage rate is then applied to the 2008-09 tax base including new construction. Put another way, if a county's taxable value decreases as a consequence of Amendment 1's doubling the homestead exemption, allowing portability, and exempting tangible personal property, the statute allows the county to increase its millage to make up for the revenue loss compared to last year without a supermajority vote. In no event may a county's millage exceed 10 mills.

Several legislators have expressed concern about allowing counties to increase the millage to lessen the effects of Amendment 1's tax exemptions. We expect that this issue will be debated in the upcoming legislative session.

At this point, the State has not determined the "growth in per capita Florida personal income," by which the 2007-08 revenues can be increased in 2008-09. We expect this growth factor to be established by the Revenue Estimating Conference sometime before March 1.

As to the requirements that the Legislature offset Amendment 1's effect on fiscally constrained counties, Section 9 of SJR 4D provides:

(1) Beginning in the 2008-09 fiscal year, the Legislature shall appropriate moneys to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties, as defined in a. 218.67(1), Florida Statutes, which occur as a direct result of the implementation of . . . [Amendment 1]. The moneys appropriated for this purpose shall be distributed among the fiscally constrained counties based on each county's proportion of the total reduction in ad valorem tax revenue resulting from the implementation of . . . [Amendment 1].

(2) On or before February 1, each fiscally constrained county shall apply to the Executive Office of the Governor to participate in the distribution of the appropriation and provide documentation supporting the county's estimated reduction in ad valorem revenue to the Executive Office of the Governor.

Tallahassee officials differ on the construction of this fiscally constrained offset provision. The Governor's office has indicated that it supports appropriating moneys to fully offset the loss and not require the boards of county

commissioners to increase the millage to make up for the tax base loss associated with Amendment 1. However, the Governor's budget indicates it intends to appropriate moneys to be distributed in July 2009, near the end of the county fiscal year, which means no county can reasonably rely on it in building the 2008-09 budget. The Governor interprets the phrase, "beginning in the 2008-09 fiscal year, the legislature shall appropriate moneys" as requiring the moneys to be appropriated *in* 2008-09 and not *for* the 2008-09 fiscal year. The Governor bolsters his position by pointing to the language in (2) which requires fiscally constrained counties by February 1 to provide documentation supporting the county's estimated reduction as another indication that an appropriation is not required until July 2009 because the counties cannot document reductions until they occur, which documentation will not be available until July 2008.

Rumors have it that some officials in the Legislature believe that the offset requirement applies to replace revenues that counties cannot make up themselves by raising the millage to counterbalance for the tax base loss associated with the double homestead, portability and tangible personal property provisions. Under this interpretation, the Legislature will offset reductions in tax base loss only for the amount that a county cannot recoup on its own by increasing its millage

How the Legislature will address the fiscally constrained offset and the millage levy authority remains to be seen. The center piece of the 60 day legislative Session which begins March 4th will be how to fund the state budget with \$1.5 to \$2 billion less than the 2007-08 budget. This year, more than ever, it is important to engage in the legislative process.