



AUDITOR GENERAL
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COUNTY VALUE ADJUSTMENT BOARDS
Performance Audit

July 1, 2003, Through June 30, 2004

This audit was made in accordance with applicable **Government Auditing Standards** issued by the Comptroller General of the United States. This audit was conducted by David Miller. Please address inquiries regarding this report to James M. Dwyer, CPA, Audit Manager, via E-mail at jimdwyer@aud.state.fl.us or by telephone at **(850) 487-9031**.

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COUNTY VALUE ADJUSTMENT BOARDS

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EXECUTIVE SUMMARY

Our audit of 14 county value adjustment boards disclosed the following:

Finding No. 1: The Legislature should consider the creation of an appeal process at the regional or State level, but only after consideration of the other recommendations in this report and the extent to which those recommendations are adopted by the Legislature, the Department, and the various Boards.

Finding No. 2: Some written procedures for the conduct of value adjustment board proceedings encompassing statute and rule provisions were in need of improvement. A procedures manual required to be used by all value adjustment board clerks, board members, special masters, and the public would provide for consistent and uniform procedures Statewide for hearings before the value adjustment boards.

Finding No. 3: To promote consistency in the conduct of petitioner hearings, consideration should be given to revising Section 194.035(1), Florida Statutes, to require that all counties use special masters.

Finding No. 4: Instances were noted where it appeared that attempts were made by a property appraiser to influence the decision-making process of a Board regarding the selection of special masters or the disqualification of a particular special master who has ruled against the property appraiser in past petitioner hearings.

Finding No. 5: In circumstances where county attorneys represent both the county and the value adjustment boards, there exists the potential for bias.

Finding No. 6: To promote consistency and fairness Statewide among all counties, consideration should be given to providing petitioners in all counties the opportunity to have good cause hearings when warranted.

Finding No. 7: Written decisions of value adjustment boards and special masters were not always sufficiently detailed and in conformance with applicable statutes and rules.

Finding No. 8: Rates of petition denial among some categories of appeal, and by some boards, appeared to be inconsistent with other categories of appeal.

Finding No. 9: The information pertaining to the qualifications of the special masters, included on the list of special masters compiled by the Department of Revenue pursuant to Section 194.035(1), Florida Statutes, was not verified.

Finding No. 10: Documentation that was required to be contained in value adjustment board clerk files was sometimes missing.

Finding No. 11: Published data as to the number of petitions filed versus the number of petitions heard by the board was not always in compliance with statutory requirements, and may be in need of statutory change.

Finding No. 12: We noted in several counties that training sessions, generally conducted by the county attorney, are sometimes held with the special masters. These meetings are generally not considered by the counties as meetings that would be subject to public notice requirements. However, in order to better prepare potential petitioners for the hearings, it might be beneficial to provide citizens the opportunity to attend.

INTRODUCTION

Section 194.015, Florida Statutes, creates value adjustment boards (Boards) for each county. Pursuant to Section 194.032(1)(a), Florida Statutes, the Boards meet for the purposes of hearing petitions related to assessments, complaints relating to homestead exemptions, appeals for exemptions denied, and appeals concerning ad valorem tax deferrals and classifications. The Boards remain in session until all petitions, complaints, appeals, and disputes are heard. The Boards consist of three members of the board of county commissioners and two members of the district school board. One member, who must be a county commissioner, is elected chairman. Pursuant to Section 194.035, Florida Statutes, in a county with a population of more than 75,000, the Board appoints a special master¹ who hears testimony, examines evidence, and renders decisions in the form of recommendations to the Board for the dispositions of the petitions.

Pursuant to Section 194.015, Florida Statutes, the clerks of the courts serve as clerks of the Boards. The clerks' responsibilities include maintaining a record of the proceedings and preserving evidence, processing petitions, scheduling hearings, and notifying the public of the results of Board proceedings.

Section 194.011, Florida Statutes, requires the Department of Revenue (Department) to, by rule, prescribe uniform procedures for hearings before the value adjustment boards and to provide certain prescribed forms. Section 194.035(1), Florida Statutes, requires the Department to provide a list of qualified special masters to any county with a population of 75,000 or less. Special masters are individuals assigned the responsibility of taking testimony at the hearings and making recommendations to the respective Boards.

Information on petitions filed, withdrawn, heard, granted, and denied for the period July 1, 2003, through June 30, 2004, for the value adjustment boards selected for our audit are disclosed in the following tabulation:

¹ The term "special master" was changed to "special magistrate" by Chapter 2004-11, effective July 1, 2004. Because the term "special master" was in effect throughout the audit period, we have used that term in this report.

County	Petitions Filed	Petitions Withdrawn	Petitions Withdrawn as a % of Petitions Filed	Petitions Heard by VAB	Petitions Granted	Petitions Granted as a % of Petitions Heard by VAB	Petitions Denied	Petitions Denied as a % of Petitions Heard by VAB
Bay	67	58	86.5	9	0	0.0	9	100.0
Broward	27,127	22,708	83.7	4,419	1,712	38.7	2,707	61.3
Citrus	554	456	82.3	98	8	8.2	90	91.8
Hernando	262	197	75.2	65	2	3.0	63	97.0
Hillsborough	4,437	2,864	64.6	1,573	377	24.0	1,196	76.0
Lee	1,143	630	55.1	513	41	8.0	472	92.0
Manatee	300	200	66.7	100	20	20.0	80	80.0
Miami-Dade	30,907	390	1.3	30,517	12,442	40.8	18,075	59.2
Nassau	63	22	35.0	41	1	2.4	40	97.6
Orange	4,929	3,968	80.5	961	76	7.9	885	92.1
Palm Beach	4,205	2,143	51.0	2,062	1,209	58.6	853	41.4
Pasco	931	783	84.1	148	3	2.0	145	98.0
Pinellas	838	110	13.1	728	81	11.1	647	88.9
Sarasota	<u>1,131</u>	<u>699</u>	61.8	<u>432</u>	<u>22</u>	5.0	<u>410</u>	95.0
Total	<u>76,894</u>	<u>35,228</u>	45.8	<u>41,666</u>	<u>15,994</u>	38.4	<u>25,672</u>	61.6

Auditor Follow-up

The Orange County Board Chair, the Broward County Board Chair, and the Palm Beach and Sarasota County Property Appraisers indicated in their responses to the findings included in this report concerns regarding the statistical data included in our report. The Orange County Chair indicated that the numbers of petitions filed and withdrawn should be reduced in the above schedule to 3,144 and 2,173, respectively. These numbers represent the assessment reduction petitions filed and withdrawn, while the schedule includes both assessment and exemption petitions. The Broward County Board and the Palm Beach County Property Appraiser were concerned that the number of petitions withdrawn included petitions that were resolved by the Property Appraiser and withdrawn prior to a hearing, as well as those that were withdrawn and not pursued by the petitioner. Also, the Palm Beach County Property Appraiser and the Sarasota County Property Appraiser indicated that exemption petitions and assessment reduction petitions were combined on the table. In all instances, the statistics reported were provided by the Clerks of the Circuit Courts or were included on the Notice of Tax Impact of Value Adjustment Board. We recognize that there should be improvements in the reporting of Board statistics (see finding No. 11) and suggest that the Clerks of the Circuit Courts consult with the Department of Revenue regarding revisions in the reporting of such information. However, consideration of the additional information as suggested would not have affected the recommendations included in this report.

FINDINGS AND RECOMMENDATIONS

Finding No. 1: Value Adjustment Board Appeal Process

The current value adjustment board appeal process is administered at the county level by the statutorily prescribed county value adjustment boards (Boards). This process provides that if taxpayers disagree with their exemption status or their property or tangible personal property assessments they can petition the Boards regarding the correctness of their assessments. In counties with a population of 75,000 or less, the Boards have the option of either using a special master to conduct the hearing or the full Board (comprised of three county commissioners and two district school board members) can conduct the hearing. In counties with populations of more than 75,000, the Boards are required to use special masters to conduct the petitioner hearings. The Boards, with assistance from the clerks of the court, appoint the special masters to conduct the hearings. If the petitioners do not prevail at the local county level, they have the option to take their case to the circuit court. The entire process is essentially conducted at the county level by local officials (the Boards, the clerks of the court, and the property appraisers). The petitioners also have the option to bypass the appeal process and go directly to the circuit court.

We reviewed appeal processes in six other states and found that those states provide various appeal processes that provide the opportunity for the citizens and property appraisers or tax assessors to challenge their assessments beyond the local level. For example, our review showed that while all six states had some form of an initial county level appeal process, in the event the citizen did not prevail at the county level, some states provided for a court-appointed arbitration process with the cost shared equally by the taxpayers and the county, while others provided for regional or State-level review of the initial decision by the Boards. As in Florida, all six states provided for an option of taking their case to court.

In the several findings in this report, we have noted inconsistencies in the manner in which value adjustment boards proceedings are conducted and in the results of such proceedings, and have made recommendations to improve consistency. Additionally, we noted in findings Nos. 4 and 5 circumstances that could inhibit a perception of fairness and equity in the process, and have made recommendations to improve that perception. An appeal process at the State or regional level could also enhance consistency in proceedings, as well as fairness and objectivity in the process. However, it would be prudent to consider the other recommendations in this report, addressing the inconsistencies and improving the perception of fairness, and the extent they are subsequently adopted, prior to evaluating the form and extent of any appellate process.

Recommendation: We recommend that the Legislature consider the creation of an appeal process at the regional or State level, but only after consideration of the other recommendations in this report and the extent to which those recommendations are adopted by the Legislature, the Department, and the various Boards.

Auditor Follow-up

Several of the Board Chairs (Miami-Dade, Orange, Palm Beach, and Pasco), and the Property Appraisers' Association of Florida, Inc., General Counsel, in their responses to this finding, expressed concerns regarding the expense and time delays that may be associated with adding an appeal process and indicated that petitioners have recourse through the courts. We recognize that providing an appeal process would involve additional expenses and be subject to time constraints; however, as indicated in the finding, such an appeal process would provide petitioners additional assurance as to the fairness of the hearing of their complaints without the added expense of filing lawsuits with an already overburdened court system.

The Hillsborough and Hernando County Clerks of the Circuit Court expressed concern regarding the costs for petitioners to attend the hearings. Such costs could be minimized through the use of regional hearings and, in any case, would have to be evaluated in comparison with the costs that would be incurred in instituting a court action. The Sarasota County Property Appraiser indicated that the paucity of lawsuits currently filed by petitioners demonstrates that the citizens are not dissatisfied with the existing system. Alternatively, the filing of only a few lawsuits could indicate that the costly legal system is not perceived as a cost effective option for petitioners.

Finding No. 2: Procedures Manual

Section 194.011(5), Florida Statutes, requires that the Department's uniform procedures for hearings before the Boards include procedures for the exchange of information and evidence by the property appraiser and the petitioner and a requirement that each Board hold an organizational meeting for the purpose of making the procedures available to petitioners. Department of Revenue Rule 12D-10.0044(10), Florida Administrative Code, includes these requirements and further requires that the procedures are to be available at a reasonable time following the organizational meeting and be available at a reasonable time before the beginning of hearings. The Boards can be deemed to have complied with the rule if petitioners are notified in writing, along with or as a part of the hearing notice, of the availability and existence of its procedures. The Boards may use additional or alternative methods of notification directed to the general public or specific taxpayers, as it may determine.

We obtained and reviewed the procedures for the 14 Boards sampled. We noted that procedures provided by 9 of the 14 clerks (Bay, Broward, Citrus, Hillsborough, Miami-Dade, Orange, Palm Beach, Pinellas, and Sarasota Counties) contained all elements of the statute and rule requirements. While some procedures were direct recitations of the statute and rules, others provided more detailed and comprehensive instructions to value adjustment board personnel and special masters. Three of the less detailed procedures (Hernando, Lee and Pasco Counties) did not contain reference to the clerk's responsibilities to prepare and transmit records and public notice of findings and results of Board actions. The procedures for Manatee County consisted of a one page document that listed nine items of information related to the petition process. The procedures for Nassau County, where a special master was not used, consisted of a three page memorandum addressed to the Board members that contained general information describing the petition and the hearing process.

As described above, the content of the county policies and procedures varied widely. For example, some counties had extensive manuals while others contained only the required elements of statute and Department rule. Disseminating information to the public and petitioners about the value adjustment board appeal process is appropriate. However, a formalized, inclusive procedures manual for use by all value adjustment board clerks, board members, special masters, and made available upon request to the public, would provide for consistent and uniform procedures Statewide for hearings before the value adjustment boards.

In addition to addressing the procedures for the exchange of information and evidence and for organizational meetings, an expanded manual could contain policies and procedures related to training of special masters, attendance of the public at the training sessions, required elements to be included in the written decisions of the special masters, making the findings and results of the Board public, compilation of a list of special masters and verification of their professional qualifications, good cause hearings, and ex parte contacts. We do not intend for this to be an all inclusive listing and while we also recognize that many of these elements are currently prescribed in statute, Department rule, or individual county manuals, the compilation of all these elements into one document (a Statewide policies and procedures manual) would promote consistency and uniformity Statewide in the hearings before value adjustment boards or special masters.

In 1999, the Department provided training materials to the Monroe County Board. The Department stated that the materials had been previously prepared and provided to the Brevard County Board pursuant to a court settlement involving Brevard County. In the preface to these materials, the Department stated that the draft materials were an effort to compile in one text the relevant statutes, rules, and cases which apply to value adjustment boards, special masters, and assessments and that the document was not a rule and the text should not be cited or used as a basis for granting or denying petitioners relief. The Department further stated that the materials were based in part upon the manual prepared in 1995 by the Department, and updated for recent law changes to Board procedures, and that the 1995 text was the first product of this type for training Board members and special masters, in response to a long and growing need voiced by special masters and the Boards for a manual of instructions in this area.

Recommendation: In view of the cited need by the Department for a manual of instructions and, in order to enhance Statewide consistency in the administration of the ad valorem tax laws, we recommend that consideration be given by the Department, in consultation with the Boards, regarding developing a Statewide uniform policies and procedures manual for use by all value adjustment boards. The above-cited materials could be used in the development of a manual.

Auditor Follow-up

The Pasco County and Miami-Dade County Board Chairs, the Hernando County Clerk of the Circuit Court, and the Property Appraisers' Association of Florida, Inc., General Counsel, in their responses to this finding, expressed concern regarding the application of a Statewide manual to both large and small counties. We concur that such a manual should accommodate such differences.

Finding No. 3: Use of Special Masters

Section 194.035(1), Florida Statutes, states that in counties having a population of more than 75,000 (35 counties), the Board shall appoint special masters for the purpose of taking testimony and making recommendations to the Board. Those counties with 75,000 or less in population are not required to use special masters (32 counties of which only one used a special master). Of the 14 counties included in our audit, only Nassau County had a population of 75,000 or less and that county did not use special masters. Section 194.035(1), Florida Statutes, further states that subject to appropriation, the Department shall reimburse those counties with a population of 75,000 or less for payments made to special masters.

To promote consistency in the conduct of petitioner hearings, consideration should be given to revising the statute to require that all counties use special masters. As presently provided for in those counties who do not use special master, the Boards (comprised of three county commissioners and two district school board members) conduct the hearings. These members may or may not have any expertise in the areas of ad valorem taxation or appraisal practices. However, for those counties that are required to use special masters, Section 194.035(1), Florida Statutes, requires certain minimum qualifications to be appointed as a special master including, for example, membership in the Florida Bar for those special masters hearing issues of exemptions and classifications as well as minimum years of experience in the area of ad valorem taxation, and being a state certified real estate appraiser.

A comparison of petitions granted or denied in those counties with populations of 75,000 or less to those counties with populations of greater than 75,000 showed that for those counties with populations of 75,000 or less, which are not required to use special masters, 50 percent of petitions filed were granted and 50 percent were denied. For those counties with populations of more than 75,000, which are required to use special masters, 17.2 percent of petitions filed were granted while 82.8 percent were denied. This significant difference in approval rates based on population and whether a special master or value adjustment board conducted the hearing illustrates the need for consistency on a Statewide basis.

Recommendation: We recommend that the Legislature consider revisions to Section 194.035, Florida Statutes, to require that all Boards use special masters.

Auditor Follow-up

The Hernando County Clerk of the Circuit Court, the Hernando County Property Appraiser, and the Property Appraisers' Association of Florida, Inc., General Counsel, in their responses to this finding, expressed concern regarding the additional cost to small counties to hire special masters. The Hernando County Clerk of the Circuit Court and Property Appraiser stated that State financial assistance might be required. As indicated in the finding, Section 194.035(1), Florida Statutes, requires that the Department of Revenue reimburse small counties for payments made to special masters. The Palm Beach County Property Appraiser, in his response to this finding, questioned how it could be concluded that the percentage of petitions heard by Boards in small counties was equal to the number denied. We did not reach such a conclusion, but rather determined that the number of petitions granted was equal to the number of petitions denied. This determination was based not on data from the limited number of counties for which we reviewed their procedures, but rather on data filed by all counties with the Department of Revenue.

Finding No. 4: Undue Influence in the Hearing Process

To assure that petitioners receive fair treatment in value adjustment board proceedings, it is critical that Board proceedings be conducted in a manner which is free of bias and or pressure. However, we noted an instance in Palm Beach County whereby a special master who had participated in Board hearings received a letter from the county attorney, who was the legal counsel for the Board, in which the county attorney stated that he had reviewed hearings held by this special master and found problems with some of her rulings. With regard to two specific hearings, in which the special master ruled in favor of the taxpayer, the county attorney stated "You should have denied those petitions based on the lack of supporting evidence presented by the petitioner." The county attorney further noted that the property appraiser's office had also complained about this special master's ruling in two other petitions and stated that "I find your rulings, while questionable on the facts presented, were not clearly erroneous." He concluded his letter by stating that "The Property Appraiser's Office has recommended that you not be recommended for appointment as a VAB special magistrate for 2005 if you apply for that position. You may wish to consider whether you do wish to apply again, in light of the opposition which may be expected from the Property Appraiser's Office next year."

In a subsequent letter to the special master, the county attorney stated that this paragraph was intended to alert the special master to the specific opposition expressed by the property appraiser's staff about the special master's future application to become a VAB special master.

While a property appraiser may disagree with a decision of a special master and may communicate that disagreement to whomever they desire, attempts to influence the decision-making process of the Board regarding the selection of special masters or the disqualification of a particular special master who has ruled against the property appraiser in past petitioner hearings does not serve to promote fairness and equity in the process.

Recommendation: We recommend that the Boards review their procedures concerning the initial appointment and any subsequent appointments of special masters and ensure that there is no one in a position to, or attempt to, influence the decision-making process of the Board regarding the selection of special masters or the disqualification of a particular special master who has ruled against the property appraiser in past petitioner hearings.

Auditor Follow-up

The Palm Beach County Board Chair indicated in his response to this finding that the only way that a property appraisers' objection to a special master appointment could be prevented would be if the law or a

rule was changed to prevent a property appraiser from commenting at the public Board meeting about particular special magistrates (formerly special masters) considered for appointment. Similarly, the Palm Beach County Property Appraiser stated in his response to this finding that it is incumbent upon the property appraiser to advise the Board when it believes a special master is either biased or unable to follow the law. The point of our finding was not to prevent a property appraiser from communicating a concern regarding the propriety of actions by a special master, but rather that the property appraiser should not be in a position to influence the selection or disqualification of a particular special master based on such concerns. The Board, assisted by the Board legal counsel, should evaluate any information provided by the property appraiser, or any other interested party, and make an independent conclusion regarding fitness for appointment. While it is not possible to assess with certainty all of the factors considered by the Board legal counsel in making a recommendation on appointment, the recommendation offered by the property appraiser gives, at least, the appearance of undue influence. The Hernando County Property Appraiser indicated in his response to this finding that many times property appraisers are asked their opinion regarding special master applicants based on the appraisers' experience and expertise. Soliciting the opinion of the property appraisers regarding the employment of special masters should be avoided.

The Sarasota County Property Appraiser indicated in his response to this finding that the audit recommendation makes no reference to a petitioner influencing the employment of a special magistrate. Our review of Board practices did not disclose any indications of such influence.

Finding No. 5: County Attorneys Representing the Value Adjustment Boards

Section 194.015, Florida Statutes, states that the office of the county attorney may be counsel to the Board unless the county attorney represents the property appraiser, in which instance the Board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the Board. No meetings of the Board can take place unless counsel to the Board is present. However, counsel for the property appraiser shall not be required when the county attorney represents the Board at the hearings, even though the county attorney may represent the property appraiser in other matters or at a different time.

Since higher assessments result in increased ad valorem tax revenues to the county, a potential bias exists when the county attorney represents both the county and the value adjustment board. To avoid this potential problem, consideration should be given to the Boards having separate private legal counsel.

Recommendation: To enhance the impartial nature of the Board's process, we recommend that the Legislature amend Section 194.015, Florida Statutes, to prohibit the county attorney from representing the Board and to require the Board to appoint private counsel with the cost of such counsel be borne by the county and the district school board.

Auditor Follow-up

Several of the Board Chairs (Broward, Orange, Palm Beach, Pasco, and Sarasota), the Hernando County Clerk of the Circuit Court, and the Hernando County and Sarasota County Property Appraisers expressed concerns as to the cost involved in hiring outside counsel for the Board. While we recognize that there will be costs associated with the employment of outside counsel, such costs should be offset by the cost savings associated with the reduction in the workload of county attorneys who currently provide legal counsel to the Boards.

The Sarasota County Property Appraiser also indicated that the recommendation that the Board appoint the attorney to represent the Board does not correlate to the desire of impartiality as the Board's majority is comprised of county commissioners. We acknowledge the Property Appraiser's concern; however, we believe that appointment by a board comprised of both county commissioners and district school board members as opposed to an attorney who is employed by the Board of County Commissioners, would improve the confidence of the taxpayer in an impartial proceeding.

The Property Appraisers' Association of Florida, Inc., General Counsel, in his response to this finding, cited a Florida Supreme Court ruling to the effect that the Board's composition of county commissioners and district school board members does not preclude an impartial and independent review of a tax assessment. While we certainly concur that county commissioners and district school board members are capable of performing this function in a proper and lawful manner, our concern is with the perception of bias, which the Citrus County Board Chair acknowledges can exist with respect to both the attorney and the Board membership. We believe that the provision of legal advice to the Board by the county attorney introduces a perception of partiality that could be avoided by the hiring of independent counsel.

Finding No. 6: Good Cause Hearings

Department of Revenue Rule 12D-10.003(8), Florida Administrative Code, states that, "The board may not extend the time for the filing of petitions. However, the failure to meet the statutory deadline for filing a petition to the board is not an absolute bar to consideration of such a petition by the board when the board determines that the petitioner has demonstrated good cause justifying consideration and that the delay will not, in fact, be prejudicial to the performance of its functions in the taxing process."

Of the 14 counties included in our audit, 9 had a policy of holding so called "good cause" hearings as provided for in the above-cited rule. However, five counties (Hernando, Manatee, Palm Beach, Pasco, and Pinellas) had policies that did not provide for good cause hearings. For example, Palm Beach County's policy stated that petitions filed after the deadline "will not be accepted for any reason." Hernando County's policy stated that late filed petitions are prejudicial to the performance of the function of the Board and that while such petitions would be reported to the Board at their meeting they "will not be considered by the VAB." To promote consistency and fairness Statewide among all counties, consideration should be given to providing all petitioners the opportunity to have good cause hearings when warranted by unusual circumstances.

Recommendation: We recommend that counties that are presently not providing for good cause hearings give consideration to changing their policies to afford all petitioners the opportunity, when circumstances warrant, to have such a hearing.

Auditor Follow-up

The Hernando County Clerk of the Circuit Court and the Palm Beach County Property Appraiser, in their responses to this finding, appear to have a concern regarding allowing good cause hearings to all, or substantially all, petitioners as a routine matter. We have not recommended that all petitioners be afforded an opportunity for a good cause hearing, but rather that such hearings be allowed only for "good cause" in accordance with policy established by the Board.

The Pasco County Board Chair indicated that the Pasco County Board does not have a good cause hearing, but reviews all petitions filed after the deadline and makes a determination, presumably as to whether a hearing should be held. The point of our finding is that the basis for the decision as to whether to allow a hearing under such circumstances should be a matter of Board policy.

Finding No. 7: Written Decisions

Section 194.034(2), Florida Statutes, states that in each case, except when a complaint is withdrawn by the petitioner or is acknowledged as correct by the property appraiser, the Boards shall render a written decision. The decision must contain findings of fact and conclusions of law and include reasons for upholding or overturning the determination of the property appraiser. When a special master has been appointed, the recommendations of the special master must be considered by the Boards.

Department of Revenue Rule 12D-10.003(5)(a), Florida Administrative Code, requires that every decision of the Boards must contain specific and detailed findings of fact which shall include both ultimate findings of fact and basic and underlying findings of fact. Each basic and underlying finding must be properly annotated to supporting evidence.

Our review of the written decisions of the special masters and the Boards revealed that 37 percent of the written decisions (52 of 139) from Boards in 11 counties (Bay, Broward, Citrus, Hillsborough, Lee, Manatee, Miami-Dade, Nassau, Orange, Palm Beach, and Pinellas) did not contain sufficient details in the finding of facts section of the written decisions to satisfy the applicable requirements of the above-cited statute and rule. For example, one written decision from Palm Beach County included only the following sentence in the findings of fact section of the written decision: "The property appraiser lawfully considered the eight criteria enumerated in Section 193.011, Florida Statutes." In another written decision from Palm Beach County, the finding of facts included, among several statements, a statement that "facts were presented that do not support a change in the assessment." These "findings of fact" are actually conclusions that are based on specific facts that were presumably relied upon to support the conclusions, but that were not set forth in the written decisions.

Recommendation: We recommend that the Boards review the content of written findings and conclusions, whether heard by the Boards or special masters, and ensure that those findings and conclusions are documented in accordance with Section 194.034(2), Florida Statutes, and Department of Revenue Rule 12D-10.003(5)(a), Florida Administrative Code.

Auditor Follow-up

The Nassau County Board Chair states in his response that he disagrees that there were not sufficient details in the written record of decisions. However, he did not provide any explanation as to the basis for his disagreement.

The Palm Beach County Property Appraiser states that we have recommended that special masters render decisions which include conclusions of law and he questions how the special masters untrained in law are qualified to render decisions containing questions of law. We have not recommended that the special masters render decisions that are conclusions of law beyond those required by Section 194.034(2), Florida Statutes. The point of our recommendation is that the special masters document their findings in accordance with Section 194.034(2), Florida Statutes, which contains the required elements of a special masters report.

Finding No. 8: Petition Denials

Tangible personal property, or business, machinery and equipment petitions appeared to have very high rates of petition denial by special masters and Boards. Our sample of 14 board records contained 4,662 tangible personal property petitions filed. The overall denial rate was 63 percent. However, Miami-Dade County Board records indicated that approximately one-third were denied. Among the remaining 13 Boards, the tangible personal property denial rate was 93 percent, including 10 Boards, totaling 796 petitions, that had 100 percent denial rates among tangible personal property petitions (Bay, Hernando, Hillsborough, Lee, Manatee, Nassau, Orange, Pasco, Pinellas, and Sarasota Counties). Few other categories of petition filings had significant rates of petition denial that approached the 93 percent denial rate, or that approached the number of category total denials by special masters and Boards.

We were informed by the clerks in three counties that they had experienced considerable difficulty in procuring the services of experienced special masters with expertise in the assessment of tangible personal property. While it was

not feasible to assess the impact of this situation on the denial rates, the development of special masters with tangible personal property expertise would provide additional assurance that the petitions are properly and fairly considered.

Recommendation: We recommend that the Department consider conducting training programs for special masters with specific emphasis on tangible personal property assessment.

Auditor Follow-up

Several respondents (Pasco County Board Chair, Palm Beach County Property Appraiser, and the Property Appraisers' Association of Florida, Inc., General Counsel) indicated in their responses to this finding that the high rate of denials of tangible personal property (TPP) petitions resulted from the nature of the TPP reporting requirements rather than inadequate training of special masters. This is in contrast to statements made by several other clerks of the circuit court regarding their inability to locate special masters with specific training related to TPP. While there may certainly be other factors that contribute to the high denial rates, the lack of trained special masters in this area should be addressed.

Finding No. 9: Department List of Special Masters

Section 194.035(1), Florida Statutes, states that the Department shall provide a list of qualified special masters to any county with a population of 75,000 or less and, subject to appropriation, reimburse counties with a population of 75,000 or less for payments made to special masters appointed for the purpose of taking testimony and making recommendations to the Boards. This section further provides that a special master appointed to hear issues of exemptions and classifications shall be a member of the Florida Bar with no less than 5 years' experience in the area of ad valorem taxation. A special master appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than 5 years' experience in real property valuation. Also, a special master appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than 5 years' experience in tangible personal property valuation.

We obtained the 2003 list of special masters compiled by the Department which contained 199 special masters. The composition of the list relies on information voluntarily supplied by clerks of the Boards to the Department. While we noted that based on the information included in the applications submitted to the clerks of the Boards by the special masters, the special masters met the applicable experience requirements contained in Section 194.035(1), Florida Statutes, we noted that this information had not been verified by either the clerks of the Boards or the Department.

Recommendation: To ensure that the special masters appointed to hear petitioners have met the applicable experience requirements contained in Section 194.035(1), Florida Statutes, we recommend that the law be amended to require that the experience information contained in the applications submitted by the special masters to the clerks of the Boards be verified by either the clerks or the Department.

Auditor Follow-up

The Pasco County Board Chair stated in his written response that our statement that information supplied by special magistrates was not verified does not mean statements of applicants were false and further notes that the fact that the qualifications of special masters were not verified does not lead to the conclusion that the special masters were not, in fact, qualified. We have not concluded that the special masters provided statements that were false or that special masters were not qualified. We believe that it is incumbent on any governmental entity to be able to demonstrate that everyone employed by the entity meets the qualifications for the positions for which they were employed, including special masters employed by the Boards.

Finding No. 10: Documentation

Department of Revenue Rule 12D-10.004(2), Florida Administrative Code, provides that the clerks of the Boards shall prepare a schedule of appearances before the Boards based on timely filed petitions. The clerk must notify each petitioner of the scheduled time of appearance. The notice shall be in writing. Furthermore, Department of Revenue Rule 12D-10.005, Florida Administrative Code, states that the clerk has the duty, when requested, to prepare the record for review by the Circuit Court. The record shall consist of a copy of each paper, including the petition and each exhibit, together with a copy of the Board's decision and written findings of fact and conclusions of law.

Our review of 139 sample petitions in 14 counties noted that 22, or 15.8 percent, of the petition files of Boards in 5 counties (Lee, Manatee, Palm Beach, Sarasota, and Pinellas) did not contain a copy of the clerk's notification to the petitioner of the hearing time and clerk personnel were unable to locate a copy in their records. Clerk personnel indicated that the notification letters should have been in the files but were apparently misfiled. Nine of the 22 petitioners were not present. Since subsequent judicial review of the entire record may occur, it is important that the record maintained by the clerks be as complete as possible.

Recommendation: We recommend that the Board clerks review permanent petition files to assure that documentation that should be included as a part of the record is retained.

Auditor Follow-up

The Manatee County Clerk of the Circuit Court stated in his response that a notice of hearing letter requested by us had been provided to us. This document was not included in the petition file, but was provided to us after we delivered the preliminary and tentative findings.

Finding No. 11: Published Data

Section 194.037(1), Florida Statutes, requires the clerk to make public the findings and results of the Boards. This section also requires that the public notice shall take the form of a newspaper advertisement and the publication must contain, among other information, the number of exemption petitions filed, the number of exemption petitions granted by the Boards, the number of valuation petitions filed, the number of valuation petitions granted by the Boards, and the tax impact of granting those petitions.

Department of Revenue Rule 12D-10.006(5), Florida Administrative Code, states that it shall be the duty of the clerk of the Boards to insure publication of the notice after the Boards have heard all petitions, complaints, appeals, and disputes.

Four of the 14 Board records we reviewed (Citrus, Hernando, Nassau, and Sarasota Counties) reported the number of petitions heard or considered by the Boards and upon which a decision was rendered, instead of the total number of petitions filed in their public notice. The other 10 Board records complied with the statute in that the number of petitions filed was reported in their public notice. Total petitions filed by the 14 Boards included in our review totaled 76,894. However, only 41,666, or 54 percent, of the petitions were actually considered by the special masters or Boards and resulted in action, either granting or denying the appeal. The remaining 35,228 petitions were either withdrawn and never subject to Board action pursuant to Section 194.034(2), Florida Statutes, or disposed of in some other manner.

The average rate of petitions granted, if computed based on petitions granted as a percentage of petitions filed, was 20.8 percent. However, when petitions granted are compared to petitions heard, and acted upon, by the special masters or Boards, the approval rate was 38.4 percent. The inclusion of the number of petitions heard, and acted

upon, by the special masters or Boards in the data required to be included in the public notice would provide additional useful data in evaluating the performance of the Boards.

Recommendation: We recommend that the Legislature consider amending Section 194.037(1), Florida Statutes, to include the number of petitions heard or considered by the Boards and upon which a decision was rendered in the required public notice. This would provide the public with additional data concerning the actions and decisions by the Boards and the impact of those decisions.

Auditor Follow-up

The Pasco County Board Chair questioned whether the ratio of petitions heard and acted upon by the special masters is a true measure of performance of a Board. Such a ratio would not, in and of itself, provide a true measure of performance of a Board, but would provide a more appropriate measure of the results of the Board's actions by excluding from the ratio those petitions that were resolved prior to consideration by the Board.

Finding No. 12: Training of Special Masters, Value Adjustment Board Members, and the General Public

We noted in eight counties that training sessions are sometimes held with the special masters. These sessions are generally conducted by the county attorney and serve as a means of providing the special masters an opportunity to review the value adjustment board hearing process in the various counties and be brought up-to-date on current practices as well as any changes that might have occurred in the hearing process. These meetings are generally not considered by the counties as meetings that would be subject to public notice requirements. Most counties do not provide formal training sessions for the Board members. The individual Board members would contact the Board attorney if they had questions. Nor is there any formal training available for the petitioners.

Most counties indicated that the petitioners who choose to represent themselves at the hearings were often not adequately prepared to present their cases. The counties attributed this to a lack of understanding of the hearing process by the petitioners. In order to educate potential petitioners on the process and current practices, it might be beneficial to provide notice of the sessions to citizens and encourage their attendance. We recognize that if petitioners were afforded the opportunity to attend these training sessions, it should not serve as an opportunity for the petitioner to present their individual cases rather solely as an opportunity to obtain a better understanding of the process. (See finding No. 2 concerning uniform procedures for petitioner hearings.)

Recommendation: We recommend that the Boards, in cooperation with the Department, consider the adoption of policies and procedures that would provide petitioners the opportunity to attend these special master training meetings as a means of better preparing them as to the hearing process.

Auditor Follow-up

Several of the respondents (Board Chairs for Broward, Miami-Dade, Orange, and Pasco Counties, and the Property Appraisers' Association of Florida, Inc., General Counsel) expressed concern regarding citizens being allowed to attend and participate in special master training programs. The point of our finding is that citizens be provided an opportunity for training with regard to the filing of petitions with the Board. This could be accomplished separate and apart from the special master training; however, in the interest of open government and full disclosure, we believe that citizens should be allowed to attend the special master training sessions even if the petitioner training is conducted at another time.

The Hillsborough County Clerk of the Circuit Court, in her response to this finding, expressed concerns regarding the scheduling of training sessions and the impact on the workloads of the Board's staff. The Clerk indicated that the training sessions could not be held until after deadline to file petitions. We believe that the sessions should be held prior to the filing deadline. Property owners with concerns regarding their

property valuations and exemption status, who attend the sessions, could then make a more informed decision as to whether or not to file the petition.

SCOPE AND OBJECTIVES

This audit focused on the administration of the value adjustment board process by the Department of Revenue, the value adjustment boards, and the clerks of the court. It included a determination of the extent to which the process achieved the desired process results and an assessment of the effectiveness of the process. Our objectives were:

- To update and document our understanding of the process and the management controls related specifically to the process. For management controls significant to the process objectives and the objectives of this audit, we obtained sufficient evidence to support our judgments about those controls.
- To evaluate the Departments', value adjustment boards', and clerks' performance in administering the value adjustment board process in compliance with those applicable laws, administrative rules, and guidelines.
- To determine the extent to which the Departments', value adjustment boards', and clerks' management controls promoted and encouraged the achievement of management's objectives in the categories of process operations; validity and reliability of data; compliance with applicable laws, administrative rules, and applicable guidelines; and safeguarding of assets.

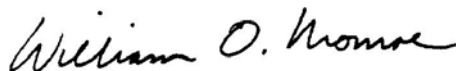
METHODOLOGY

The methodology used to develop the findings in this report included the testing and examination of pertinent records of the selected value adjustment boards in connection with the application of procedures required by applicable standards contained in Government Auditing Standards issued by the Comptroller General of the United States.

Our audit included examinations of various transactions (as well as events and conditions) occurring during the audit period July 1, 2003, through June 30, 2004.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our audit.



William O. Monroe, CPA
Auditor General

AUDITEE RESPONSES

The preliminary and tentative findings and recommendations were delivered to the 14 value adjustment boards, clerks of the circuit courts, and county property appraisers listed in the tabulation on page 2 of this report. Responses to our preliminary and tentative findings and recommendations are included in this report as Exhibit A.

EXHIBIT – A
AUDITEE RESPONSES

- [Exhibit – A \(part 1\):](#) Broward County VAB, Citrus County VAB, Lee County VAB, Miami-Dade County VAB, Nassau County VAB, Orange County VAB
- [Exhibit – A \(part 2\):](#) Palm Beach County VAB, Pasco County VAB, Pinellas County VAB, Sarasota VAB
- [Exhibit – A \(part 3\):](#) Bay County Clerk of the Court, Hernando County Clerk of the Court, Hillsborough County Clerk of the Court, Manatee County Clerk of the Court, Department of Revenue, Broward County PA, Hernando County PA, Palm Beach PA
- [Exhibit – A \(part 4\):](#) Sarasota County PA, Property Appraisers’ Association of Florida, Inc.