IN THE SUPREME COURT OF THE STATE OF FLORIDA

SAM J. COLDING, as Collier County Property Appraiser, and the DEPARTMENT OF REVENUE, STATE OF FLORIDA,

Petitioners,

vs.

CASE NO. 64,366

PETER W. HERZOG, AND JOAN L. HERZOG,

Respondents.

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Case No. 82-2013

PETITIONERS' INITIAL BRIEF

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PRELIMINARY STATEMENT

In this brief, the Petitioner, DEPARTMENT OF REVENUE, STATE OF FLORIDA, will be referred to as the "Department." The Co-petitioner, SAM J. COLDING, as Property Appraiser of Collier County, Florida, will be referred to as the "Property Appraiser." The Respondents, PETER W. HERZOG & JOAN L. HERZOG, will be referred to as the "Respondents." The Appellate Court in this case was the Second District Court of Appeal of Florida, which Court will be referred to herein as the "District Court." The trial court in this case was the Twentieth Judicial Circuit in and for Collier County, Florida, which court will be referred to as the "trial court."

STATEMENT OF THE CASE AND FACTS

The Respondents are permanent residents of the State of Missouri (A.-2). They also own a vacation residence in Collier County, Florida, which they used as a "part-time" dwelling during the year 1982 (A.-2). The 1982 personal property assessment roll of Collier County contained an assessment by the Property Appraiser of certain household goods and personal effects located in the Respondents' Collier County part-time dwelling (A.-2). The Collier County dwelling was not leased by the Respondents and the household goods and personal effects were not used commercially during the tax year in question (A.-2).

The Respondents contested the assessment by filing a complaint in the trial court against the Property Appraiser and the Department. The complaint alleged, among other things, that their household goods and personal effects at the Collier County part-time dwelling were exempt from ad valorem taxation under the Florida statutes or, alternatively, that the tax assessment was in violation of the Privileges and Immunities Clause of the U.S. Constitution (Art. IV, §2, Cl. 1). On August 19, 1982, the trial court entered a "Final Judgment" upholding the subject assessment by the Property Appraiser of the Respondents' household goods and personal effects (A.-4).

The final judgment of the trial court was subsequently reversed in a decision of the District Court filed on September 14, 1983 (A. 1-3). The District Court did not rule on the Respondents' privileges and immunities claim by holding that household goods and personal effects are not subject to ad valorem taxation in Florida, whether owned by a resident or a non-resident (A.-2). However, the District Court did certify to this Court as a question of great public importance the following qustion (A.-3).

> ARE HOUSEHOLD GOODS AND PERSONAL EFFECTS SUBJECT TO AD VALOREM TAXATION UNDER THE STATUTES AND CONSTITUTION OF THE STATE OF FLORIDA?

STATEMENT OF ISSUES

POINT I

ARE HOUSEHOLD GOODS AND PERSONAL EFFECTS SUBJECT TO AD VALOREM TAXATION UNDER THE STATUTES AND CONSTITUTION OF THE STATE OF FLORIDA?

POINT II

ARE THE FLORIDA CONSTITUTIONAL AND STATUTORY PROVISIONS LIMITING THE EXEMPTION FROM AD VALOREM TAXATION OF HOUSEHOLD GOODS AND PERSONAL EFFECTS TO FLORIDA RESIDENTS ONLY VIOLATIVE OF THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE U.S. CONSTITUTION?

ARGUMENT

POINT I

THE HOUSEHOLD GOODS AND PERSONAL EFFECTS OF NON-RESIDENTS ARE SUBJECT TO AD VALOREM TAXATION BY MANDATE OF THE FLORIDA CONSTITUTION AND THE GENERAL LAWS OF THIS STATE.

The District Court below relied primarily on the case of Department of Revenue v. Markham, 381 So.2d 1101 (Fla. 1 DCA 1979), as authority for its conclusion that no household goods and personal effects are subject to ad valorem taxation in Florida, whether owned by residents or non-residents. The First District Court of Appeal of Florida did hold in the Markham case that household goods and personal effects are not subject to ad valorem taxation in this state, whether owned by residents or non-residents. However, the Department respectfully submits for the reasons set forth below that the rationale underlying the decision of the First District Court in the Markham case should be rejected by this Court.

First, the decision of the First District Court of Appeal in the Markham case was subsequently quashed by this Court in Department of Revenue v. Markham, 396 So.2d 1120 (Fla. 1981). Therefore, the opinion of the First District in the Markham case was rendered void by this Court's quashal and said decision

of the First District Court clearly carries no weight as stare decisis at this present time. See, 13 Fla. Jur.2d, Courts & Judges, §15 at page 271.

The First District's lengthy decision in the Markham case, contains an exhaustive and detailed analysis by the Court of various statutory provisions relating to the taxation of personal property in general and of household goods and personal effects in particular. In summary, the First District's opinion holding that the "household goods and personal effects" of both residents and non-residents are not subject to ad valorem taxation was based primarily on the statutory definition of "tangible personal property," which expressly excludes both inventory and household goods from the definition of "tangible personal property."

The statutory provisions excluding "household goods" from the definition of tangible personal property were first enacted in 1967 as §200.01, F.S. (1967). These provisions have been renumbered and amended over the years and are contained in subsection 192.001(11)(d), which read as follows:

> (d) "Tangible personal property" means all goods, chattels, and other articles of value (but not including the vehicular items enumerated in s. 1 (b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself. "Construction work in progress" consists of those items of tangible personal property commonly known as fixtures, machinery, and equipment when the process of

> being installed in or expanded improvements to real property and whose value is materially enchanced upon connection or use with pre-existing, taxable operational system or facility. Construction work in progress shall be deemed substantially completed when connected with pre-existing, taxable, operational system or facility. "Inventory" and "household goods" are expressly excluded from this definition. "Live-aboard vessels" as defined in s. 327.02 (18) are expressly included in this definition. (e.s.).

It is evident from the lengthy opinion of the First District Court of Appeal in the Markham case, that the Court had quite a challenge in attempting to explain away the plain language of Art. VII, §3(b) of the Florida Constitution limiting the "household goods and personal effects" exemption to Florida residents only. The First District Court went through a laborious process of tracing the statutory history of the various sections dealing with the taxation of personal property in order to reach the conclusion that the above cited statutory provisions of §192.001 (11)(d), F.S., except "household goods and personal effects" from ad valorem taxation, whether or not the owner is a resident or a non-resident of this state.

The Department will not attempt to reply on a point-by-point basis to all of the comments of the First District Court in the Markham case. However, the Department respectfully submits that the basic fallacy underlying the First District's opinion in the Markham case is the court's conclusion that the Legislature

does have the power to exclude a certain type of property from ad valorem taxation by general law, even though the Florida Constitution does not expressly grant the Legislature the power to exempt such type of property from ad valorem taxation.

The language of Art. VII, §4, Fla. Const., provides in pertinent part that:

> Sec. 4 Taxation; assessments--By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation. (e.s.).

Under §§3, 4, 5 and 6 of Art. VII, Fla. Const., there are certain designated types of property that may be classified for tax purposes, assessed at a specified percentage of their value or that may be exempted from taxation. However, household goods and personal effects of non-residents are not included in any of the expressly designated types of properties in Art. VII that may be exempted from taxation.

Article VII, §3(b), Fla. Const., does provide an exemption dealing with "household goods and personal effects," and said provision reads in pertinent part as follows:

> (b) There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars. . . . (e.s.).

The plain language of the above cited portion of Art. VII, §3(b), Fla. Const., clearly limits the constitutional exemption for "household goods and personal effects" to persons residing in this state. There are no other provisions in the Florida

Constitution that either expressly or implicitly provide a constitutional basis to empower the Florida Legislature to exempt household goods and personal effects from ad valorem taxation.

This Court has unequivocally and repeatedly held that the Florida Constitution mandates that all property located in the state is subject to ad valorem taxation, unless specific authority to exempt such property is granted in the Constitution; and, therefore, that the Florida Legislature has no authority to exempt from ad valorem taxation by general law any class of real or personal property for which the Constitution makes no provision for exempting. Am Fi Inv. Corp. v. Kinney, 360 So.2d 415 (Fla. 1978); Archer v. Marshall, 355 So.2d 781 (Fla. 1978); Volusia County v. Daytona Beach Racing, 341 So.2d 498 (Fla. 1976), app. dis., 434 U.S. 804, 98 S.Ct. 32, 54 L.Ed.2d 61 (1977); Presbyterian Homes of Synod of Florida v. Wood, 297 So.2d 556 (Fla. 1974); and Palethorpe v. Thomson, 171 So.2d 526 (Fla. 1965).

This consistent ruling that no exemption of property from ad valorem taxation is legally permissible unless expressly authorized by the Florida Constitution was most recently articulated in the case of Am Fi. Inv. Corp. v. Kinney, supra, wherein this Court stated in pertinent part at page 416 of the opinion as follows:

> . . . We agree with the trial court that the Florida Constitution requires that all property used for private purposes bear its just share of the tax burden for the support of local government and education with certain exceptions specifically enumerated in the constitution. (e.s.)

An argument might be made that the First District was dealing with a classification statute in the Markham case, rather than an exemption statute. However, in the recent case of Dept. of Revenue v. Fla. Boaters Assoc., Inc., 409 So.2d 17 (Fla. 1981), this Court enunicated its express disapproval of an attempt by the Florida Legislature to avoid the plain meaning of taxation provisions of the Florida Constitution by a statutory "definitional" process. In the Florida Boaters case, this Court rejected the Legislature's apparent attempt to get around the Florida constitutional prohibition against subjecting boats to ad valorem taxation by classifying houseboats as "live-aboard vessels" and subjecting such "live-aboard vessels" to ad valorem taxation by statute.

In the case of Palethorpe v. Thomson, supra, this Court also rejected the Legislature's attempt to provide by statutory law that "house trailers" were not included within the definition of motor vehicles for purposes of the constitutional exclusion from ad valorem taxation.

The Fla. Boaters Assoc. and the Palethorpe cases reflect this Court's position that the Legislature may not circumvent the plain meaning of constitutional provisions relating to ad valorem taxation by direct or indirect means. Thus, if the Constitution does not expressly authorize the exemption from ad valorem taxation of a specified type or class of property, the Legislature may not indirectly exempt such property by statutorily "excluding" or "excepting" such property from ad valorem taxation. This Court succinctly stated at page 784 of its opinion in Archer v. Marshall, supra, that:

> . . . Regardless of the term used to describe the set-off, the reduction in rent afforded the leaseholders has the effect of a tax exemption and as such is unconstitutional since such exemption is not within the provisions of our present state constitution. (e.s.).

This Court has enunicated its express approval of the basic principle of statutory construction that the courts have the duty, if reasonably possible, to construe a statute so as not to conflict with the Florida Constitution. See, State v. Gale Dist., Inc. 349 So.2d 150, 153 (Fla. 1977). Consequently, the Department submits that it would be constitutionally impermissible for the courts to construe the provisions of §192.001(11)(d), F.S., excluding "household goods" from the definition of "tangible personal property" as compelling a conclusion that "household goods and personal effects" of both residents and non-residents of this state are not subject to ad valorem taxation, since the basic

mandate for such taxation is the organic law of the Florida Constitution.

Furthermore, the basic principle of law that all real and personal property in this state is subject to ad valorem taxation unless constitutionally exempt was also implemented into general law by the adoption of §196.001(1), F.S., which reads in pertinent part that:

> Property subject to taxation.--Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law:
>
> (1) All real and personal property in this state and all personal property belonging to persons residing in this state. . . . (e.s.).

Although this language appears in the statutory chapter on exemptions, this Court has held that §196.001 imposes tax liability. Williams v. Jones, 326 So.2d 425 (Fla. 1975). This Court noted on page 435 of the Jones opinion that the Legislature (in Ch. 71-113, Laws of Fla.) had placed the above quoted language in Ch. 192 as §192.010, and that the placement of this section in Ch. 196 by the Statutory Revision and Indexing Division did not affect the legislative intent to impose tax liability thereby. More recently in Lykes Bros., Inc. v. City of Plant City, 354 So.2d 878 (Fla. 1978), this Court said of that statutory section:

> Section 196.001, Florida Statutes (1973) provides that all property is subject to taxation, unless expressly exempted. Id. at 880.

Thus, §196.001(1), F.S., provides a corresponding statutory basis to the constitutional mandate that all property not expressly exempted is subject to ad valorem tax. The property in question (household goods) is within the legislative classification of "personal property." Section 192.001(11)(a), F.S., defines "personal property" to include "household goods" as follows:

> Definitions.--All definitions set out in chapter 1 that are applicable to this part are included herein. In addition, the following definitions shall apply in the imposition of ad valorem taxes.
>
> * * * *
>
> (11) "Personal property," for the purposes of ad valorem taxation, shall be divided into four categories as follows:
>
> (a) "Household goods" means wearing apparel, furniture, appliances and other items ordinarily found in the home and used for the comfort of the owner and his family. Household goods are not held for commercial purposes or resale.

From the foregoing definition, it can be seen that household goods are classified as one of four categories of personal property. Therefore, if the household goods are located in this state they

must be taxed under §196.001(1), unless expressly exempted. The only express statutory exemption for household goods is found in §196.181, F.S., which reads:

> Exemption of household goods and personal effects.--There shall be exempt from taxation to every person residing and making his or her permanent home in this state household goods and personal effects. . . . (e.s.).

Thus, by its clear and express terms, the statutory exemption language of §196.181 traces the constitutional mandate of Art. VII, §3(b) by limiting the household goods exemption to those persons residing and making their permanent homes in Florida. To the same effect is Department of Revenue Rule 12D-7.02, F.A.C., providing in pertinent part that "household goods and personal effects belonging to persons not residing and making their permanent homes in this state are not exempt."

The First District opined in its quashed Markham decision that, in a 1967 redraft of the ad valorem taxation provisions, the Legislature deliberately failed to specifically levy a tax on household goods and personal effects. Under this conclusion, there apparently would be no such thing as taxable household goods in Florida. However, §193.114, F.S. (1979), provides:

> Preparation of assessment rolls.--
> (1) Each property appraiser shall prepare the following assessment rolls:
>
> * * * *

> (b) Tangible personal property assessment roll. This roll shall include inventory, taxable household goods, and all other taxable tangible personal property. (e.s.).

Thus, if the rationale of the First District Court in its Markham opinion was correct, it would necessarily follow that the reference to placing "taxable household goods" on the tax rolls in §193.114(1)(b), F.S., is a nullity. Likewise, if no household goods or personal effects are subject to taxation by the Florida Constitution or statutes in the first place, then the express exemption of residents' household goods as set forth in §196.181, F.S., is a meaningless statutory provision. However, in Lykes Bros., Inc. v. City of Plant City, supra, at 881, this Court expressly declined to adopt a construction of the ad valorem tax statutes which would render a portion thereof a redundancy. See also, generally, 30 Fla. Jur., Statutes, §118.

POINT II

THE FLORIDA CONSTITUTIONAL AND STATUTORY PROVISIONS LIMITING THE EXEMPTION FROM AD VALOREM TAXATION OF HOUSEHOLD GOODS AND PERSONAL EFFECTS TO FLORIDA RESIDENTS ONLY ARE NOT VIOLATIVE OF THE PRIVILEGES AND IMMUNITIES CLAUSE OF THE U.S. CONSTITUTION.

The Respondents contended in the District Court below that an ad valorem tax on household goods and personal effects of non-residents only violates the Privileges and Immunities Clause of the United States Constitution (Art. IV, 2, Cl. 1). However, none of the federal cases cited in the Respondents' briefs below upholding a claim under the Privileges and Immunities Clause dealt with a factual situation where the subject activity of the non-resident was leisure or recreational in nature as opposed to some fundamental right, such as a commercial calling.

One of the principal cases relied upon by the Respondents in the District Court in connection with their Privileges and Immunities Clause claim is the case of Austin v. New Hampshire, 420 U.S. 656, 43 L.Ed. 2d 530, 95 S.Ct. 1191 (1975). The Supreme Court did hold in the Austin case that a state commuters income tax which fell exclusively on the incomes of non-residents and was not offset by other taxes imposed upon residents alone, violated the Privileges and Immunities Clause of the U.S. Constitution.

However, the activity presented in the Austin case which the Supreme Court found to be a "fundamental right" protected by the Privileges and Immunities Clause was the right of the non-resident to earn a living in the State of New Hampshire and to be taxed on the income from that state in the same manner as a permanent resident. In the case before this Court, the Respondents are not contending that the household goods and personal effects assessed by the Property Appraiser were used in connection with their earning of a livelihood in this state. In fact, it is uncontroverted that the Respondents' part-time dwelling was not used a rental property and that the household goods and personal effects in question were not used commercially during the tax year in question.

One of the leading Supreme Court decisions in recent years dealing with the Privileges and Immunities Clause of the U.S. Constitution is the case of Baldwin v. Montana Fish & Game Commn., 436 U.S. 371, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978). In the Baldwin case, the Supreme Court upheld the constitutionality of a Montana hunting license provision which imposed substantially higher license fees on non-residents. The majority opinion of the Supreme Court in the Baldwin case authored by Justice Blackmun contains a review of the history of the application of the Privileges and Immunities Clause. At 56 L.Ed.2d, pages

364, 365 of the Baldwin opinion, the Supreme Court stated in pertinent part that:

> When the Privileges and Immunities Clause has been applied to specific cases, it has been interpreted to prevent a State from imposing unreasonable burdens on citizens of other States in their pursuit of common callings within the State, Ward v. Maryland, 12 Wall 418, 20 L.Ed. 449 (1871); in the ownership and disposition of privately held property within the State, Blake v. McClung, 172 US 239, 43 L.Ed 432, 19 S.Ct 165 (1898); and in access to the courts of the State, Canadian Northern R. Co. v. Eggen, 252 US 553, 64 L.Ed. 713 S.Ct. 402 (1920).
>
> It has not been suggested however, that the state citizenship or residency may never be used by a State to distinguish among persons. Suffrage, for example, always has been understood to be tied to an individual's identification with a particular State. See, e.g., Dunn v. Blumstein, 405 US 330, 31 .Ed.2d 274, 92 S.Ct. 995 (1972). No one would suggest that the Privileges and Immunities Clause requires a State to open its polls to a person who declines to assert that the State is the only one where he claims a right to vote. The same is true as to qualification for an elective office of the State, Knapaux v. Ellisor, 419 US 891, 42 L.Ed.2d 136, 95 S.Ct. 169 (1974); Chimento v. Stark, 353 F. Supp. 1211 (NH), summarily aff'd, 414 US 802, 38 .Ed.2d 39, 94 S.Ct. 125 (1973). Nor must a State always apply all its laws or all its services equally to anyone, resident or nonresident, who may request it so to do, Canadian Northern R. Co. v. Eggen, supra, cf. Sosna v. Iowa, 419 US393, 42 L.Ed.2d 532, 95 S.Ct. 553 (1975); Shapiro v. Thompson, 394 US 618, 22 L.Ed.2d 600, 89 S.Ct. 1322 (1969). Some distinctions between residents and nonresidents merely reflect the fact that this is a Nation composed of individual States, and are

permitted; other distinctions are prohibited because they hinder the formation, the purpose, or the development of a single Union of these States. Only with respect to those "privileges" and "immunities" bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and nonresident, equally. . . . (e.s.).

The Supreme Court concluded at 436 U.S. 388, 98 S.Ct. 1862-63, in its Baldwin opinion that:

> Appellants' interest in sharing this limited resource on more equal terms with Montana residents simply does not fall within the purview of the Privileges and Immunities Clause. Equality in excess to Montana elk is not basic to the maintenance or well-being of the Union. Appellants do not--and cannot--contend that they are deprived of a means of a livelihood by the system or of access to any part of the State to which they seek to travel. We do not decide the full range of activities that are sufficiently basic to the livelihood of the Nation that the States may not interfere with a non-resident's participation therein without similarly interfering with a resident's participation. Whatever rights or activities may be "fundamental" under the Privileges and Immunities Clause, we are persuaded, and hold, that elk hunting by non-residents in Montana is not one of them. Id., 436 US. at 388, 98 S.Ct. at 1862-63. (e.s.).

The rationale of the United States Supreme Court in the Baldwin decision was subsequently adopted by this Court in the case of In Re Estate of Greenberg, 390 So.2d 40 (Fla. 1980). In the Greenberg case, this Court rejected a claim that the statutory provisions under which a non-resident not related to a decedent may not qualify as a personal representative of an estate

violated the Privileges and Immunities Clause of the U.S. Constitution. On page 49 of the Greenberg opinion this Court concluded as follows:

> Furthermore, we hold that sections 733.302 and 733.304 do not violate article IV, section 2, Constitution of the United States, which provides: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the serveral States." Pincus misapprehends the distinctions between the treatment of residents and nonresidents against which the prviileges and immunities clause protects. The Supreme Court in Baldwin v. Montana Fish and Game Commission, defining the limits of the privileges and immunities protection, explained that some distinctions between residents and nonresidents are permitted and that only those distinctions which hinder the formation, purpose, or development of a single union of the states is prohibited. Performing the task of a personal representative does not rise to the level of a privilege or immunity bearing upon the validity of the nation as a single entity. . . . Id., at 390 So.2d 49. (e.s.).

The Greenberg decision of this Court was appealed to the U.S. Supreme Court. However, the appeal was subsequently dismissed for lack of a substantial federal question at 450 U.S. 961, 67 L.Ed.2d 610, 101 S.Ct. 1475 (1981).

The Baldwin rationale was also expressly cited as a basis for the rejection of a privileges and immunities claim in the case of Hawaii Boating Assoc. v. Water Transportation Facilities, 651 F.2d 661 (9th Cir. 1981). In the Hawaii Boating Assoc. case, the district court had ruled that a Hawaiian statute imposing

higher rates on non-residents for mooring their boats in state harbors did not violate the Privileges and Immunities Clause because a fundamental right was not involved.

The Ninth Circuit Court, while holding in the Hawaii Boating case that the Privileges and Immunities Clause was not applicable, went on to rule on page 666 of the opinion that the appellants failed to establish a viable privileges and immunities claim because the right to access (at equal rates) to mooring privileges at recreational boat harbors was not a "fundamental" right.

Another recent decision following the Baldwin rationale is the case of Northwest Gillnetters Ass'n. v. Sandison, 628 P.2d 800 (Wash. 1981). In the Sandison case, the Washington Supreme Court upheld a regulation establishing a one day commercial season for spring salmon fishing in the Columbia River in the face of an alleged Privileges and Immunities Clause violation. On page 805 of the Sandison opinion the Court stated in pertinent part that:

> Finally, appellants contend the privileges and immunities clause is violated because the regulations resulted in part from an attempt to allocate each state's fishery to its own citizens. That clause is violated when a state discriminates against a noncitizen in a way

> that frustrates the ability of the nation to operate as a single entity. Baldwin v. Fish and Game Comm'n., 436 U.S. 371, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978). For such a violation to exist, the discrimination must involve a fundamental right, such as a commercial calling. Baldwin, supra; Toomer v. Witsell, 334 U.S. 385, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948). (e.s.).

An analysis of the above cited federal decisions reveals that the crucial distinction drawn by the Supreme Court in determining whether or not the challenged state law was within the purview of the scope of the Privileges and Immunities Clause was whether the subject activity of the non-resident constituted such a fundamental right as to "affect the very vitality and well-being of our Nation." Almost all of the cases where the Supreme Court has held a challenged state law to be violative of the Privileges and Immunities Clause involved the non-resident's right to earn a living in the nondomicilary state on equal footing with state residents.

Furthermore, and probably more significant, the legal research of the Department at the trial and appellate court levels has failed to locate one single case where the Supreme Court has ever declared violative of the Privileges and Immunities Clause a state law dealing with the ad valorem taxation of property located in the state not used in connection with the non-resident's "commercial livelihood."

The validity of the conclusion that, even in America, the ownership of a vacation dwelling and household goods therein a state other than the permanent residence of the owner is a luxury rather than a "basic necessity of life" would appear to be beyond serious question. Certainly the incidence of property tax burden on household goods located in a temporary dwelling cannot be reasonably characterized as being a fundamental activity comparable in nature to the basic necessity of earning a livelihood in a state other than where a person has his or her permanent residence as was present in the cases of Austin v. New Hampshire, supra; Toomer v. Witsell, 334 U.S. 385, 92 L.Ed. 1460 (1948); and Ward v. Maryland, 12 Wall. 418, 20 L.Ed. 449 (1871), relied upon by the Respondents in the District Court.

CONCLUSION

The organic law of the Florida Constitution, as consistently interpreted by this Court, mandates that all property in this state shall be subject to ad valorem taxation, unless the Constitution expressly authorizes a specific exemption. It is manifest that there are no provisions in the state constitution which expressly exempt, or which authorize the Legislature to exempt, from taxation the household goods and personal effects of non-residents. Consequently, the Legislature may not indirectly exempt from taxation by general law such household goods and personal effects of non-residents by simply "excluding" or "exempting" such personal property from being classified as "tangible personal property." Furthermore, the source of the limitation to Florida residents only of the exemption from taxation of household goods and personal effects are the constitutional provisions of Art. VII, §3(b), Fla. Const. Thus, this Court would have to declare invalid these constitutional provisions in order to uphold the decision of the District Court.

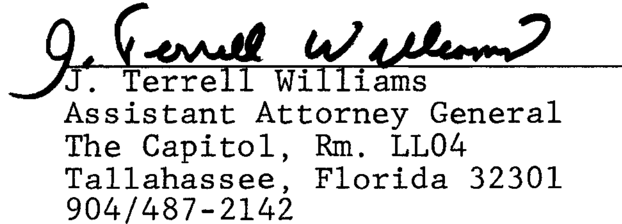
Finally, the incidence or rate of ad valorem taxation on personal property in this state owned by the Respondents and admittedly not used in connection with their "commercial

livelihood" does not rise to the level of an activity of such fundamental nature that it should affect the "very well-being and vitality of our Nation."

The decision of the District Court should be reversed with instructions that the judgment of the trial court upholding the Property Appraiser's assessment of the personal property in question be affirmed.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL



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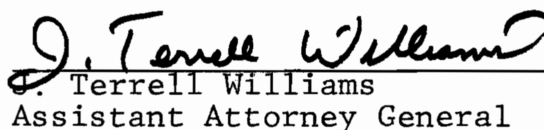
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioners' Initial Brief & Appendix has been furnished by mail to PETER W. HERZOG, Esq., 411 North 7th St., Suite 1300, St. Louis, Missouri 63101, LEO J. SALVATORI, The Four Hundred Bldg., 400 5th Ave., South, Suite 301, Naples, Florida 33940, this 31 day of October, 1983.



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