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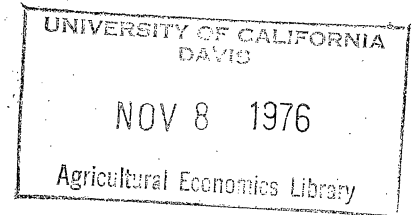
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1976

Taxation



AD VALOREM TAXATION
AND
FLORIDA AGRICULTURE

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*Paper presented, AAEA Meetings,
Penn State University, Aug. 15-18, 1976.*

Introduction

In 1925 Florida experienced a tremendous surge of growth in population that changed the state's complexion forever. This surge of growth was basically due to a speculative land boom with the demand for land rising to tremendous proportions. Once a predominantly rural state, Florida was not prepared to meet the onslaught of people with her existing laws. One of the major areas affected was the tax structure which has undergone many changes throughout the years in an attempt to alleviate the problems which have arisen.

Until this population and land sales upswing ad valorem taxation and all it entailed presented little problem as the majority of land was agricultural in nature and in use. Few government services (i.e. new roads, schools, police and fire protection) were needed by those living in the state at that time. Florida's tax system, until now based primarily on the ad valorem tax, needed many revisions to meet the new demands placed upon it and legislators worked overtime to provide these revisions. Increased demand for those government services previously mentioned by the new urban dwellers and land speculators who appeared on the scene had to be met, resulting in a deficit of funds in the state government. In order to meet these demands the ad valorem tax was increased. Herein began the problem with the Florida farmer (who still demanded few government services) whose land taxes were increased while there was no change in the use of his land.

The role of ad valorem taxation came to be of even greater importance than before in the state legislature and remains so today. Much legislation has been enacted over the years as the tax laws have attempted to

keep up with the problems arising from the new era in Florida.

Problems and Legislation: A Look at Florida Since the 1920's

With the increase in population and the rising demand for land, problems were expected and faced with frequency in Florida. Urban sprawl and the demand for land grew together and the number of people in the state multiplied rapidly. Taxation and land assessment became difficult, if not impossible, without laws and guidelines with which to work.

Urban Sprawl and Land Demand

Before the land and population boom Florida was a predominantly rural state farmed by the owners. As a result of the above situation farmers found themselves competing for the land. Different interest groups competed both among themselves and with the farmers to use the land for purposes other than agriculture. In Florida these competitors were the real estate developer, the industrialist, and the land speculator.¹ Each group valued the land differently according to their future plans for the land in question. While the farmer valued his land for what he could raise on it,² his competitors had other ideas. The real estate developer wanted to build on the land while the industrialist looked for land that would enhance his business. His major concerns were the plant site, transportation facilities, and local natural resources. The land speculator held land in hopes of a high return on his investment when he sold it and therefore the future value of that land was the most important aspect to him.³

¹ Florida Agricultural Tax Council, "Florida Agriculture and Taxes", (1963).

² Spitze, "Property Taxes-Increasing Burden for Farmers", Better Farming Methods, April, 1963; p. 10.

³ House and Home; August, 1960, pp. 108-109.

Although these people used the land in entirely different manners and for different purposes, they all had one thing in common. They wanted their taxes to be to their advantage and therefore low.

With the competition for land increasing, people bought land wherever it best suited them for their needs. The result was a haphazard growth. New roads and automobiles enabled people to spread out over the land. The urban areas grew and the suburban home areas expanded to the border of the farmers' holdings which became more valuable on the open market as each year passed. The land's assessed value at times became so great that the owner, the farmer, could not pay the tax imposed upon it and still remain in farming. He had to sell his land or a viable portion thereof so that he could pay the tax.⁴ This remains one of the greatest battlefields in agriculture today. Essentially, the farmers are being taxed out of existence. They feel it is unfair as they were there first, their land use has not changed and they do not need the various government services which are causing the rise in ad valorem taxation. The farmers feel that the tax appraiser should value their land according to its agricultural use.

The Tax Assessor

The traditional system in Florida agriculture had a tax assessor who knew the land and assessed accordingly. Locally there was little oppressive ad valorem tax. These matters were handled on a county basis although guidelines were set by the state. The tax assessor usually satisfied, even pleased, the people whose lands he assessed.⁵

⁴ Wershow, James, "Agricultural Zoning in Florida - Its Implications and Problems", 13 U. Fla. L. Rev. 479 (1960).

⁵ Wershow, James, "Ad Valorem Assessment in Florida - Whither Now?" 18 U. Fla. L. Rev. 9 (1965).

The tax assessor as an elected officer within his county must value the land at what he feels it is worth in accordance with the existing legal standards. No longer is there only one type of land use. Is it fair to penalize the farmer whose land, itself, is his source of income, by assessing everyone on the same basis (i.e. fair market value) even when they are using the land for entirely different purposes? On the other hand, is it fair not to? A closer look at assessment is necessary.

Assessment of Land

The assessment of land value is on the shoulders of the county tax assessor who must apply guidelines set by the state legislature in appraising the land. "These officials often are guided more by local considerations than by legalistic concepts or symbols."⁶ The city commission sets the millage or tax rate and combines this millage with the tax appraiser's estimate to arrive at the tax figure to be paid by the land owner. In an attempt to help the farmer with his plight the Florida Legislature took steps to accommodate him.

Preferential Assessment

In 1959 the Florida Legislature enacted section 193.201 of the Florida Statutes. This was designed to protect the farmer from urban sprawl and land speculators. Briefly, this is a land classification act with a preferential land assessment based on agricultural use. It states:

"Agricultural lands shall include horticulture, floriculture, vitaculture, forestry, dairy, livestock, poultry, bee, and all forms of farm products and farm production."⁷

⁶ Wershow, James, "Ad Valorem Taxation & Its Relationship to Agricultural Land Tax Problems in Florida", 16 U. Fla. L. Rev. 523 (1964)

⁷ Fla. Stat. § 193.201(6), (1963).

This section also stated:

"The tax assessor shall consider the following in assessing this land:"⁸

1. the cost of the property as agricultural land
2. the present replacement value of improvements thereon
3. the quantity and size of said property
4. the condition of said property
5. the present cash value of said property as agricultural land
6. the location of said property
7. the character of the area or place in which said land is located
8. such other agricultural factors as may from time to time become applicable

Unfortunately the wording is vague and ambiguous. It does not clearly state how much of the land must be cultivated or to what extent it must be used. The land speculator, therefore, can barely meet the minimum standards set forth in the above section in order to qualify for a preferential assessment for his land.⁹

It can be seen then, that one of the great problems in assessing land for taxation is differentiating between the bona fide farmer and the land speculator. As previously stated, the speculator buys land with the intent of selling it at a profit. This landowner would like to have any tax concession he can get just as the farmer would. By putting in a little he may obtain a great amount. If a land speculator stocks his land with a few head of range cattle he feels he is entitled to the preferential assessment.

⁸ Fla. Stat. § 193.201(5), (1963).

⁹ Wershow, James, "Agricultural Zoning in Florida - Its Implications and Problems", 13 U. Fla. L. Rev. 488 (1960).

The bona fide farmer uses his land in the production of food and fiber. Farming is usually all he knows yet, he too, will sell his land if the price offered is attractive enough. The farmer whose fixed costs have increased due to the increase in taxes may sell his farm or part of it because he cannot shift the burden to someone else as other business operators can. "These farmers often sell to the speculator who can temporarily absorb the load, exploit the potential value of the land and reap a rich profit in the end."¹⁰ The land in the past which has been owned by land speculators has generally remained idle and therefore promoted waste.¹¹

Meanwhile the farmer who has sold his land has moved into the urban areas and has begun to demand more government services which in turn cause the state to again increase taxes. Thus a vicious cycle has been created. The state has found herself in the middle of many confrontations concerning taxation and has been subjected to a great emotional upheaval by the land owners.

Litigation and Legislation

Most farmers are individualists and believe in laissez faire. They do not want to be taxed for services they neither want nor receive. Nor do they want their taxes raised because the market value of their land has risen due to people moving in nearby. The farmers feel these newcomers are nuisances to them anyway. They also feel that this high tax burden is an

¹⁰ Wershow, James, "Ad Valorem Taxation and Its Relationship to Agricultural Land Tax Problems in Florida", 16 U. Fla. L. Rev. 526 (1964).

¹¹ Ibid.

infringement upon their rights as citizens and are strongly in favor of preferential assessment. The non farmer, however, feels that preferential assessment is arbitrary and discriminatory in favor of the farmers. He also feels that this practice is not uniform and equal, a provision of the Florida Constitution.¹² But this section provides for a uniform and equal rate of taxation. In 1957 the Florida legislature passed section 193.11(3) of the Florida Statutes. The statute provided:¹³

"All lands being used for agricultural purposes shall be assessed as agricultural lands upon an acreage basis, regardless of the fact that any or all of said lands are embraced in a plat or a subdivision or other real estate development. Provided, 'agricultural purposes' shall include only lands being used in a bona fide farming, pasture, or grove operation by the lessee or owner, or some person in their employ. Provided shed nurseries or nurseries under cover shall not be termed agricultural and shall be excluded from this law. Lands which have not been used for agricultural purposes prior to the effective date of this law shall be prima facie subject to assessment on the same basis as assessed for the previous year and any demand for a reassessment of such lands for agricultural purposes shall be subject to the severest scrutiny of the county tax assessor to the end that the lands shall be classified properly."

With these laws set up and worded as they were it was not long before cases began to arise in which land owners were dissatisfied. In Tyson vs. Lanier¹⁴ the Osceola County tax assessor, Lanier, was challenged. The plaintiff, Tyson, wanted Lanier to follow the guidelines established and enumerated in section 193.11(3) of the Florida Statutes. The litigation resulting ended with the court holding for Lanier. Tyson took the next step by going to the chancellor. The chancellor held in Tyson's favor but the Second Court of Appeal reversed the order saying

¹² Fla. Const. Art. IX § 1.

¹³ Fla. Stat. § 193.11(3) (1961).

¹⁴ 156 So. 2d. 833.

taxation should be based on the "full cash value".¹⁵

The vote was two to one against Tyson with the two opposing judges saying it would be giving a partial tax exemption.¹⁶ The one favorable vote was cast by Judge White who noted that the non agricultural land holders were taxed not on what they could be but, rather, on what they presently were. He went on to say that the agricultural land would be taxed on a new value when it left production and could no longer be considered agricultural in use. He felt these were variables which had to be taken into consideration.¹⁷

Justice Terrell of the Florida Supreme Court recognized the discrepancies herein.¹⁸ He pointed out that land can be valued at just value without considering the future use.¹⁹ This was an important judgement in favor of preferential assessment in Florida. He went on to say:²⁰

"As courts we should never forget that in construing acts of the legislature, we are concerned only with the power of the legislature to enact the law. Our peculiar social and economic views have no place in such a consideration."

Justice Terrell's opinion was opposed by Justice Drew who claimed it was 'preferential' and that the courts were making exceptions.²¹

In an attempt to help clarify the situation new wording was introduced

¹⁵ Wershow, James: see note 10 supra at 521; from Tyson vs. Lanier, 147 So. 2d. 365, 368, (2d. D.C.A. Fla. 1962).

¹⁶ Id. at 373.

¹⁷ Id. at 380.

¹⁸ Tyson vs. Lanier, 156 So. 2d. 833, 835, (1963).

¹⁹ Id. at 833, 838.

²⁰ Id. at 833, 839.

²¹ Id. at 840.

in the 1963 session of the Florida Legislature. "Full cash value" was deleted from the books and "just value" was inserted as the measure for ad valorem tax assessment. Also section 193.021 established enumerated factors to determine this just value. These factors are:²²

1. present cash value
2. highest and best use to which property can be expected to be put in the immediate future, and the present use of the property.
3. location of the property.
4. quantity or size of the property.
5. cost of the property and present replacement value of any improvements thereon.
6. condition of the property.
7. income from the property.

The changes made were meant to help clarify what before had been vague or ambiguous. But this section had repercussions of its own in Duval County. The case was Walter vs. Schuler²³ in which the people confused the terms used in valuation. A poor school system incited the people of the county to question the tax laws. The people wanted their property taxed at a 'just value' which they thought was the same as the 'fair market value'. Justice Thomas supported the seven factors for valuation while claiming that just value was equal to the fair market value. He said:²⁴

"Fair market value may be established by the classic formula that it is the amount a purchaser willing but not obliged to buy would pay to one willing but not obliged to sell."

Shortly thereafter the case of Lanier vs. Overstreet²⁵ helped clear up some of the questions on section 193.11(3). The court amended this

²² Fla. Laws 1963, ch. 63-250.

²³ 176 So. 2d. 81 (Fla. 1965).

²⁴ Id. at 82.

²⁵ 175 So. 2d 521 (Fla. 1965).

section to read:²⁶

"This subsection shall not be construed, interpreted, or applied so as to permit lands being used for agricultural purposes to be assessed other than as agricultural lands and upon an acreage basis."

Again, with this amendment, the court granted a giant step in favor of preferential assessment.

Following this, in trying to establish classification of agricultural land the court held that the land must be valued according to present use, not what it might be used for in the future (potential value) even if the opportunity is there. It was said that if the change was expected immediately then it was possible to use the 'highest and best use'.²⁷ The court held that section 193.11(3) of the Florida Statutes is a "...valid legislative classification to secure a just valuation of agricultural lands."²⁸

Once again Justice Drew opposed this opinion along with Justices Thomas and O'Connell using the same plea for uniformity and equality. They claimed that "the legislative body has no power under our constitution to exempt any property from taxation and that they can not make fish of one and fowl of another."²⁹

In the case of Markham vs. Blount³⁰ the Broward County tax assessor claimed he would conflict with section 193.11(3) if he followed section 193.11(1). The Supreme Court said this was not so basing their judgement

²⁶ Fla. Stat. § 193.11(3) (1963).

²⁷ Lanier vs. Overstreet, 175 So. 2d 523, 524 (1965).

²⁸ Id. at 525.

²⁹ Id. at 521, 526.

³⁰ 175 So. 2d 526 (Fla. 1965).

on the conclusion that all the sections were constitutional. The list of cases and judgements is endless. The court continues to legislate in attempts to solve the problems that arise. Many of these problems have been phased out over the years while some of them still exist today as has been shown.

Recourse

In discussing these cases it is necessary to mention the actual steps involved in challenging a tax assessor's appraisal. First, the farmer must file for preferential assessment by March first of each year. If he does not do so he waives the privilege of agricultural assessment for the period of that one year.³¹ In awarding preferential assessment the tax assessor must determine, according to guidelines established, whether any given land is being used for bona fide agricultural purposes. These guidelines are:³²

1. the length of time the land has been so utilized
2. whether the use has been continuous
3. the purchase price paid
4. size, as it relates to specific agricultural use
5. whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices
6. whether such land is under lease and, if so, the effective length, terms, and conditions of the lease
7. such other factors as may from time to time become applicable.

The landowner who feels he has been treated unfairly or unjustly

³¹ Fla. Stat. § 193.461; § 196.011(1).

³² Fla. Stat. § 193.461(3).

can appeal to the board of tax adjustment.³³ The tax adjustment board usually consists of three county commissioners and two school board members. The board will review the case and pass judgement using the land assessment guidelines as a basis from which to work. The commissioners use property of similar size, use, location, condition, etc. as means by which an adjustment might be made. "But too often political considerations, favoritism, and the lack of expert evidence influence their determination."³⁴

If the board decides in favor of the tax appraiser the farmer may have judicial recourse. He must, however, produce "A clear and positive showing of fraud, or illegality, or of an abuse of discretion so arbitrary and discriminatory as to amount to fraud on the taxpayer or be denial of the equal protection of the law..."³⁵ In addition, "the courts have generally held that all administrative remedies must first be exhausted, and they will ignore this requirement only if flagrant violations or omissions of statutory requirements occur in making the assessment."³⁶ The suit must be instituted within sixty days from the time the assessment proceedings become final.³⁷

³³ Fla. Stat. § 193.461(3b).

³⁴ Wershow, James, "Regional Valuation Boards - A British Answer to Ad Valorem Assessment Problems in Florida." 21 U. Fla. L. Rev. 325 (1969).

³⁵ Id.: Poland vs. City of Pahokee; 157 Fla. 179, 180; 25 So. 2d. 271 (1946).

³⁶ Graham vs. City of West Tampa; 71 Fla. 605, 612; 71 So. 925, 928 (1961); C.D. Utility Corp. vs. Maxwell, 189 So. 2d 643, 648.

³⁷ Fla. Stat. § 192.21 (1967).

It can be seen, therefore, that the process is so protracted that the average farmer cannot cope with the obstacles set in his way. If these obstacles do not deter him from the path then the money involved with the litigation generally will. "A severe lack of liquidity usually is found in the farm or ranch enterprise. The farm family's wealth almost entirely resides in production assets, with liquid assets typically totalling less than five percent of total worth."³⁸ "Average farm and ranch net income to assets ratio is about three percent nationally, and has been declining in recent years."³⁹ With this lack of funding to cover the costs of litigation a farmer has little chance of pursuing judicial recourse without liquidating some or all of his resources. It can also be seen from this information that the farmer has little or no money with which to pay much of the taxes imposed upon him. This in itself establishes the assessment of land and the ad valorem tax as a very important aspect of agriculture today.

Preferential Assessment is Only One Answer

Although preferential assessment is the agricultural standard in Florida, it is not the only method of agricultural assessment used today. There are alternatives being used in such states as California, Maryland, and others.

³⁸ Fiore, Owen G., Donald H. Kelley, and Alfred J. Olsen; Agriculture Estate Planning: Tax and other Legal and Non - Legal Problems Involving Farmers and Ranchers; from USDA Economics Research Service, 1972.

³⁹ Id. from Business Income Tax Returns, Statistics of Income, Internal Revenue Service.

Deferred Taxation or Rollback

Deferred taxation provides for assessment according to the value of land in its current use but it adds a charge when the land is transferred out of farm use. Usually this time period is three years.⁴⁰ This method of taxation faces the problem of the land speculator as it penalizes the owner for selling his land into other than agricultural use. The idea is sound, however it also penalizes the bona fide farmer who may sell his land when he has, in fact, used the land in a bona fide farming operation up until the time of the sale. The farmers generally dislike this method of taxation, however it is found in eighteen states: Alaska, Connecticut, Hawaii, Illinois, Kentucky, Maine, Maryland, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, Texas, Utah, and Virginia.⁴¹

Restrictive Agreements

In this form of taxation the owner of the land in question agrees to restrict the use of his land to agriculture for a given period of years.⁴² In return he receives a tax concession in the form of a preferential assessment. The period is usually ten years. Many farmers feel this form of assessment is an infringement upon their property rights as afforded by the United States Constitution. This method of taxation is used in Florida for park, recreational, and open space land.⁴³

⁴⁰ Hady, Thomas F. & Ann G. Sibold, "State Programs for the Differential Assessment of Farm and Open Space Land", p 2.

⁴¹ Id. at p 3.

⁴² Id.

⁴³ Id. at p 4.

15

Conclusion: The Impact of the Ad Valorem Tax on Agriculture Today

The problems surrounding ad valorem taxation are not new; nor are they likely to be solved in the immediate future. Legislation has resulted in repeated revisions in the tax laws over the years in Florida in attempts to near that point of solution.

The tax assessor follows guidelines established by the state and has a general idea of what the land is worth in his county. Often, tax assessors who have held the office for many years feel they know the value of the land in their counties better than any values the guidelines could provide. They tend to appraise the land accordingly. As Marion County's (Ocala, Florida) tax appraiser recently noted upon receiving the new 1976 guidelines for appraisal:⁴⁴

"If you took an appraiser to the same house every day for a week and he tried to apply the 927 pages of rules and regulations (referring to the guidelines), that appraiser would come out with several different values, in the same cost range, but different, because of the human element."

In determination of agricultural land values, under the present laws in Florida, any land speculator may obtain preferential assessment by meeting the minimum requirements established. As long as the Florida laws provide no foolproof guards against this, the problem will exist.

Preferential assessment is being used in Florida presently, helping the bona fide farmer as long as he remains in farming. This type of taxation helps these farmers remain in agricultural production and is found in Arkansas, Colorado, Delaware, Indiana, Iowa, New Mexico, South Dakota, and Wyoming as well as in Florida.⁴⁵

⁴⁴ Ocala Star Banner, "Appraiser Gives Guideline Views", February 4, 1976.

⁴⁵ See note 40, supra. (p 2).

Today the farming population comprises approximately four percent of the total United States population. This is a vital four percent as these people provide food and fiber not only for the United States but for export as well. If the basic conflict cannot be resolved farmers will continue to be "taxed out of existence" which will result in less land in agricultural production. At the same time, those farmers who must leave the farm community become urban dwellers, demanding more government services which, until this point, were not needed. The cycle is consummated when taxes are raised even more to compensate for these new urban people. Equally as important, or probably more so is the fact that many farmers are losing their livelihoods because they are unable to pay high taxes.

Although the problems in ad valorem taxation in Florida have not been solved, Florida legislation has taken steps in the right direction to provide for the farmer. This is important as it shows that the legislators have recognized the need for a different rate of taxation for this vital group of people. With this in mind it is not impossible to foresee future adjustments being made to ensure the farmer of his livelihood and the people of the food and fiber that these farmers produce.