IN THE UNITED STATES SUPREME COURT
OF FLORIDA

CASE NO.: 65,324

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| METROPOLITAN DADE COUNTY, and STEPHEN L. SMITH, Acting Tax Collector, CITY OF MIAMI, and CITY OF MIAMI BEACH, | : |
| Appellants, | : |
| vs. | : |
| THE GOLDEN NUGGET GROUP, et al., | : |
| Appellees. | : |



# BRIEF ON JURISDICTION

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## STATEMENT OF THE CASE

Petitioners seek to invoke the discretionary jurisdiction of this Court concerning the decision of the Third District Court of Appeal, filed February 28, 1984, rendered April 17, 1984.[1] That decision reversed a Final Judgment of the Circuit Court of Dade County which held Chapter 83-354, Laws of Florida, invalid.[2] The District Court also determined de novo certain constitutional issues relative to the statute.[3]

## STATEMENT OF FACTS

In the final days of the 1983 Legislature, both Dade and Duval Counties had enacted separate convention tax bills. Dade's statute is Chapter 83-354, Laws of Florida, and Duval's became Chapter 83-356.[4] Both acts are limited in application to the specific county, this definition being accomplished circuitously, not directly.[5] The Dade Act provided no collection mechanism for the tax,

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[1]Jurisdiction is proper on three separate bases under Rule 9.030(a)(2)(A)(i), (ii) and (iv), Fla. R. App. P. because the decision expressly declares valid a state statute; expressly construes provisions of the state and federal constitutions and expressly and directly conflicts with decisions of other district courts of appeal and the Supreme Court on the same questions of law.

[2]The Appendix contains copies of the District Court Opinion, Order on Rehearing, Circuit Court Final Judgment, Chapters 83-354 and 83-356, Florida Statutes, Petition for Rehearing and Response to Reply, and the Opinion of Attorney General 83-71.

[3]Since the trial court held the statute and ordinance invalid on non-constitutional grounds, it chose not to reach the "very serious constitutional issues" raised as to the tax. The District Court made those constitutional determinations de novo at the urging of all parties.

[4]The principal difference between the Dade and Duval statutes is the tax rate, Dade being 3% and Duval being 2%. The tax is generally applicable to rentals of 30 days or less, of certain, but not all, types of accommodations. Also the expenditure provisions of each statute are tailored to fit the particular county. The Dade Act permits certain municipalities to "opt out" and not be subject to the tax.

[5]The Dade Act applies only to counties as defined by § 125.011(1), Fla. Stat., counties which have adopted a home rule charter under three subsections of the 1885 Florida Constitution. Only three counties may qualify, Dade, Hillsborough and Monroe. Of those only Dade has adopted home rule.

although the Dade Ordinance purported to authorize the local tax collector to receive the funds. The Attorney General issued his Opinion that the Department of Revenue had no power to collect the tax. O.A.G. 83-71. The Circuit Court agreed and found no authority for the Dade Tax Collector to collect either. The District Court reversed the trial court and disagreed with the Attorney General, holding the Department of Revenue could collect and hold the funds for future appropriation.

## ARGUMENT

### THE JURISDICTION OF THIS COURT SHOULD BE INVOKED.

Numerous varied attacks upon the validity and constitutionality of Chapter 83-354 were the subject of the decision below. Due to space restraints all cannot be sufficiently discussed here. Jurisdiction is appropriate because the decision passed upon the validity of a state statute for the first time, construed provisions of both the state and federal constitutions and directly conflicts with other decisions of the district courts and the Supreme Court. Since each basis of jurisdiction generally exists as to each issue, the discussion is divided by issue.

A. Special Act without Referendum or Notice

In holding the Act valid, the District Court construed Article III, Section 10, of the Florida Constitution requiring notice of referendum for the enactment of special laws. Chapter 83-354 was held to be a general law.[6] Jurisdiction should be invoked because this construction is fundamental error.

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[6] A statute which relates to a particular person, thing or subject of a class (a county) is a special one. Carter v. Norman, 38 So. 2d 30 (Fla. 1941). Conversely, a statute relating to subdivisions of a state or to subjects, persons or things of a class, based upon proper classifications and differences that inhere in or are peculiar or appropriate to the class, is a general law. Id. at 32. Finally, a statute relating to a particular subdivision or portions of the state or to particular places of classified locality, or one that uses a classification scheme or some other criteria so its application is restricted to particular localities, is a local law or general law of local application. Carter v. Norman, supra at 32; City of Miami Beach v. Frankel, 363 So. 2d 555, 558 (Fla. 3rd DCA 1978). Carter v. Norman, supra at 32. Waybright v. Duval County, 196 So. 430 (Fla. 1940); The Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc. 434 So. 2d 879 (Fla. 1983).

Additionally it is based upon a factual premise entirely outside of the Record, erroneously assumed by the District Court.

Chapter 83-354 is unquestionably a special law enacted without notice or referendum. It applies only to Dade county, and potentially, if Monroe and Hillsborough change their form of government, a maximum of three. No constitutionally rational basis exists to limit an act to develop convention centers to one (or three) counties, based upon form of government, the sole classification.

Incredibly, the District Court never attempts to rationally relate the purpose of the Act (convention center development) to the Legislative classification system, form of government (home rule under the 1885 Constitution). Instead, the District Court ignored the Legislature's classification and created another, absent from the Act and nowhere factually supported in the Record. The Court notes "that during the last two decades these counties in particular have developed or plan to develop facilities that attract a growing number of convention tourists," then states that "clearly a reasonable classification" is that these three counties "each have substantial tourist oriented economies". Opinion, p. 7. The Court's reliance upon this characteristic is absurd. There was no Record below whatsoever of any facts regarding development of convention tourist oriented facilities in Monroe and Hillsborough counties or that these two counties have "tourist oriented economies."[7] The Court made no such finding in its Final Judgment. This is error and constitutes direct express conflict. Maistrosky v. Harvey, 133 So. 2d 103 (2d DCA Fla. 1961), cert. den. 138 So. 2d 336; Kelley v. Kelley, 75 So. 2d 191 (Fla. 1954); Frank v. Jensen, 118 So. 2d 545 (Fla. 1960).

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[7]Even if this classification based upon "tourist oriented economies" is some form of appellate judicial notice, it is inaccurate and irrational. Hillsborough County is well known not to have a tourist oriented economy. Moreover, other excluded counties have tourist oriented economies (e.g., Pinellas, Orange, Broward, Palm Beach).

The District Court's criteria of "tourist oriented economies" appears nowhere in the Act. Instead, the Legislature chose "home rule" government and limited that to counties authorized to adopt it by the 1885 Constitution.[8] No logical nexus exists between the Act's purpose, convention center development, and the right to adopt a particular form of county government. This classification is so inappropriate that the almost identical Duval Act had to utilize a different classification to include only Duval County. The classification used was unquestionably chosen only for the purpose of singling out Dade County. If permitted to stand the same classification can be used to validate every future special act relating only to Dade County, without notice or referendum and the constitutional prohibition as to special acts will be meaningless.

The Decision below is in direct express conflict with established Florida law which, for purposes of determining a statute to be a general or special law, requires an examination of the classification system used by the Legislature to determine if it is "reasonably related to the subject of the law." Article III, Sect. 11(b), Florida Constitution (1968); Carter v. Norman, supra, Dept. of Legal Affairs v. Sanford-Orlando Kennel Club, Inc., 434 So.2d 879 (Fla. 1983); State v. City of Miami Beach, 234 So.2d 103 (Fla. 1970); Waybright v. Duval County, 196 So. 430 (Fla. 1940).

B. Prohibited Special Law Subject

Error was committed by the District Court when it construed Article III, Section 11(a)(2), Florida Constitution:

> Article III, Section 11. Prohibited Special laws. There shall be no special law or general law of local application pertaining to:
> (2) assessment or collection of taxes for state or county purposes.

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[8] Pinellas County was allowed to adopt home rule in 1980 under Ch. 80-590, Laws of Florida.

The District Court, erroneously relying upon two cases[9] decided prior to pertinent changes in the Florida Constitution on this point, held this provision to be applicable only to the mechanics of collection, but not to acts which impose a local tax. After these cases were decided, a fundamental change occurred in both the Constitution of Florida and the Florida Statutes regarding this exact issue. The Constitution of 1885, applicable to the decisions in Wilson and McMullen, provided in Article IX Section 5:

> **§ 5 Taxes for County and Municipal Purposes.** The Legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes, and for no other purposes. . .

The successor to this provision, Article VII Sec. 9 of the 1968 Constitution, inserts a requirement that such legislative authorization for county taxes be by general law:

> **§ 9 Local Taxes.**
> (a) Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes. . . (Emphasis added).

Likewise Florida Statute Sec. 125.01(r) now requires that the power to levy and collect taxes for county purposes be provided by general law.

Where Article III, Section 11 of the Florida Constitution prohibits special laws or general laws of local application pertaining to the assessment or collection of taxes, it is absolutely clear that present Florida law now prohibits such special or local acts which levy and collect taxes. Additionally, the District Court's holding directly conflicts with State ex rel. Maxwell Hunter, Inc. v. O'Quinn, 154 So. 166 (Fla. 1934), where this Court held invalid a statute regarding delinquent taxes affecting only certain counties. The Court stated:

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[9] Wilson v. Hillsborough County Aviation Authority, 138 So. 2d 65 (Fla. 1962), and McMullen v. Pinellas County, 106 So 73 (1925).

> In view of the prescribed organic system for state and county taxation, there appears to be no permissible classification by population or otherwise for statutory regulations which directly effect the assessment or the collection of taxes for state and county purposes. (Emphasis added). Id. at 169.

C. Violation of Equal Protection Guarantees.

The District Court construed the Equal Protection guarantees of both the Federal and Florida Constitutions by holding the Dade Act did not arbitrarily classify persons, types of residences or counties for purposes of imposing the tax. Opinion, p. 8-9. The tax is levied on "any payment made by any person to rent, lease or use for a period of 30 days or less any living quarters or accommodations . . . (listing types)." Persons in Dade County who (a) own homes or (b) rent living quarters for periods of 31 days or more or (c) rent single family homes for 30 days or less, are not required to pay the tax. Residents are classified by duration and type of their residence in Dade County. There is no rational basis for this classification, which is a violation of Equal Protection Clauses of both the United States and Florida Constitutions. Osterndorf v. Turner, 426 So. 2d 539 (1982). See also Zobel v. Williams, 457 U.S. 55 (1982); Vlandis v. Kline, 412 U.S. 441 (1973); Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974). The decision is in direct conflict with those cases.

Petitioners entertain visitors whose initial period of stay is less than thirty days, but thereafter may exceed thirty days. No rational distinction exists as to imposition of a convention tax between a person who visits Dade for 29 days, as opposed to one who stays for 31 days. Likewise, there is no possible reasonable basis to distinguish based upon physical type of residence. A person renting a trailer or a condominium monthly pays the tax, while one renting a house for that same month does not. The District Court suggested no rational basis for these disparate treatments. Lastly, as noted above, no rational basis exists for the distinction drawn between counties within the ambit of the Act (Dade), and those

that are not.[10] Mere differences without substance are not sufficient to sustain the classification. West Flagler Kennel Club v. Florida State Racing Com'n., 153 So. 2d 5 (Fla. 1963).

D. Unreasonable Interpretation of the Act

The District Court's construction of the Act is unreasonable, in direct conflict with Florida law regarding statutory construction. The Court did not look to the plain language of the statute to determine its validity. American Bankers Life Assn. Co. v. Williams, 212 So. 2d 777 (1st DCA Fla. 1968). To understand this, a review of the Act is necessary. Chapter 83-354 was enacted as Sec. 212.057, Fla. Stat., without any provision for collection of the tax imposed. Recognizing the collection omission, Dade County in Ordinance 83-91 authorized its Tax Collector to collect the tax. Section 2 of the Act includes specific provisions as to expenditure of all revenues raised, tailored to Dade County (essentially, two-thirds to the Miami Beach Convention Center and one-third to a new Miami complex). However, Fla. Stat. § 212.18 provides for collection of all revenues under that Chapter by the Department of Revenue. Under Sec. 212.20 such funds are to be paid to the General Revenue Fund.

Because Chapter 83-354 includes no mechanism for collection at all, while mandating that all revenues be used only for specified projects, it directly conflicts with the chapter of the Florida Statutes under which the Legislature expressly enacted it. The Attorney General stated that both the Dade and Duval Statutes were thereby deficient. O.A.G. 83-71. Both the trial and district courts held that the Dade Tax Collector lacked authority to collect a tax enacted under Chapter 212. The District Court likewise agreed that no segregation of the revenue under Fla.Stat. 215.32(1)(b) was authorized. Then the District Court

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[10] In glaring contrast to this tax is the Tourist Development Tax, Fla. Stat. § 125.0104, which applies to any county which chooses to impose it.

adopted a very strained construction to validate the Act by holding that the Department of Revenue could collect the tax and deposit it in the General Revenue Fund for "future appropriation measures." On rehearing it directed revenues already collected by the county paid to the Department.

By this construction the District Court committed two errors: (1) deposit in the General Revenue Fund for future appropriation is contradictory to the expenditure provisions of the Act; and (2) illegally collected revenue is ordered paid to a state agency not a party to the case and not authorized to accept it.

The Act mandates how the revenues must be spent. By directing the funds placed, unsegregated, in the General Revenue Fund, the District Court emasculated this provision. Is the Legislature now required to appropriate in the future? If so, is it required to appropriate as provided by the Act and only to Dade County? If so, by what authority can the District Court require the Legislature to act? If not, then what happened to Section 2 of the Dade Act?

The only revenue collected has been by Dade County pursuant to the invalid Ordinance. The Department of Revenue has not collected any revenue, nor is it required to do so, as it is not a party to the case. No authority permits revenues collected illegally by the County to be paid to the Department. Jurisdiction is appropriate to correct this tortured erroneous construction.

E. Other Errors

The Dade Act violates Due Process requirements which mandate that a legislative act be sufficiently definite to apprise what is required of those to whom it applies.[11]

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[11] Camp v. Board of Public Instruction, 368 U.S. 278, 7 L.Ed. 2d 285, 82 S.Ct. 275 (1961), State v. Wershow, 343 So. 2d 605 (Fla. 1977). An act is unconstitution if persons of common intelligence must necessarily guess at its meaning and differ as to its application. Camp v. Board of Public Instruction, supra.

Rental of certain living quarters "for a period of thirty days or less" is the event which triggers imposition of this tax which phrase is not defined. It is impossible to determine the actual rental period that falls in the scope of the tax. Section 83.46, Fla. Stat., provides that the duration of a renter's tenancy depends upon the "periods" for which the rent is payable. On this basis the Dade Act imposes a tax on all persons who pay their rent on a weekly or monthly basis.[12] Such an absurd result is created by this vagueness. Likewise, does a hotelier collect the tax from a guest who comes for four weeks and then stays 33 days, or for a "period" of 33 days, but stays only 28 days? No provision exists for refunds. Does a visitor only pay the tax for one thirty day period each year? The Statute does not answer these questions.

The vagueness is further aggravated by the Act's penal nature, failure to collect being punishable. Judicial scrutiny of a law for vagueness is particularly stringent when the law is penal.[13]

The Act is unconstitutional as a violation of uniform taxation protections. The District Court held it did not violate Article VII, Section 2, Florida Constitution, limited to ad valorem taxes, but failed to address the actual constitutional challenge as to uniformity, and ignored the fact that the tax is not uniform in Dade County. Uniform taxation in the taxing unit is a universal principal, founded on Equal Protection guarantees which apply to taxation statutes. See Kahn v. Shevin, 416 U.S. 351, 94 S.Ct. 1734, 40 L.Ed.2d 189 (1974).

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[12] Those under §83.46 renting monthly may be taxed in the five months a year having 30 days or less, but not in the other seven. Residents renting by the week always must pay the tax.

[13] State v. Wershow, supra; Cf., D'Alemberte v. Anderson, 349 So. 2d 164 (Fla. 1977). Papachristou v. City of Jacksonville, 405 U.S. 156, L.Ed.2d 110, 92 S.Ct. (1972), State v. Lindsay, 248 So. 2d 377 (Fla. 1973).

Specifically, Equal Protection requires uniform rates of taxation in the taxing unit. In Gilman v. City of Sheboygan, 2 Black (U.S.) 510, 17 L.Ed. 305, 309 (1863), the United States Supreme Court noted:

> The uniformity must be co-extensive with the territory to which it applies. If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout the extent of the territory to which it is applicable.[14]

Under the Act and Ordinance Dade municipalities may "opt out" of the tax if they have a municipal resort tax. Bal Harbour and Surfside have chosen to be exempt. As a result, Petitioners must charge three percent more tax[15] than their closest competitors located in Surfside and Bal Harbour (and those north in Broward County). Thus, the rate of taxation in the taxing district is not uniform. Uniformity within the taxing district is required by the Florida Constitution. Town of Palm Beach v. City of West Palm Beach, 55 So. 2d 566, 571 (Fla. 1951). W. J. Howey Co. v. Williams, 195 So. 181 (Fla. 1940). The Decision below directly and expressly conflicts with this established Florida and Federal law.

## CONCLUSION

Three independent bases for this Court's discretionary jurisdiction exist. In validating this Statute the District Court misconstrued several constitutional provisions and placed a blatantly erroneous interpretation on the new statute itself. This Court should grant a full review of these errors.

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[14] This principle is well established. See Pine Grove Township v. Talcott, 19 Wall (U.S.) 666, 22 L.Ed. 227 (1874), Foster v. Pryor, 189 U.S. 325, 23 S.Ct. 549, 47 L.Ed. 835 (1903) and 71 Am.Jur.2d, State and Local Taxation, § 152 and cases cited therein.

[15] Five percent sales tax, two percent county-wide tourist tax and three percent convention tax, totalling ten percent.

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By _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail, this 25th day of May, 1984, to: Jose Garcia-Pedrosa, City of Miami Attorney, 169 East Flagler Street, Suite 1101, Miami, Florida 33131; Vicki Jay, Esquire, Assistant County Attorney, Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130 and Lucia Allen Dougherty, Esq., City of Miami Beach Attorney, 1700 Convention Center Drive, Miami Beach, Florida 33139.

By: _____
Gerald F. Richman