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IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,[illegible]5

JAMES F. REDFORD, JR., etc., et al.,

Petitioners,

vs.

STATE OF FLORIDA, DEPARTMENT OF REVENUE,

Respondent.
_____/

REPLY BRIEF OF PETITIONER BYSTROM AS DADE COUNTY PROPERTY APPRAISER

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By

James K. Kracht
Assistant County Attorney

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INTRODUCTION

The following argument is submitted by the Petitioner Property Appraiser in response to Points I and II of the Department of Revenue's Answer Brief. In an attempt to avoid repetition and surplusage, the Petitioner Property Appraiser adopts as additional argument Points I and II of the Petitioner Property Appraisal Adjustment Board's Reply Brief.

In this Brief, the Petitioner, Franklin B. Bystrom, Dade County Property Appraiser, will be referred to as the "Property Appraiser".

The Petitioners, James F. Redford, Jr., Ruth Shack, William G. Oliver, Phyllis Miller, and Linton B. Tyler, as members of and constituting the Dade County Property Appraisal Adjustment Board, will be referred to as the "Property Appraisal Adjustment Board" or the "Board".

The Respondent, State of Florida, Department of Revenue, will be referred to as the "DOR" or the "Department".

The 25 taxpayers who are not parties to these proceedings but whose tax exemptions have been cancelled by the Final Judgment and decision of the Third District Court of Appeal in the within cause will be referred to as "taxpayers".

The appellate court in this case, the Third District Court of Appeal, will be referred to as the "District Court".

ARGUMENT

THE DECISION OF THE DISTRICT COURT INCORRECTLY ALLOWS THE EXEMPTIONS OF TWENTY-FIVE NON-PARTY TAXPAYERS TO BE UNILATERALLY REVOKED BY THE DEPARTMENT OF REVENUE IN A MANNER THAT IS CONTRARY TO LAW, IGNORES THE PRESUMPTION OF CORRECTNESS AND DENIES PROCEDURAL DUE PROCESS TO THE AFFECTED TAXPAYERS.

As previously stated in Point I of the Property Appraiser's Initial Brief, with respect to the 25 taxpayers involved in these proceedings, the District Court's decision allows the DOR to become the property appraiser and property appraisal adjustment board in the absence of statutory authority and without notice or an opportunity to be heard having been given the affected taxpayers. In the first point of its Answer Brief, the DOR attempts to avoid this argument by erroneously characterizing the exemptions for the 25 affected lessee-taxpayers as involving an entire class of property in Dade County, thus suggesting that the Department's action is properly supervisory.

First, the 25 leasehold interests here involved represent neither all nor substantially all of the leasehold interests classified and assessed on the Dade County tax roll for 1979. Official records reflect that, at the Miami International Airport alone, more than 2½ times this number of leasehold interests were found by the Property Appraisal Adjustment Board to be non-exempt and taxable as such for 1979. Consequently, the DOR's repeated insistence in its brief that its decision to cancel these individual tax exemptions affected an entire class or stratum of property is unfounded and erroneous.

Second, the very cases cited by the DOR as purported authority for the Department to unilaterally cancel the 25 involved exemptions clearly illustrate that the DOR's responsibility extends to the supervision of local taxing officials regarding questions of county-wide and state-wide uniformity and not how 25 individual non-party taxpayers are assessed. In Spooner v. Askew, 345 So.2d 1055 (Fla.1977), for example, this Court considered reductions which had been made across-the-board by a county board of tax adjustment to all property within the county on a flat percentage basis. It can hardly be said that the action of the local property appraisal adjustment board there at issue was similar or comparable to the action of the Dade County Property Appraisal Adjustment Board exempting the leasehold interests of 25 taxpayers for 1979 after individual hearings and the rendition of individual findings of fact for each lessee-taxpayer.

Similarly, in DOR v. Ford, 438 So.2d 798 (Fla.1983), the DOR's supervisory responsibilities were discussed in relation to Florida's goal of obtaining uniformity in the application of tax laws generally and in the assessment of all property. Nothing in the record of the within cause suggests that the uniformity issue has been properly invoked so as to permit the Department to unilaterally cancel these 25 individual exemptions without notice to or the participation of the affected taxpayers, to substitute its factual interpretations for those of local taxing officials and to ignore the presumption of correctness clothing official assessments.

Third, the thrust of the DOR's argument in the first point of its Answer Brief is that its authority to revoke these 25 exemptions stems from its supervisory responsibility generally and more specifically from the Legislature's grant of authority to it to bring and maintain actions pursuant to §195.092, Fla.Stat. The weakness of the DOR's argument in this regard is that it fails to address the legislatively imposed requirement in §195.092 that the rule, regulation or decision to be enforced by a judicial proceeding must have been "lawful" and "lawfully made". As examination of the District Court's decision reveals, that court has effectively concluded that the DOR can properly coerce local taxing officials to comply with any decision or order it might make without regard to the lawfulness of any such decision or order. If the District Court's decision is left to stand, the 25 affected taxpayers will be required to resort to judicial proceedings for the first time to reinstate their previously granted tax exemptions more than 6 years after the exemptions were initially granted and without having received any due process protections in the cancellation of these exemptions. While the statutory framework in its present form provides for general supervisory responsibilities to be vested in the DOR and a statutory procedure wherein decisions of property appraisal adjustment boards can be judicially challenged in three specific circumstances, nowhere in Florida's tax laws are taxpayers put on notice that if individual decisions of property appraisal adjustment boards are objected to by the DOR, these decisions can be judicially reversed and reversed without inquiry into the lawfulness thereof or notice to the affected taxpayers.

Pursuant to §194.036(1), Fla.Stat. (1983) [formerly §194.032(6)(a)], individual decisions of a property appraisal adjustment board can be challenged if there is a specific constitutional, statutory or rule violation as a result of a particular decision or if the decision results in a specified variance from the property appraiser's value. The statute further provides authority to challenge decisions of a property appraisal adjustment board on the basis of a consistent or continuous violation of the intent of the law or administrative rules.

This statute, as it existed in 1979 and as it exists in its present form, specifically grants the right to contest individual property appraisal adjustment board decisions to local property appraisers and not, as the DOR might like, to the DOR. While those taxpayers seeking relief from a property appraisal adjustment board are, by virtue of the Florida Statutes, on notice that a property appraiser has the lawful authority to judicially challenge decisions of a property appraisal adjustment board favorable to such taxpayers, it cannot be said that they are on notice of any existing right which the DOR might have individually or with the assistance of the Florida courts to unilaterally reverse property appraisal adjustment board decisions as has been done here. If left to stand, the decision of the District Court would judicially grant to the DOR the authority to challenge property appraisal adjustment board decisions pursuant to §194.036(1) notwithstanding the Legislature's grant of such authority to property appraisers only. Of even greater concern, the decision operates to allow for the maintenance of judicial

proceedings without requiring the presence and participation of the affected individual taxpayers.

In 1975 this Court handed down its decision in Hollywood Jaycees v. State, Department of Revenue, 306 So.2d 109 (Fla. 1975), holding unconstitutional the Department of Revenue's application of then existing statutory review procedures. These procedures had allowed the Department to reverse tax exemptions previously granted by the County Board of Tax Adjustment without providing the affected taxpayer notice, an opportunity to be heard, and other procedural due process protections. The decision of the Court was, by its terms, made expressly applicable to "the situation of citizens who are aggrieved by rulings of the DOR invalidating tax exemptions authorized by Boards of Tax Adjustment." 306 So.2d at 113.

Rather than amending the statute which had authorized the Department to act as a reviewer of Adjustment Board decisions and unilaterally cancel the same by providing for the procedural due process protections which this Court had found lacking in Hollywood Jaycees, the Legislature, in the next year, repealed this authority in its entirety in Chapter 76-234, Laws of Florida. In this same Act, the Legislature replaced its grant of authority for the Department of Revenue to review and unilaterally reverse Adjustment Board decisions by creating the provisions of §194.032(6), [now §194.036(1)], authorizing property appraisers and not the Department of Revenue to seek reversal of certain specified Board decisions through judicial proceedings. This substitution can only be viewed as an expression by the Legislature of its deliberate

choice to respond to this Court's decision in Hollywood Jaycees, not by amending the statute so as to provide the missing due process protections to affected taxpayers, but rather by placing the function of reviewing Board decisions with Florida circuit courts in which affected taxpayers would have notice, an opportunity to be heard, and full due process protections.

Nevertheless, less than four (4) years after the Department of Revenue was expressly found to have violated procedural due process rights of an affected taxpayer and after the Florida Legislature extensively revised the statutory procedures for reviewing individual tax assessments in 1976, the Department of Revenue insists it has the right, with the aid of the circuit court, to challenge and unilaterally reverse the Dade County Property Appraisal Adjustment Board decisions affecting 1979 tax exemptions for 25 individual lessee-taxpayers. It further insists that it has the right to do so without these affected taxpayers being joined in or otherwise made party to such judicial proceedings. If this Court's decision in Hollywood Jaycees is still law, and if the provisions of Chapter 194 are to be applied as the Legislature enacted them, then the decision of the District Court permitting the Department of Revenue, with the aid of the court, to unilaterally cancel these 25 individually granted tax exemptions cannot stand.

The DOR further claims in its Answer Brief that its unilateral action cancelling the 25 tax exemptions should not be controlled by this Court's decision in Hollywood Jaycees, merely because rather than involving one taxpayer,

its action involved 25. That is, the DOR claims it should be excused from joining the affected taxpayers because of the attendant alleged logistical difficulties and undue burdens. It is impossible to comprehend how it would have been more burdensome for the DOR to join the 25 affected taxpayers in the instant cause than to have to defend 25 separate lawsuits which the Department concedes the taxpayers could file if the District Court's decision were left intact. The floodgate scare tactics employed by the DOR can hardly be considered a legitimate basis for denying to the 25 affected taxpayers the same property rights and procedural due process protections deemed vital by this Court in its Hollywood Jaycees decision. This is especially true where, as here, the District Court's decision ignores the presumption of correctness clothing these individual assessments, permits absolutely no inquiry into the lawfulness or correctness of the DOR's position, and sanctions the attempt by the DOR to override and thereby perform functions of a property appraiser and property appraisal adjustment board.

The DOR's suggestion of the non-applicability of this Court's decision in District School Board of Lee County v. Askew, 278 So.2d 272 (Fla.1973), to the facts and circumstances involved in the instant cause is erroneous. The DOR attempts to distinguish the District School Board decision from the instant cause because the actions which the state officials there sought to utilize as a basis for overturning presumptively valid assessments of local taxing officials were not judicially approved. The fallacy

of the DOR's argument is, however, that just as in the District School Board decision, the unilateral actions of the DOR involved in the instant cause lack judicial approval.

As a result of the decision of the District Court in the within cause, neither the actions nor decisions of the DOR with respect to the 25 affected lessee-taxpayers have been judicially approved. That is, as the DOR repeatedly reiterates in its Answer Brief, the District Court refused to address the exemption question and vacated that portion of the trial court's final judgment which had done so. Thus, while holding that the DOR had an absolute right to utilize the Florida courts to unilaterally reverse the Property Appraisal Adjustment Board decisions and set aside 25 presumptively valid individual assessments, the District Court's decision never considered or determined the correctness of the DOR's factual interpretations and legal conclusions with respect to the affected taxpayers. Consequently, to the extent that this Court determined in District School Board of Lee County v. Askew, that presumptively valid individual assessments of local taxing officials could be challenged and reversed by state officials only by the presentation of appropriate and sufficient proofs excluding every reasonable hypothesis of a legal assessment, the District Court's decision in the within cause should be reversed.

Finally, the DOR's suggestion on page 14 of its Answer Brief that the Dade County Property Appraiser refused to file suit challenging the individual decisions of the Property Appraisal Adjustment Board because of his being an appointed rather than an elected constitutional officer is totally false. Notwithstanding his status as

an appointee of the Dade County Manager pursuant to §8.01 of the Dade County Home Rule Charter, the Dade County Property Appraiser is subject to the same duties and responsibilities as are all other Florida property appraisers. State v. McNayr, 133 So.2d 312 (Fla.1961). Well illustrative of the weakness of the DOR's suggestion in this regard is that since the enactment of Chapter 76-234, Laws of Florida, authorizing property appraisers to judicially challenge individual decisions of property appraisal adjustment boards, the Dade County Property Appraiser has annually filed and pursued through the Florida courts numerous lawsuits challenging individual decisions of the Dade County Property Appraisal Adjustment Board. See for example Whitman v. Bystrom, 10 F.L.W. 353 (Fla.3d DCA February 5, 1985); Bystrom v. Florida Rock Industries, Inc., 452 So.2d 1053 (Fla.3d DCA 1984); Bystrom v. Equitable Life Assurance Society of the United States, 416 So.2d 1133 (Fla.3d DCA 1982), pet. for rev. denied, 429 So.2d 5 (1983); Blake v. Oceancoast Corp., 417 So.2d 1002 (Fla. 3d DCA 1982); Muss v. Blake, 416 So.2d 2 (Fla.3d DCA 1982). In fact, an examination of recent Florida appellate court decisions clearly demonstrates that the Dade County Property Appraiser has utilized the challenge provisions of what is now §194.036(1) far more frequently and regularly than any other Florida property appraiser.

CONCLUSION

Based upon the foregoing argument and authority, this Court is respectfully requested to reverse the decision of the District Court and direct the trial court to dismiss this action with prejudice. There being no statutory authority for the Department of Revenue to substitute its judgment for that of the Property Appraiser and the Property Appraisal Adjustment Board, and there being no statutory authority for the Department of Revenue to cancel 25 previously-granted tax exemptions without the taxpayers being present or having had their due process rights protected, and more than five years having elapsed since these exemptions were granted, this action should be dismissed.

Respectfully submitted,

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By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing REPLY BRIEF OF PETITIONER BYSTROM AS DADE COUNTY PROPERTY APPRAISER was mailed on this 23rd day of April, 1985 to STEVEN A. SCHULTZ, Esquire Schultz & Hollander, P.A., 1200 Republic National Bank Building, 150 S.E. Second Avenue, Miami, FL 33131; J. TERRELL WILLIAMS, Esquire, Assistant Attorney General, Department of Legal Affairs, The Capitol, LL04, Tallahassee, FL 32301; DARREY A. DAVIS, Esquire, Steel Hector & Davis, 1400 Southeast Bank Building, Miami, FL 33131; JOSEPH A. JENNINGS, Esquire, 900 Brickell Centre, 799 Brickell Plaza, Miami, FL 33131.

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