OA 5-9-85

IN THE SUPREME COURT OF THE STATE OF FLORIDA

JAMES A. REDFORD, JR.,

Petitioners,

vs. CASE NO. 65,825

STATE OF FLORIDA,
DEPARTMENT OF REVENUE,

Respondent.
_____/

On Discretionary Review to the

THIRD DISTRICT COURT OF APPEAL OF FLORIDA

(Case Nos. 82-2227 & 82-2228)

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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COUNSELS FOR RESPONDENT
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PRELIMINARY STATEMENT

The Respondent, State of Florida, Department of Revenue, will be referred to as the "DOR". The Petitioner, James F. Redford, Jr., et. al., and Franklin B. Bystrom, Dade County Property Appraiser, will be sometimes referred to collectively as the "Taxing Authorities." The Petitioner James F. Redford, Jr., et. al., will sometimes be referred to individually as the "Adjustment Board". The Petitioner, Franklin B. Bystrom, Dade County Property Appraiser, will sometimes be referred to individually as the "Property Appraiser."

The term "Trial Court" will be used to refer to Judge Joseph M. Nadler of the Eleventh Judicial Circuit Court of Dade County, Florida. The term "District Court" will be used to refer to the Third District Court of Appeal of Florida.

The symbol "R" will be used to refer to the record on appeal. The symbol "App" will be used to refer to the Appendix located at the back of this answer brief of Respondent.

The Department of Revenue has restated several of the issues as phrased in the Taxing Authorities' initial briefs in the interest of clarity and with the intent of attempting to more effectively define the basic legal issues before this Court for consideration.

STATEMENT OF THE CASE AND FACTS

The DOR has no basic disagreement with the statement of the case and facts set forth in the Taxing Authorities' initial briefs, but would add the following:

The Motions to Dismiss filed by the Taxing Authorities asserted the grounds of failure to join the lessees as indispensable parties, estoppel of the Department of Revenue to challenge its own regulations, and failure to state a cause of action because the leasehold interests were exempt as a matter of law pursuant to §§125.019 and 159.15, F.S. (R. 6-11). These Motions to Dismiss were denied by order of the trial court after a hearing and after extensive memorandums of law were submitted by the parties. (R. 25-35, 41-70).

The same issues considered and rejected by the trial court in its order denying the Motions to Dismiss were subsequently raised as purported "affirmative defenses" in the answers by the Adjustment Board and the Property Appraiser (R. 72-80). These same issues were later reasserted by the Taxing Authorities in their Joint Motion for Summary Judgment (R. 106-108). In their Joint Motion for Summary Judgment, the Taxing Authorities advised the trial court that "the pleadings and other documents of record show there is no genuine issue to any material fact, and that the Defendants Board and Property Appraiser are entitled to judgment as a matter of law" (App. 8-10). (e.s.)

The unanimous District Court decision being reviewed by this Court specifically vacated that part of the trial court's judgment which made a merit determination that the subject leaseholds (for-profit corporation leaseholders in governmental property) were not exempt from taxation (App. A-3). The District Court expressly limited its holding to the questions of whether s. 195.092, F.S., authorized the DOR in its supervisory role to compel obedience of the taxing officials [Adjustment Board] to place this category of property of the tax rolls. (App. 3) The District Court noted that "other portions of the taxing code afford any specific taxpayer who is aggrieved the right to raise any and all defenses in a subsequent proceeding, i.e., s. 197.171(2), Fla. Stats. (1977)" (App. 3).

The following additional facts are essential to a proper analysis of this case:

1. The Dade County Property Appraiser is not an elected official. Under §8.01 of the Dade County Home Rule Charter, the Dade County Property Appraiser is an employee appointed by the Dade County Manager. Pursuant to s. 194.015, F.S., a majority [3] of the five member Adjustment Board are from the governing board of Dade County who are the bosses of the appointed Property Appraiser.

2. The Property Appraiser admitted as true in his answer (R. 74), the allegations contained in paragraph 12 of the DOR's complaint stating that "the Plaintiff subsequently notified the Property Appraiser of its determination and requested the Property Appraiser to challenge the Adjustment Board's decisions that the subject leasehold interests of the lessee were entitled to exempt status by filing a suit in circuit court seeking to have the Adjustment Board's decision set aside as illegal and void." The DOR was subsequently advised that the Property Appraiser did not intend to file suit to challenge the Adjustment Board's decisions granting the exemptions to the lessees. (R. 3-4).

3. The Adjustment Board admitted in its response to request for admissions of fact (R. 84) that five of the owners of leasehold interests granted tax exemptions for the year 1979 were commercial airlines providing services to the general public of air transportation of passengers and personal property for a charge from their leasholds at Miami International Airport (R. 81). The Adjustment Board also admitted in its response to request for admissions of fact (R. 84) that the remaining 21 lessees granted exemptions for the year 1979 were all commercial, for-profit corporations operating from their leasehold interests at Miami International Airport (R. 82).

SUMMARY OF ARGUMENT

The only two issues of any real substance to be resolved by this Court are: (1) Whether the DOR has authority under §195.092, F.S., to obtain a court order requiring that a category of real property [private leasehold interests in governmental property] be restored to the county tax rolls where such property has been removed from the assessment roll by actions of the Adjustment Board? (2) Whether all the taxpayers owning the subject leasehold interests are indispensable parties in such an action filed by the DOR against the Adjustment Board?

This Court has held that "across-the-board-adjustments" by a property appraisal adjustment board are illegal. This Court has also ruled in several cases that the DOR not only has the authority, but actually has the duty, to file actions under §195.092 against local taxing officials to compel compliance with the ad valorem tax laws of this state.

The potentially aggrieved taxpayers owning the leasehold interests in governmental property are not indispensable parties. Due process is provided to these potentially aggrieved taxpayers by case law and by the statutory provisions of §194.036(1)(c), F.S., when read in pari materia with §194.171(2), F.S., granting each taxpayer the right to raise any and all legal challenges to his respective assessment in a subsequent de novo judicial proceeding.

ARGUMENT

POINT I

THE DISTRICT COURT CORRECTLY CONCLUDED THAT THE DEPARTMENT OF REVENUE HAS THE AUTHORITY UNDER §195.092, F.S., TO OBTAIN A COURT ORDER COMPELLING THE ADJUSTMENT BOARD TO PLACE A CLASS OF REAL PROPERTY ON THE ASSESSMENT ROLLS AS TAXABLE PROPERTY.

In this case, the Court is not faced with an Adjustment Board decision affecting only one parcel of property or only one individual taxpayer. The Adjustment Board's challenged decision involved substantially all of the airline-related lessees at the Miami International Airport (R. 81-85). Leasehold interests in governmental property were a separate classification of real property in 1979 and were assessed on the county real property rolls, unless expressly exempt. See, §§195.073(1)(g) and 196.001(2), F.S. (1979).

The District Court expressly limited the scope of its decision below to the question of whether s. 195.092, F.S., authorized the DOR to utilize the courts to compel the Adjustment Board to place a class of property [private leasehold interests in governmentally-owned property] on the Dade County tax rolls for the year 1979. (App. 3) The holding of the District Court on this question was in the affirmative.

Section 195.092, F.S., provides in pertinent part that:

> (1) AUTHORITY TO BRING AND MAINTAIN SUITS.-- The Department of Revenue shall have authority to bring and maintain such actions at law or in equity by mandamus or injunction, or otherwise, to enforce the performance of any duties of any officer or official performing duties with relation to the execution of the tax laws of the state, or to enforce obedience to any lawful order, regulation or decision of the Department of Revenue lawfully made under the authority of these tax laws. . .

The District Court noted that s. 195.092 was both a substantive grant of power and a complement to the supervisory powers elsewhere granted to the DOR. See, §§193.114(5) & (6), 195.002, 195.027, 195.096 & 195.097, F.S. (1979), and Rule 12D-8.20, F.A.C. All of the cited statutory and regulatory laws are still in effect in substantially similar form, except that former subsections 193.114(5) & (6) were subsequently renumbered and are currently set forth in s. 193.1142 (1) and (2), F.S.

The initial briefs on the merits of the Taxing Authorities raise the not unfamiliar refrain of county taxing officials objecting to a perceived unwarranted intrusion by the DOR into local ad valorem tax matters. This Court has consistently recognized the increased statutory supervisory powers over local taxing officials granted by the Legislature to the DOR [and its statutory

predecessor] and the corresponding increased tension between state and county tax officials. See, Department of Revenue v. Ford, 438 So.2d 798 (Fla. 1983); Spooner v. Askew, 345 So.2d 1055 (Fla. 1977); and Burns v. Butscher, 187 So.2d 594 (Fla. 1966).

The case of Burns v. Butscher, supra, affirmed a final order of Leon County Circuit Judge Hugh Taylor rejecting a similar claim that former s. 192.31 allowed the Comptroller [the statutory predecessor in duty to the DOR] to override the duties of tax assessors [now "property appraisers"] in violation of the state Constitution. This Court observed on page 596 of the Burns opinion that former s. 196.16, F.S. (1965) [the statutory predecessor of current s. 195.092] authorized the Comptroller "to institute suits to secure obedience by officials of duties devolving upon them in relation to the tax laws and observance of pertinent regulations promulgated by the Comptroller."

The former supervisory authority of the Comptroller over the tax assessor was important, Justice Thomas noted, to attain uniformity and equality of taxation between the taxpayers of the several counties, as well as throughout the state. Justice Thomas, writing the unanimous opinion of this Court in the Burns case, ruled that, "We do not construe the statute as an attempt at usurpation by the

Comptroller. . . of the duties of tax assessors or materially to interfere with their discretion. . ." (e.s.). Id., at page 596.

As a part of the Governmental Reorganization Act of 1969, all of the former powers and duties of the Comptroller pertaining to supervision over ad valorem taxes were transferred to the DOR. See, Ch. 69-106, §21, Laws of Fla. (1969). Also, in the same year, the Legislature promulgated Ch. 69-55, Laws of Fla. (1969), containing an extensive revision of the ad valorem tax statutes. For the first time, the statutory powers and duties of the state agency responsible for supervision of the assessment and collection of ad valorem taxes were consolidated primarily into one chapter of the Florida Statutes (Ch. 195), then titled "State Regulation of Ad Valorem Taxation."

At the beginning of the 1973 legislative session, this Court rendered its opinion in District School Bd. of Lee Co. v. Askew, 278 So.2d 272 (Fla. 1973). The Legislature's apparent concern over the potential adverse effect of this decision with respect to the State's supervisory role in ad valorem taxation to secure "just valuation" tax rolls was reputedly the impetus for the Legislature's enactment in 1973 of the "Property Assessment Administration and Finance Law."[1] Ch. 73-172, Laws of Fla. (1973).

[1]See, Pajcic, Weber, and Francis, Truth or Consequences: Florida Opts for Truth in Millage in Response to the Proposition 13 Syndrome, 8 Fla. State U.L. Rev. 593 (1980).

The Property Assessment Administration and Finance Law of 1973 (codified in Ch. 195, F.S.) greatly increased the statutory powers of the State of Florida with respect to ad valorem taxation. Included among other things, were detailed statutory provisions for periodic in-depth studies of the assessment rolls of each county and annual post-audit reviews of assessment rolls by the DOR to be enforced by "continuing supervision" by the DOR of the preparation of the current assessment rolls. See, §§195.096 and 195.097, F.S.

The increased supervisory powers granted to the DOR in 1973 was noted by this Court in the case of Spooner v. Askew, supra. On page 1058 of the Spooner opinion, this Court observed that:

> The constitution creates a class of public officials called tax assessors (now known as Property Appraisers) whose duty it is to determine the fair value of all properties within county boundaries. There is an obvious tension between the exercise by these county officials of their constitutional responsibilities on the one hand, and the development of statewide uniformity by state level officials on the other. The Legislature's 1973 decision to expand the tools made available to the Department for it to "ride herd" on county officials sharpened pre-existing conflicts,. . . . (e.s.)

The Taxing Authorities rely primarily on two decisions of this Court in support of their argument that the District Court decision "improperly permits the DOR to perform duties and functions of the Property Appraiser and Adjustment Board in the absence of the legal authority." These two decisions are District School Bd. of Lee Co. v. Askew, supra; and Root v. Wood, 21 So.2d 133 (Fla. 1945).

The DOR respectfully submits that the Taxing Authorities' reliance on the District School Bd. and Root v. Wood cases as a purported basis for reversal of the District Court decision is clearly misplaced. The holding of this Court in the District School Bd. case, does not support the position of the taxing authorities for several reasons.

First, the District School Bd. case involved a dispute between the Auditor General and the Lee County Property Appraiser. In our case, the real controversy is between the DOR and the Dade County Adjustment Board, since it is uncontroverted that the Property Appraiser complied with the DOR's direction that the subject leasehold interests be placed on the real property assessment rolls as taxable property for the year 1979.

The Property Appraiser could have directly challenged the legality of the DOR's directive by filing a suit under §195.092(2), F.S. However, the Property Appraiser declined to file a court action and followed the DOR's directive. It

was the Adjustment Board which, on its own motion, held hearings and subsequently removed the subject private leasehold interests from the Dade County tax rolls for the year 1979.

Secondly, and probably more important, the state agency action challenged in the District School Bd. case related to non-judicial findings in a ratio study prepared by the Auditor General to determine allocations of State educational funds under the Minimum Foundation Program. The District School Bd. opinion did not hold that it was improper for the State of Florida to seek and obtain a court order invalidating an action of a county taxing official. Rather, this Court held in the District School Bd. case that former §236.07(8), F.S., (1971), was unconstitutional insofar as it allowed for findings in a ratio study [not judicially approved or confirmed by the courts] to overrule the certified findings of the county tax assessors. In fact, this Court noted on page 277 of the District School Bd. opinion that:

> The State has the authority and power to challenge an assessment through circuit court (Fla. Stat. §194.171, F.S.A.), and has a duty to the taxpayers of the State to do so in cases such as is presented here where underassessment in a county requires the State to pick up a portion of the county's fair share of the cost of education. However, we hold that the State has no power to ignore the presumption of correctness attendant to the official assessments. . . . (e.s.)

The additional case of Root v. Wood, supra, cited in the Property Appraiser's brief is clearly distinguishable with respect to the material facts presented and is not applicable to this case. The Root v. Wood case did not even arise out of a clash between state and county taxing officials. The complaint in Root v. Wood case was filed by a taxpayer against the Dade County Tax Collector challenging an intangible personal property assessment as being excessive.

The findings of fact as set forth on page 134 of the Root v. Wood opinion reflects that the local taxing officials of Dade County actually complied with the Comptroller's determination at issue ". . .for the reason that the Tax Assessor and the Board of Equalization felt they were bound by the order of the Comptroller and had no discretion in the matter. . .(e.s.)" Thus, the question of whether the Comptroller [the statutory predecessor in duty to the DOR] had the power to obtain a court order overruling a determination of local taxing officials was not even at issue in the Root v. Wood case. Furthermore, the Root v. Wood case did not involve the removal of a class of property from the county real property tax rolls, but merely dealt with a valuation challenge by an individual taxpayer owning intangible personal property.

The most recent discussion by this Court of the powers and responsibilities granted by the Legislature to the DOR in connection with the supervision of property appraisers and other local taxing officials is found in the case of DOR v. Ford, 438 So.2d 798 (Fla. 1983). In the Ford case, the DOR was critized by the courts for not fulfilling its supervisory responsibilities over the property appraisers with respect to the requirement of assessment of subsurface interests in real property under §192.481, F.S. On page 800 of the Ford opinion, this Court noted in pertinent part that:

> The district court opinion explored in detail the legislative provisions which outline the responsibilities of the Department of Revenue in regards to ad valorem taxation. We agree with the court's conclusion that the Florida Department of Revenue is clearly charged with implementing the legislature's intention that Florida's ad valorem taxation laws are enforced, implemented and administered uniformly throughout the state. §195.027(1), Fla. Stat. (1981). Central to this duty is the Department's responsibility of supervising Florida property appraisers and other local taxtion officials and ensuring that they comply with the laws which govern the asessment, collection and administration of ad valorem taxes. . . . (e.s.)

It is undisputed here that the Property Appraiser declined to comply with the DOR's request that he file suit under former §194.032(6)(a), F.S. (1979) [now 194.036(1)(c)] to challenge the Adjustment Board's actions in removing the

subject private leasehold interests in governmental property from the 1979 Dade County real property assessment rolls. The Property Appraiser's refusal to file suit against the Adjustment Board in this case is, in all candor, somewhat understandable. The Property Appraiser in Dade County is not a constitutional officer elected by the voters of Dade County, but is merely a hired employee directly subordinate in authority to a majority of the members of the Adjustment Board.

The actions of the Adjustment Board in removing the airline related leasehold interests from the Dade County real property assessment rolls in 1979 are clearly ultra vires. This conclusion is apparent because such actions are comprehensive class-related actions exceeding the limited authority of the Board to hear individual petitions and correspondingly to adjust individual assessments under §194.011 through §194.037, F.S.

This Court has previously declared invalid attempts by an adjusment board to make comprehensive changes affecting a class or classes of property on a county tax roll in Spooner v. Askew, supra. In the Spooner case, the judgment of the trial court providing a 12% reduction in the property appraiser's assessed values was reversed due to the holding of this Court that:

> As regards the trial court's holding that county boards of tax adjustment may validly adjust assessments across-

> the-board, we find no statutory basis to support that conclusion. Before 1970 the authority of these boards in the assessment process was limited to a review of individual petitions presented by taxpayers aggrieved by their individual assessments. All traces of statutory language arguably suggesting that the boards had authority to act without individual petitions were repealed in 1970. When in 1973 the Legislature repealed Section 194.015(2), Florida Statutes (1971) (relating to the Board's powers) but neglected to identify that action in the title of the repealer bill, it neither expanded nor contracted the board's authority to respond to individual petitions. It simply cleansed the statutes of surplus language. Under these circumstances, there was no title defect of the type proscribed by Article III, Section 6 of the Floria Constitution. In finding to the contrary and ruling for the Board the trial court erred. (e.s.) Id. at page 1058

In summary of Point I, the DOR would reemphasize that this case presents a rather unique situation where an Adjustment Board exempts or reduces the value of a category or class of property and the Property Appraiser declines to challenge the Adjustment Board decisions by filing suit under §194.036(1)(c). In such a situation, the sole remedy available for seeking redress against apparent violations of the ad valorem tax laws by an Adjustment Board is for the DOR to file an action under §195.092(1) seeking a judicial determination concerning the propriety of the Adjustment Board's activities! Such action is precisely what the DOR

took below and is expressly what this Court recommeded in the District School Bd. case, wherein is stated that:

> The proper method for challenging the validity of an assessment is through the circuit court (Fla. Stat. 194.171, FSA, and the state has the power, through the Department of Revenue, to bring such an action. Fla. Stat. §195.092, F.S.A. Id., at page 276.

POINT II

THE TAXPAYERS ARE ASSURED PROCEDURAL DUE PROCESS BECAUSE OF STATUTORY AND CASE LAW GRANTING TO EACH TAXPAYER THE RIGHT TO A SUBSEQUENT TRIAL DE NOVO ON ALL ISSUES.

The Department of Revenue would again point out that the District Court expressly vacated the trial court's merit determination that the subject private leasehold interests were not exempt and ruled that ". . . other portions of the tax code afford a taxpayer who is aggrieved by the agency action the right to raise any and all defenses in a subsequent proceeding. See, s. 194.171(2), . . ." (e.s.) (App. 3). Thus, when a supplemental tax roll containing the subject leasehold interests is certified to the tax collector for collection, each taxpayer will have 60 days therefrom to challenge the individual assessment under §194.171(2).

The District Court noted that this right was particularly true in this case because the taxpayers were not before the Court and, therefore, could not be precluded in subsequent litigation from the exercise of his right to prove an exemption was proper. The District Court cited as authority for this conclusion the case of State ex rel. Burbridge v. St. John, 143 Fla. 876, 197 So. 549 (1940), clarifying 143 Fla. 544, 197 So. 131.

State ex rel. Burbridge v. St. John, supra, involved a proceeding by the State of Florida, on relation of Clinton

Burbridge and others, against the Tax Assessor for a writ of mandamus to return certain property belonging to the Housing Authority of Jacksonville to the tax rolls. The Housing Authority built houses on its property and rented them for residences and that was not a charitable use of the property.

In Burbridge, this Court held that a dismissal of the suit was improper and that a residential purpose did not qualify as a charitable purpose. The Court clarified its opinion by saying that it was not holding that the exemption was proper or improper but merely that since the property owner (Housing Authority of Jacksonville, Florida) was not a party to the suit it could not be precluded by any judgment entered in the case from proving its right to an exemption was proper. Likewise, in this case any aggrieved taxpayers owning the leasehold interests may also challenge any subsequent tax assessment on any grounds [whether it be excessive valuation or alleged exempt status] by filing suit under §194.171(2).

It is undisputed that the DOR was forced to file this action in the trial court to obtain a judicial determination of the legality of the actions of the Adjustment Board in granting the airline leasehold interests exemption from ad valorem taxes because the Property Appraiser declined to take such action as was requested by the DOR. Thus, the

DOR's position in this case is identical to that of a property appraiser who has challenged a decision of an adjustment board by filing suit in the circuit court pursuant to the provisions of current §194.036(1)(c), [formerly §194.032(6)(a)3 (1977)].

In the situation where the property appraiser does file suit against an adjustment board under §194.036(1)(c), [formerly 194.032(6)(a)3 (1977)], the Legislature expressly provides in this subsection for the reservation of the right of a taxpayer to file an action to contest any judicially altered or changed assessment. The last sentence of this subsection reads:

> "... However, when a final judicial decision is rendered as a result of an appeal filed pursuant to subparagraph 194.032(6)(a)3 which alters or changes an assessment of a parcel of property of any taxpayer not a part to such procedure, such taxpayer shall have 60 days from the date of the final judicial decision to file an action to contest such altered or changed assessment. . . ." (e.s.)

The provisions of now renumbered §194.036(1)(c) were construed by the Second District Court in Mikos v. Apprisal Adjustment Board, 365 So.2d 757 (Fla. 2 DCA 1978). In the Mikos case, the Court held that a decision of the DOR concurring with the property appraiser's assertion that there was a continuous violation of law by the adjustment board was not a final agency action governed by Ch. 120.

The Court also ruled in the Mikos opinion that "The rights of the adversely affected taxpayer not made a party to the court action are fully preserved in providing for his independent challenge of such adverse judicial determination. Section 194.032(6)(a)(3), Florida Statutes, (1977). . . ." Id, at page 759. (e.s.)

The DOR would also direct this Court's attention to the fact that §194.181(2), F.S., specifically provides ". . . that in any case brought by the property appraiser pursuant to subparagraph 194.036(1)(c), the property appraisal adjustment board shall be party defendant." (e.s.)

Consequently, it is evident that the potentially affected taxpayers here clearly would not have been indispensable parties if the Property Appraiser had filed suit against the Adjustment Board as requested by the DOR. Nevertheless, the Property Appraiser is now in the interesting posture of requesting this Court to hold that [because he declined to challenge the Adjustment Board as requested] the owners of the private leasehold interests have suddenly become indispenable parties!

The Adjustment Board and the Property Appraiser rely primarily on the case of Hollywood Jaycees v. Dept. of Revenue, 306 So.2d 109 (Fla. 1975), as purported authority for their contention that failure to join the lessees in this action deprives the lessees of due process of law.

However, it is undisputed that the statutory language construed in the Hollywood Jaycees case was not even in existence at the time the instant action was filed.

The language of former §193.122(1), F.S. (1973), read in pertinent part that:

> . . . If the board of tax adjustment makes any changes in the assessor's roll it shall forward to the department its specific and detailed findings for all changes made by the board to substantiate that the evidence presented was sufficient to overcome the assessor's presumption of correctness. The board shall reduce its finding of fact to writing, in each case stating the reasons for which the assessor's determination was overturned. The department shall invalidate any change by the board if it finds the change lacks legal sufficiency or that the evidence presented was insufficient to overcome the assessor's presumption of correctness. (e.s.)

This repeal in 1976 of the above-cited statutory basis for automatic administrative review by the DOR of decisions of adjustment boards is one of the reasons why the DOR was required to file this action in the Dade County Circuit Court under §195.092(1).

The Hollywood Jaycees case also is not controlling for the additional reason that in 1973 an aggrieved taxpayer was required to exhaust his administrative remedies under Part I of Ch. 194 by filing a petition with the board of tax adjustment as a condition precedent to challenging tje tax assessment in circuit court. See, Blake v. R.M.S. Holding

Corp., 341 So.2d 795, 800 (Fla. 3 DCA 1977). However, the provisions of §194.032(3), F.S. (1979), as amended, deleted the requirement that a taxpayer had to pursue his administrative remedies as a condition precedent to filing an action in circuit court. An aggrieved taxpayer may now completely bypass the adjustment board hearings and directly file an action in circuit court challenging a tax assessment under §194.171(2). See, Cape Cave Corp. v. Lowe, 411 So.2d 887, 888 (Fla. 2 DCA 1982).

Pursuant to its property and assessment administration duties mandated by Ch. 195, F.S., the DOR is required to make various determinations and decisions and to issue directives and rulings in connection with its supervision of the preparation of assessment rolls by the property appraisers. See, §§195.096 and 195.097, F.S., et. al. The provisions of subsections (3) and (4) of §195.097 give the Department of Revenue the express statutory authority to take whatever legal actions are necessary in order to enforce compliance with its administrative orders in connection with the preparation of the assessment rolls.

The matters contemplated by §195.097 and other related provisions of Ch. 195 generally involve entire classes, categories, or strata of property on the assessment rolls. In populous counties like Dade County, the assessment of literally thousands of parcels of property included in one

or more class, category, or strata of property could be ultimately affected as the result of an order or ruling of the Department of Revenue. If all of the owners of such potentially effected parcels of property were held to be indispensable parties in any action filed by the Department of Revenue against the property appraiser or other county taxing officials to enforce orders entered in connection with its supervision of the assessment of property then such statutory authority of the DOR would be rendered a practical nullity.

The prohibitive labor and costs involved with the joinder of hundreds or even thousands of owners of property constituting one or more classes of property on an assessment roll in a county like Dade appears to be axiomatic. In the instant case, involving a relatively small class of property (for-profit corporate leaseholders in governmental property) in terms of total number of parcels, it is undisputed that there were at least 26 different leases having an ownership interest as of January 1, 1979, in the leaseholds granted exemptions from ad valorem taxation by the decisions of the Adjustment Board (R-81-85).

In concluding this portion of the argument, the Department of Revenue respectfully submits that a judicially

imposed requirement of the joinder of potentially affected property owners in an action brought by the Department of Revenue under §195.092(1) against officials performing duties in relation to the execution of the tax laws of this state would create chaos in the property assessment administrative procedures promulgated by the Florida Legislature as codified in Ch. 195, F.S!

POINT III

THE DECISION OF THE DISTRICT COURT DOES NOT ERR IN PARTIALLLY AFFIRMING AND PARTIALLY VACATING THE TRIAL COURT'S GRANTING OF SUMMARY FINAL JUDGMENT IN FAVOR OF THE DOR.

Despite the fact that the decision of the District Court vacated all portions of the trial court's judgment dealing with a merit determination of exemption, Point III of the brief of the Adjustment Board's brief argues for a merit determination of whether the category of property held by for-profit corporation leaseholders in governmental property was exempt or nonexempt. The DOR feels constrained to answer this point because the Adjustment Board devotes 20 pages of its 50 page brief to this issue. The DOR notes in doing so, however, that the Property Appraiser has not raised this point in his brief!

The Adjustment Board contends that the summary judgment entered in favor of the DOR should have been reversed because the trial court failed to "recognize any genuine issues as to any material fact." However, as related in the DOR's statement of the case, the Adjustment Board and the Appraiser filed a joint motion for summary judgment in the trial court requesting that a summary judgment be entered in their favor "on the grounds that the pleadings and other documents show that there is no genuine issue as to any material fact" (App. 8).

In 40 Fla. Jur.2d, Pleadings, §64, at pages 83-84, the following general rule of law disapproving this type of inconsistent pleading is set forth in pertinent part as follows:

> In general, an admission made in a pleading operates to effect a species of estoppel. Thus, an allegation in a pleading may have the legal effect of establishing an estoppel against the pleader. A party may be estopped by the material averments of his pleading from later taking a position inconsistent therewith, either in the same case or in a subsequent case between the same parties involving the same subject matter. . . .

Should a trial court be reversed for making a finding that there are no material dispute of facts when all the parties to the suit advised the trial court in written motions of their agreement with this conclusion? The Department of Revenue submits that this Court should not approve of such inconsistent posturing by the Adjustment Board! The contention that the trial court committed reversible error by failing to recognize the existence of remaining genuine issues of material fact should be summarily dismissed.

One of the main contentions of the Adjustment Board in the trial court was that the subject leasehold interests are exempt from ad valorem taxation in 1979 under the provisions of §196.199(2), F.S., which expressly exempt from ad valorem

taxation leasehold interests in property owned by a governmental entity "only when the lessee serves or performs a governmental, municipal, or public purpose or function as defined in §196.012(5). . . . " (e.s.). The assertion that the utilization of the leasehold interest at Miami International Airport by the private lessees in connection with air transportation of passengers and property and related air support services entitles the leasehold interests to exemption from ad valorem taxation under the provisions of §196.199(2), F.S., is the primary argument raised in the Adjustment Board's brief.

As set forth in the DOR's statement of facts, the pleadings, admissions and answers to interrogatories established the undisputed fact that the private lessees utilized the subject leasehold interests in 1979 for commercial, profit-making purposes in connection with the air transportation of passengers and property and related air support services for a pecuniary charge (R. 81-85). The Adjustment Board argues that, notwithstanding these uncontroverted critical facts, the trial court erred in its ruling that the DOR was entitled to a judgment as a matter of law holding that the leasehold interests were being utilized by the private lessees for "governmental-proprietary" purposes, thereby rendering the "governmental" exemption provisions of §196.199(2) inapplicable.

The primary case relied on by the PAAB in their argument under Point III is the decision of this Court in Dade County v. Pan American World Airways, Inc., 275 So.2d 505 (Fla. 1973). In the Pan American case, this Court did hold that the 1970 ad valorem tax assessment of Pan American's leasehold interests at Miami International Airport was invalid because the leasehold interests should have been entitled to an ad valorem exemption under the former statutory provisions of §196.25(2)(c), F.S. (1969). The DOR agrees that the Pan American decision did reflect the status of the Florida law in 1970 that the leasehold interests of commercial airlines proving air transportation was used for a predominantly public purpose and was entitled to exemption from ad valorem tax under the former provisions of §196.25(2)(c), F.S. (1970). However, the DOR does not agree that the Pan American decision is controlling in this case.

The appellate courts of this state, including this Court, have specifically observed in later decisions that the former provisions of §196.25(2)(c) construed in the Pan American case were subsequently repealed and superseded by the current provisions of §196.001(2) and 196.199(2) expressly relied upon by the trial court in the summary judgment challenged in this proceeding. See, Volusia County v. Daytona Beach Racing Comm., 341 So.2d 498, 502,

n. 5 (Fla. 1976); Williams v. Jones, 326 So.2d 425 (Fla. 1975); and St. Johns Associates v. Mallard, 366 So.2d 34, 37 (Fla. 1 DCA 1978). See, also, Mallard v. Tele-Trip Co., 398 So.2d 969 (Fla. 1 DCA 1980).

In the St. Johns Associates case, the First District Court of Appeal was faced with a similar argument by the appellant relying upon the Pan American case, supra. The First District rejected the lessees' reliance on the Pan American case by stating in pertinent part on page 37 of the St. Johns Associates opinion, as follows:

> It should be noted that the Court in Pan American Airways was asked to construe statutes different from those now before us. There the court interpreted the effect of Section 196.25(2)(c), Florida Statutes (1969), which permitted the exemption from taxation of leasehold interests to corporations for profit in property owned by the state or other governmental unit "for a consideration in the performance by the public body of a public function or public purpose authorized by law. . . ." Section 196.25 was repealed by §15 to Ch. 71-133, and the legislature, in §16 to the same act, amended Chapter 192 by enacting §192.010, later renumbered as Section 196.001. (footnote omitted).

In the St. John's Associates case, the First District Court rejected the taxpayer's exemption argument and rendered an opinion reviewing the evolution of the statutory and case law applicable to the taxability of the leasehold interests of private lessees in governmentally owned

property. On pages 36 and 37 of the St. John's Associates opinion, the First District Court stated in pertinent part as follows:

> St. John's relies upon Hillsborough County Aviation v. Walden, 210 So.2d 193 (Fla. 1968); Dade County v. Pan American World Airways, Inc., 275 So.2d 505 (Fla. 1973); Hertz v. Walden, 299 So.2d 121 (Fla. 2d DCA 1974), affirmed 320 So.2d 385 (Fla.) and Opa-Locka v. Metropolitan Dade County, 247 So.2d 755 (Fla. 3d DCA 1971) for its position that if the use of the premises leased is predominantly public in nature as an indispensable facility supporting the operation of the public facility, the exemption will be allowed even if the use was for private purposes incidental to the predominate public use. Those cases set forth a public purpose test permitting a private party to qualify for an exemption if its use of the property was essential to some public purpose, and if the same functions could be performed by using public funds. For example, in Dade County v. Pan American World Airways, supra, the Florida Supreme Court held that Pan Am's overhaul base, reservations and accounting office, flight simulation building at Miami International Airport were tax exempt because the projects were primarily and predominantly for the public benefit, even though there may have been some incidental private purpose. And, once a project meets the test of public purpose, an incidental private purpose loses its identity and is merged within the term public purpose.
>
> * * *
>
> We conclude that a more recent line of cases militates against St. John's

> argument that an exemption exists. E.g. Straughn v. Camp, 293 So.2d 689 (Fla. 1974); Williams v. Jones, 326 So.2d 425 (Fla. 1975); Volusia County v. Daytona Beach Racing, etc., 341 So.2d 498 (Fla. 1976). Therefore the test formerly applied in those cases relied upon by St. John's, i.e., predominant public use, no longer has continuing efficacy and we must look instead to the use actually made of the property leased to determine its tax exempt status.
>
> Legislative declarations such as those in Ch. 63-1447 do not necessarily make the function a commercial lessee performs governmental. It is rather the actual use made of the leased property which determines whether it is taxable under the constitution. Cf. Straughn v. Camp, supra. Governmental functions or duties relate to the administration of government or some element of sovereignty, Daly v. Stokell, 63 So.2d 644 (Fla. 1953), while proprietary functions are those undertaken for public benefit and involve no exercise of sovereignty. City of Miami v. Oates, 152 Fla. 21, 10 So.2d 721 (1942). If the function is in fact proprietary--it matters not what statutory authorization is given the governmental unit--the leased property does not obtain its tax exempt benefit. Williams v. Jones, supra. . . . (e.s.)

In the landmark case of Williams v. Jones, supra, cited in the St. John's Associates opinion, this Court was faced with the question of whether certain leases of county owned Santa Rosa Island were entitled to the exemption set forth in §§196.199(2) and 196.012(5), F.S. The commercial lessees operating in such diverse enterprises as barber shops, plumbing businesses, laundrys and restaurants argued that the operation of their business constituted a governmental

or public purpose function and that their leaseholds were therefore exempt from ad valorem taxation pursuant to §§196.199(2) and 196.012(5). This Court rejected the lessee's argument in Williams v. Jones and held that the exemption contemplated uner §§196.012(5) and 196.199(2) relate to "governmental" functions as opposed to "governmental proprietary" functions.

On page 432 of the Williams opinion, this Court reiterated its position that "it is the utilization of leased property from a governmental source that determines whether it is taxable. . ." (e.s.). See, also, Straughn v. Camp, 293 So.2d 689, 695 (Fla. 1974). Because the leased properties were being utilized by the lessees for commercial, profit-making purposes, this Court held that the functions performed by the Santa Rosa Island lessees were governmental-proprietary in nature and that exemptions set forth in §§196.021(5) and 196.199(2) were not applicable.

The "function by utilization" test, recognizing a distinction between "governmental-governmental" as opposed to "governmental-proprietary" functions performed by the private lessee, has been followed in every subsequent appellate court decision in this state construing the question of the taxability of leasehold interests of private lessees in governmentally owned property since the decision of this Court in Williams v. Jones was filed in 1975.

See, Walden v. Hillsborough County Aviation Authority, 375 So.2d 283 (Fla. 1979); Markham v. MacCabee Investments, Inc., 343 So.2d 16 (Fla. 1977); Volusia County v. Daytona Beach Racing & Rec. Fac. Dist., supra; St. John's Associates v. Mallard, supra; Mallard v. R.G. Hobelmann & Co., Inc., 363 So.2d 1176 (Fla. 1 DCA 1978) and Hudson v. Brown, 363 So.2d 582 (Fla. 1 DCA 1978).

A leading case decided by this Court construing the application of the "governmental-governmental" and the governmental-proprietary" functional utilization test as to airport lessees is the case of Walden v. Hillsborough County Aviation Authority, supra. In the Walden case, this Court quashed the decision of the Second District Court of Appeal and held that the leasehold interests of certain lessees at the Tampa International Airport were subject to ad valorem taxation since they were being utilized by the lessees for a commercial, profit making purpose constituting a "governmental-proprietary" function.

In the Walden case, this Court rendered a detailed opinion tracing the development of the case law dealing with the taxability of a leasehold interests of private lessees at airport facilities owned by governmental authorities. On pages 285-287, this Court stated in pertinent part as follows:

Petitioners allege that our decision in Williams controls and overrules, directly or impliedly, all the pre-Williams cases relied upon by the trial court and the Second District Court of Appeal. They contend that under Williams the test to be used in determining if a public purpose exemption exists is whether the actual leasehold use constitutes a "governmental-governmental" or a "governmental-proprietary" function. It is the utilization of property leased from a governmental source, they argue, that determines if the leasehold is taxable. They maintain that these leaseholds are taxable because they are used for commercial, profit-making purposes and serve a "governmental-proprietary" function.

To the contrary, respondents allege that the trial court and the Second District correctly relied on Hillsborough County Aviation Authority v. Walden, 210 So.2d 193 (Fla. 1968); Hertz Corp. v. Walden; and Dade County v. Pan American World Airways, 275 So.2d 505 (Fla. 1973), as these cases, upholding public purpose exemptions for certain airport leaseholds, are factually indistinguishable from the present case. They argue that Williams and Volusia County v. Daytona Beach Racing & Recreational Facilities District, 341 So.2d 498 (Fla. 1976), are inapplicable because the facts of the present case, involving a modern airport run by a governmental authority exercising strict controls, are substantially different. They say that their leaseholds are "indispensable facilities" with a "predominant public use" and thus satisfy the "public use" test of Hillsborough County Aviation Authority v. Walden.

We conclude that our decision in Williams is controlling and that the leasehold interests of Host, Dobbs, and Bonanni are properly subject to ad valorem taxation. . . .

* * *

We reject respondents' argument that the present case is substantially different from Williams and Volusia County so as to render those decisions inapplicable. We further reject the cases respondents cite as controlling. Their reliance on Daytona Beach Racing & Recreational Facilities District v. Paul, 179 So.2d 349 (Fla. 1965), and Dade County v. Pan American World Airways is misplaced in light of our decision in Volusia County v. Daytona Beach Racing & Recreational Facilities District, wherein we expressly overruled Daytona Beach Racing & Recreational District v. Paul and also noted that the statutory provision considered in Dade County v. Pan American World Airways had been superseded. Hillsborough County Aviation Authority v. Walden is inapplicable for the same reason.

Furthermore, the rationale expressed in the decision of the Second District in Hertz Corporation v. Walden and approved by this Court in Walden v. Hertz Corporation. is inconsistent with our subsequent decisions in Williams v. Jones and Volusia County v. Daytona Beach Racing & Recreational Facilities District, and this rationale has been impliedly over-ruled by these subsequent decisions. We hereby expressly recede from our prior decision in Walden v. Hertz Corporation to the extent that it is inconsistent with our present decision.

Applying the "function by utilization" test of Williams v. Jones, we hold that the district and the trial judge erred in holding that the leasehold interests of Hosts, Dobbs, and Bonanni were not taxable. It is undisputed that these leaseholds are being utilized for commercial, profit-making purposes, and for this reason they have a "governmental proprietary" function. Having such a function, they are taxable. The First District Court of Appeal in St. John's Associates v. Mallard, 366 So.2d 34 (Fla. 1st DCA 1978), reached a similar

> result in denying an exemption from taxation claimed by a leaseholder of the Jacksonville Port Authority. The rationale of the First District in that case is consistent with our holding in this case. . . . (e.s.)

Thus, in the Walden case this Court once again expressly noted that the taxpayers' reliance on the case of Dade County v. Pan American World Airways was misplaced in light of the subsequent decisions of this Court. Also, in Walden this Court made it clear that the "governmental-governmental" and "governmental-proprietary" test enunciated in Williams v. Jones, supra, was also applicable in a factual situation involving private lessees at a large public airport built and owned by a governmental authority.

The PAAB argues in its brief on page 26 that the appellate courts of Florida have not rendered any leasehold tax exemption cases involving lessees performing an "aeronautical (or directly related) function" since the Pan American case was decided. This assertion, however well-intended, is erroneous.

In the case of Hudson v. Brown, supra, the First District Court of Appeal affirmed a summary final judgment of the trial court holding that the appellant's leasehold interests at Tallahassee Municipal Airport were subject to ad valorem taxation, expressly relying on the case of St. John's Associates v. Mallard, supra. The leasehold

interests of the appellant Hudson were utilized in part for the maintenance and repair and servicing of aircraft at the Tallahassee Municipal Airport. Also, a portion of the leased property was subleased to another private corporation for profit for the operation of aircraft chartering and flying instruction services.

At pages 120-122 of the record on appeal are true and correct copies of the affidavit of appellant Hudson as to the aircraft related activities performed by the appellant on the leasehold interests and a certificate from the Leon County Clerk showing that the final judgment and affidavit were part of the record on appeal before the First District in the Hudson case.

The summary final judgment challenged in this proceeding also cites the latest known judicial decision in Florida relating to the ad valorem taxation of leasehold interests of private lessees at public airport facilities, Delta Airlines, Inc. v. Mallard, Case No. 78-14173-CA (Duval County Circuit Court 1981) (App. 11-13). In the Delta Airlines, Inc., case, the Duval County Circuit Court in holding that the leasehold interests of Delta Airlines at the Jacksonville International Airport were subject to ad valorem tax for the year 1978 made a specific ruling that "the utilization of said leasehold interests by the plaintiff for the purpose of providing air transportation

to passengers and personal property for a charge is 'proprietary' in nature and constitutes a 'governmental-proprietary' function as opposed to a 'governmental-governmental function' and therefore, the plaintiff is not entitled to the exemption provided under §196.199(2), F.S. (1977)." (e.s.) (App. 11-13).

POINT IV

THE DISTRICT COURT DECISION IS NOT IN ERROR BECAUSE THE INDIVIDUAL TAXPAYERS OWNING THE LEASEHOLD INTERESTS IN GOVERNMENTAL PROPERTY WERE NOT MADE PARTIES TO THE ACTION.

Point IV of the brief of the Adjustment Board basically reargues the contention that all of the taxpayers owning the subject private leasehold interests in governmental property are indispenable party defendants in this case. The DOR submits that this is essentially the argument raised in Point II of the Property Appraiser's brief, which the Adjustment Board adopted by reference in its brief. Since the DOR has responded in detail to this contention in its answer to Point II of the Property Appraiser's brief, the DOR hereby adopts as its answer to Point IV of the Adjustment Board's brief, the argument set forth under Point II.

POINT V

THE DISTRICT COURT CORRECTLY AFFIRMED THAT PORTION OF THE TRIAL COURT'S JUDGMENT ORDERING THE PROPERTY APPRAISER TO PREPARE A 1979 SUPPLEMENTAL ROLL.

The Adjustment Board cites an overwhelming number of cases under Point V of its argument purporting to support its position that the trial court's mandate to the Property Appraiser to place the subject leasehold interests on a supplemental 1979 real property assessment roll is a "violation of the backassessment statute (§193.092)." The DOR notes that this is another issue not raised by the Appraiser in his brief to this Court.

The Department of Revenue respectfully submits that none of these cases cited by the Adjustment Board's brief are controlling. The question presented here is not whether a property appraiser has the statutory authority to voluntarily back-assess property pursuant to §193.092, F.S., but is the more basic issue of whether the courts of this state have the legal authority to fashion a judicial remedy when it has been determined that certain actions were without legal authority.

In the case of Havill v. Gurley, 382 So.2d 109 (Fla 5 DCA 1980), the trial judge renderd a judgment in favor of a taxpayer who brought an action to contest the assessment of

ad valorem tangible personal property and inventory taxes for the years 1977-1978. In 1980, the First District Court reversed the lower court's judgment and, on page 113 of the Havill opinion, remanded the case to the trial court with specific directions "for the trial court to determine the proper tax assessment value."

In the case of Simpson v. Merrill, 234 So.2d 350 (Fla. 1970), the taxpayers filed a suit contesting the 1966-1967 ad valorem tax assessments on certain parcels of land. The taxpayers appealed the trial court's final judgment to the First District Court of Appeal, which court subsequently reversed the judgment of the trial court. In April 1970 (a period of almost 4 years after the 1966 assessment in question), this Court affirmed the decision of the First District and ordered that the case be remanded for a new trial to determine the fair market value of parcel 2, the principal part of the property.

As previously noted in the DOR's brief, this is a case where the Property Appraiser refused to go along with the DOR's request to file an action challenging the decisions of the Adjustment Board granting total exemptions to the for-profit corporate lessees in governmental property. Thus, the DOR was faced with the choice of allowing what it felt to be substantial violations of the law to go unchallenged or, in effect, to step into the shoes of the

Property Appraiser and file an action that should have been brought by the Property Appraiser under current §194.036(1)(c). The referenced portion of this statute provides, in essence, that if the DOR makes a probable cause determination that there exists a continuous violation of the law by the Property Appraisal Adjustment Board in its decisions, then the Appraiser may bring suit to enjoin such future violations and "to restore the tax roll to its just value in such amount as determined by judicial proceeding. . . ." (e.s.)

In the case of Higgs v. Property Appraisal Adjustment Adjustment Board of Monroe County, 411 So.2d 307 (Fla. 3 DCA 1982), the Monroe County Property Appraiser filed suit against the Property Appraisal Adjustment Board alleging consistent violations of the law with certain decisions of the Property Appraisal Adjustment Board. This Court held in the Higgs case that there were certain deficiencies in the Adjustment Board's written decisions and reversed the judgment of the trial court and remanded the case with directions to grant appropriate relief to the Appraiser.

In all the above-cited cases, the appellate courts of this state have recognized the inherent power of the courts to fashion appropriate judicial relief by compelling changes in tax assessments even many years after the assessments were originally made where a judicial determination has been

made that the actions of the taxing officials were illegal. If the Adjustment Board's contention was adopted that the courts do not have the power to order that a category of property be placed on the assessment rolls after the final disposition of lengthy judicial proceedings in the trial and appellate court levels, then all an adjustment board would have to do to prevail in any action brought by a property appraiser or by the DOR would be to appeal any adverse trial court judgment to the district court and [if it lost there] to seek review by this Court. This process would, in almost every case, take several years for a final resolution.

Certainly, no taxing officials should be allowed to rely merely upon the passage of time of pending litigation as a basis for not being subject to judicial sanctions. Furthermore, under the provisions of §195.092(4)(a) the courts are vested with express statutory authority to:

> (a) Enter such orders as are necessary to ensure that assessments shall be uniform, equitable, at just value and otherwise in compliance with law. (e.s.)

POINT VI

THE FOR-PROFIT CORPORATE LEASEHOLDERS IN GOVERNMENTAL PROPERTY ARE NOT EXEMPT UNDER §125.019, FLORIDA STATUTES.

The Adjustment Board argues in Point VI of its brief that the subject for-profit corporate leaseholders in governmental property are exempt under §125.091, F.S. The DOR reiterates that the portion of the trial court's order ruling that each of the individual leasehold interests were not entitled to exemption from taxation was expressly vacated by the decision of the District Court. However, the DOR feels constrained to answer Point VI even though this is another issue not raised by the Property Appraiser in his brief.

The DOR respectfully submits that the Adjustment Board's reliance on §125.019, F.S., dealing with projects financed by the sale of revenue bonds is misplaced in that the subsequently enacted provisions of §§196.001(2) and 196.199, F.S., represent the latest, more specific expression of the will of the Florida Legislature as to the requirements for taxation and exemption of leasehold interests held by private lessees in property owned by governmental units.

The provisions of §196.001(2) providing for taxation of leasehold interests in governmental property and §196.199 dealing with the requirements for exemption of property

owned by a governmental unit but used by non-governmental lessees were created by Ch. 71-133, Laws of Fla. (1971), which Act became effective December 31, 1971. The provisions of §125.019 relied upon by the Taxing Authorities were initially enacted as a part of the old Port Authority Act of 1945 and remained intact until re-enacted as part of Ch. 71-249, Laws of Fla., which became effective July 1, 1971. Section 159.15, F.S., also cited in the Taxing Authorities' brief was enacted in 1967 pursuant to the passage of Ch. 67-550, Laws of Fla.

There are no specific references in either §125.019 or §159.15 to leasehold interests of private lessees being expressly included within the scope of this statutory exemption from taxation. Also, it is undisputed that the comprehensive provisions of §196.199 detailing the specific requirements for exemption from taxation of private leasehold interests in governmental property were enacted subsequent to the passage of §§125.019 and 159.15, F.S. It is an established rule of statutory construction in this state that it is the duty of the courts to attempt to harmonize provisions of different legislative acts in order to provide both full reach, but when conflict and policy makes that impossible, to give effect to the latest, more specific expression of the legislative will. Marston v. Gainesville Sun Publishing Co., Inc., 341 So.2d 783 (Fla. 1 DCA 1976).

The DOR would also note that the Adjustment Board's contention that the leasehold interests of for-profit corporations in governmental projects financed under the provisions of §125.011-125.021 are exempt from taxation pursuant to §125.019 creates a direct constitutional conflict with the provisions of Art. VII, §10(c), Fla. Const. (1968). This constitutional provision authorizes the issuance and sale of revenue bonds by local governing bodies to finance the construction of airport facilities. The provisions of said Art. VII, §10(c) read in pertinent part as follows:

> . . .If any project so financed or any part thereof, is occupied or operated by any private corporation, association, partnership or person pursuant to contract or lease with the issuing body, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property. (e.s.)

An argument similar to that asserted by the PAAB here was raised by a lessee holding a leasehold interest at the Jacksonville International Airport in the case of Mallard v. Tele-Trip Co., supra. In the Mallard case, the lessee contended that it was exempt from ad valorem tax based on §624.520(1), F.S. (1971), notwithstanding the provisions of §§196.001(2) and 196.199, F.S. The trial court entered a summary judgment in favor of the lessee. The First District

Court reversed the judgment of the trial court and quoted from this Court's decision in the Walden case on page 971 of the Mallard opinion ". . . that the only exemption to §196.001(2), F.S.,[providing that leasehold interests in property of governmental units shall be subject to taxation unless expressly exempt,] is specified in §196.199(2), F.S. . . . (e.s.)

The portion of this Court's opinion in Walden cited in the Tele-Trip Co. case reads in pertinent part as follows at 375 So.2d 285:

> We conclude that our decision in Williams is controlling in that the leasehold interests of Hosts, Dobbs and Bonanni are properly subject to ad valorem taxation.
>
> We reach this conclusion as a result of the following analysis. Section 196.001 provides:
>
> > (1) 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; and
> >
> > (2) All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.
>
> This statute evidences the legislative intent that, unless expressly exempted, the holders of leases of publicly-owned

land shall bear the same tax burden as private property owners who devote their land to the same uses. The only exemption granted is that allowed by §196.199(2). . . . (e.s.)

CONCLUSION

The DOR submits that the briefs filed before this Court by the Taxing Authorities totally fail to establish that the decision of the District Court "expressly and directly conflicts" with the decision of another district court or a decision of this Court on the same question of law.

Furthermore, the Adjustment Board's lack of legal authority to make "across-the-board" adjustments affecting classes or categories of property, and the corresponding statutory power and duty of the DOR to utilize the courts to ensure that such actions are corrected have been recognized in prior decisions of this Court.

The DOR respectfully submits that the petitions of the Taxing Authorities for discretionary review of the District Court decision should be denied.

Respectfully submitted,

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COUNSELS FOR RESPONDENT
DEPARTMENT OF REVENUE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief on the Merits and Appendix have been furnished by mail to STEVEN A. SCHULTZ, Esq., 1200 Republic National Bank Bldg., 150 S.E. Second Ave., Miami, Florida 33131; DARREY DAVIS, Esq., 400 S.E. Financial Center, Miami, Florida 33131; JOSEPH A. JENNINGS, Esq., 900 Brickell Centre, 799 Brickell Plaza, Miami, Florida 33131 & JAMES K. KRACHT, Assistant County Attorney, 73 West Flagler St., Dade County Courthouse, Miami, Florida 33130, this 29th day of March, 1985.

J. Terrell Williams
Assistant Attorney General