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February 2, 2010

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JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

Mr. John Rosner, Chief Attorney
Joint Administrative Procedures Committee
Room 120, Holland Building
Tallahassee, Florida 32399

Dear Mr. Rosner:

Thank you for your thorough review of proposed Rule Chapter 12D-9, F.A.C. Based on our discussions on January 22, 2010, we are providing some additional information to your comments on the Notice of Change published on January 22, 2010.

Comment: Rule 12D-9.013(1), F.A.C. What is the statutory support for the reference to a \$15.00 filing fee?

This fee is established in Section 194.013(1), F.S. The issue has been corrected by adding this statute reference to the Law Implemented section in the second Notice of Change that will be published in the February 5, 2010 edition of the Florida Administrative Weekly.

Comment: Rule 12D-9.019(7)(b), F.A.C. What is the statutory support for changing the current reference to the 4 hour rule?

Section 192.0105(2)(d), F.S., establishes the four-hour requirement, yet subsection (2)(f) states the petitioner's right to have evidence presented "at a public hearing at the scheduled time," without reference to the four-hour requirement, and citing section 194.034(1)(c), F.S. The Department believes the matter should be clarified and addressed by the Legislature, and we will seek to have the reference removed from Section 194.032(2), F.S. In the meantime, the rule as drafted is believed to address the subject area, recognizing that the statute always provides a maximum of four hours for the petitioner to have to wait before a rescheduling. The purpose of the statute is to provide a point of entry into circuit court where the petitioner waits four hours and a hearing is not immediately provided after that wait. Today, Section 194.032(2), F.S., has no real function because the point of entry to circuit court is available without a wait.

This statutory provision was in place many years ago when the law provided for exhaustion of remedies with the value adjustment board prior to seeking judicial review in circuit court. See St. Joe Paper Co. v. Metropolitan Dade County, 418 So.2d 1013 (Fla. 3d DCA 1982), esp. footnote 3. However, current law does not require a petition to receive action by the value adjustment board as a prerequisite to judicial review under Section 194.171, F.S. Previous drafts of the rule had recognized the four-hour limitation; however, referencing the four-hour limitation in the rules amounts to a requirement that a petitioner wait four hours before the clerk might be authorized to reschedule the hearing. There is currently no statutory requirement that a petitioner wait four hours or any other length of time before proceeding to circuit court.

Comment: Rule 12D-9.029(14), F.A.C. The subject matter in the Notice of Change is different than the previous draft. The Department may wish to review to ensure the Notice of Change was correctly drafted.

The original Rule Chapter 12D-9 draft had procedural information on remands of assessed valuations. This information was removed after the original publishing of text in the September 4, 2009 edition of the *Florida Administrative Weekly*. Subsection (14) was replaced with information for the property appraiser on how to obtain forms associated with Rule Chapter 12D-9.029, F.A.C.

Comment: Rule 12D-9.032, F.A.C. To avoid confusion the Department may wish to avoid using the phrase “adopting by reference,” which is one of the phrases of import in Chapter 120, F.S.

The rule has been amended to remove the phrase “by reference”, and we will show the new language in the second Notice of Change.

As mentioned above, the second Notice of Change has been filed and will publish in the next *Florida Administrative Weekly* on February 5, 2010.

Thank you for your assistance. If you have any questions, please feel free to call me at (850) 487-1453.

Respectfully,



Robert P. Babin
Director, Legislative and Cabinet Affairs
Florida Department of Revenue