O/a 985

IN THE SUPREME COURT OF FLORIDA

FRANKLIN B. BYSTROM, et al., Petitioners, vs. S. F. WHITMAN, et al., Respondents.	)	CASE NO. 66,916

BRIEF OF AMICUS CURIAE

C. Ray Daniel, as Property Appraiser of Hillsborough County, and the Property Appraisers Association of Florida

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PRELIMINARY STATEMENT

Petitioner, FRANKLIN B. BYSTROM, Dade County Property Appraiser, will be referred to herein as the "Property Appraiser", the Petitioner Randall Miller, as Director of the Department of Revenue of the State of Florida, will be referred to as the "Department", the Respondents, S. F. WHITMAN, D. A. WHITMAN, and W. F. WHITMAN, will be referred to collectively as the "Taxpayer".

The Amicus, C. RAY DANIEL, as Property Appraiser of Hillsborough County, and as President of the Property Appraisers Association of Florida, and the Property Appraisers Association of Florida will be referred to collectively as the "Amicus".

STATEMENT OF THE FACTS AND STATEMENT OF THE CASE

This case involves the right of a Property Appraiser to discover information in the possession of the taxpayer, relating to the value of the taxpayer's property, through the discovery process. At the trial level, the Property Appraiser sought, through the discovery process to require the production of records which would have provided actual income and expense information of the taxpayer's business operation. The trial court entered an order requiring the production of such information. The taxpayer in response to such order, filed a petition for certorari to the Third District Court of Appeal stating in such petition

that the taxpayer was "prepared to accept the gross revenue, expense and net revenue attributed to [the subject] property by the Appraiser, and wish to challenge only the capitalization rate applied by the Appraiser to the properties hypothesized net income". The Third District Court granted the taxpayer's petition, and held that the taxpayer was not required to produce any of the documents requested. In this decision the Third District Court stated:

> It is undisputed that the Property Appraiser, using an income approach to arrive at value, formulated his 1981 assessment on the Bal Harbour Shops without having access to the actual income and expense records of the taxpayers which he now seeks. It is also undisputed that the taxpayers challenged the assessment, not by questioning the amount of net income attributed to the prope'rty by the Appraiser, but rather by questioning the capitalization rate which the Appraiser applied to the hypothesized net income figure. Under these circumstances, say the taxpayers, the production of these and like records may not be compelled.

The Court then concluded that, inasmuch as the taxpayer had conceded that the income figure hypothesized by the Appraiser was correct, that there was no need for discovery. It stated at page five of its decision:

> In the present case, however, the taxpayers, unlike the taxpayers in Homer v. Connecticut General, do not base their claim that the records are not relevant solely on the fact that the Appraiser did not use them in making the assessment. Instead, these taxpayers assert that the records are not relevant because they are probative only of the income earned from the ownership of the property, an issue which is not being litigated. Although the taxpayers challenge the total assessment, they have conceded that the income figure hypothesized by the Appraiser is correct. Under such circumstances, it is clear to us that ordering the production of these records

> over objection is an abuse of discretion. As the committee note to Florida Rules of Civil Procedure 1.350 states, the trial court must "weigh the need for discovery and likely results of it against the right of privacy of the party or witness or custodian." Here, there being no disputed issue to which the taxpayers' records are germane, there is no need for discovery.

The Court also held that Section 195.027(3), F.S. and Department of Revenue Rule 12D-1.05, promulgated as implementation for such statute, did not apply because the statute only applied to pre assessment determinations, and since the assessment had already been made by the Property Appraiser, that such statute and rule were inapplicable.

It is these two holdings of the Third District Court which are subject to review by this Court.

SUMMARY OF ARGUMENT

The contentions of the Amicus are as follows:

1. Actual income data is available through the discovery process on proper request even though actual income was not available to the Property Appraiser in arriving at his determination of the assessment of the property which was placed on the tax roll. It is the amount of the assessment not the method of arriving at the assessment which is at issue, and the Property Appraiser should be allowed to defend his assessment through utilizing all legally admissible information which would include actual income and expense information, in addition to income and expense information hypothecated by the Property Appraiser in arriving at his determination of value. Actual income and expense data has been found to be admissible, and in fact, if available to a Property Appraiser and not used, it has been held that such constitutes error so as to invalidate the assessment of such Property Appraiser. Actual income and expense information should be available to a Property Appraiser to impeach the assessment as determined by the taxpayer. Because the income approach to value relies upon a formula whereby the capitalization rate and the net operating income interrelate, it is error to conclude that if a taxpayer concedes that the hypothecated net income as projected by the Property Appraiser is correct, that this can prevent a Property Appraiser from obtaining actual income data which, if discoverable, may

demonstrate that the taxpayer has a considerably higher income than that hypothecated by the Property Appraiser.

2. Section 195.027(3), **F.S.,** does authorize a Property Appraiser, the Department of Revenue, and the Auditor General to obtain access to financial records after a determination is made by the Property Appraiser during the tax year of the assessment of the property. The functions of the Department of Revenue and the Auditor General, both of which such public agencies are expressly included within the operational affect of the statute, involve in-depth and non-in-depth reviews for tax roll approval purposes, and post-audit reviews which always occur after the determination of the assessment by the Property Appraiser. The Third District erred in limiting the application of the statute solely to pre-assessment situations which would always have to occur prior to July 1, which is the date the tax rolls are required to be submitted to the Department of Revenue.

ARGUMENT

The Amicus contends that the decision of the Third District Court is in error and that actual income and expense data is discoverable in a Court action by a Property Appraiser, even though the Property Appraiser is required to hypothecate typical income and typical expense data in arriving at the value on the subject property through the income approach to value.

POINT I

THAT ACTUAL INCOME AND EXPENSE INFORMATION OF A TAXPAYER, IS RELEVANT AND DISCOVERABLE, EVEN IF THE PROPERTY APPRAISER HAD ARRIVED AT A VALUE ON SAID TAXPAYER'S PROPERTY THROUGH THE INCOME APPROACH TO VALUE, USING HYPOTHECATED INCOME AND EXPENSE INFORMATION.

It should be remembered that the accepted formula for arriving at the value of property based on the income approach to value, is as set forth below.

$$\frac{\text{Net Income}}{\text{Overall rate of return (Capitalization rate)}} = \text{Value}$$

The formula is sometimes expressed as:

$$V + \frac{NOI}{\text{CAP. Rate}}$$

With this formula in mind the position of the taxpayer and the ruling of the Court below should be considered. The taxpayer has opposed furnishing actual income and expense information to the Property Appraiser, even though the Circuit Court had clothed all such

information with a protective order of confidentiality. The first question is why would a taxpayer not wish for such information to be furnished? The obvious first response to this question would be that the actual income of the taxpayer is considerably higher than that projected by the Property Appraiser, and the taxpayer doesn't want this to be found out.

The different elements of the formula and the mathematical use of the formula demonstrate quite clearly that a change in either the net income or the capitalization rate can, and will affect the value of the subject property. The following example demonstrates how these interrelate. Assume a $100,000.00 net income, and a 15 percent capitalization rate or return on investment. The result would be as expressed below:

1. $\frac{\$100,000.00}{.15} = \$666,666.67$

Next assume that the capitalization rate increases to 30 percent:

2. $\frac{\$100,000.00}{.30} = \$333,333.33$

Thus, it can be seen that if the CAP rate is increased, the value goes down, assuming that the net income remains constant. So it is certainly to the taxpayers advantage, if a Property Appraiser has hypothecated a low net income, to confine the Property Appraiser to this calculation in an attempt to convince the Court that the CAP rate or rate of return should be higher. It should be

remembered that the purpose of the CAP rate, is to reflect the risk factor in the investment. The CAP rate is determined generally by arriving at what is referred to as the "safe rate" which is the rate of return being paid on treasury notes and other guaranteed return investments such as passbook savings. However, if the yield (net income) on the investment is found to be higher than originally anticipated, this would directly affect the CAP rate because it would indicate the possibility that the risk factor should be changed or revisited.

For example, assume that the net income was $200,000.00 and the capitalization rate which was used was 15 percent in one instance, and 30 percent in the other. The following would be the two results:

3. $\frac{\$200,000.00}{.15} = \$1,333,333.33$

4. $\frac{\$200,000.00}{.30} = \$ 666,666.67$

Thus, using the examples shown, if the Property Appraiser had projected a $100,000.00 net income and used a 15 percent capitalization rate, while the actual net income was $200,000.00 this would tend to establish that the Property Appraiser's determination of value, was too low in light of the actual operation of the business. If this information were discoverable, then it would also serve to disprove the determination of value arrived at by the taxpayer. In other words, it would impeach the reliability

of the taxpayer's determination of value using the income approach to value.

Preventing the Property Appraiser from obtaining this information in effect, prevents the Property Appraiser from demonstrating the correctness of his determination of value and prevents the Property Appraiser from impeaching the value arrived at by the taxpayer himself. For instance, assume that the taxpayer had placed a value on his property of $1,000,000.00, but it was learned that the taxpayer had stated to insurance companies that the value of his property was $3,000,000.00. This information would certainly be admissible as amounting to an admission against interest because it would tend to disprove the taxpayers determination of the value of his property at $1,000,000.00 by showing that the taxpayer himself had for another purpose stated that the value of the property was $3,000,000.00.

In these days of mass appraisal it is imperative that a Property Appraiser use the best information which he has available at a given point in time in the preparation of his tax roll, which includes assessing each and every parcel of property in the county. However, this should certainly not prevent a Property Appraiser from supporting his determination of value by obtaining information from a taxpayer which both supports the Property Appraiser's determination of value, and serves to disprove the taxpayers determination of value. Everything which a Property Appraiser has in his office is discoverable to the taxpayer,

if it affects or could affect the value of the subject property. The same rule should apply to enable the Property Appraiser to obtain any information from the taxpayer which would assist in determining the proper value to be placed on the property. or which would disprove the value placed on the property by the taxpayer.

The Third District Court apparently bottomed its decision on the mistaken assumption that each of the components of the formula used in arriving at a value based on the income approach to value, are totally segregated and totally unrelated. The examples previously given herein demonstrate clearly why this is incorrect. The capitalization rate is a function of determining the risk factor involved in a particular investment or type of investment. The income from such business may vary depending on extraneous factors such as the economic conditions and the particular location of the business, as well as management of the business. However, the yield or income returned on the business can definitely affect the capitalization rate which is nothing more than an estimate or projection of the business risk associated with a particular kind of business. If the yield is consistently higher, then the risk associated with such business, which is reflected in the determination of capitalization rate, would generally be revisited.

Assume, that instead of wanting to fix and agree upon the net income, the taxpayer found it to his advantage

to agree on the capitalization rate but controvert and attempt to change the determination of net income. From the examples previously given it is clear that if the CAP rate remained constant, and the net income increased, then the value would increase proportionately. The inverse is also true; that is, if the CAP rate remained constant and the income was lower, then the value would decrease. These two always interrelate and work together to directly affect the value.

This Court has on numerous occasions stated that the primary test of discovery is whether or not the discovery could reasonably be determined to lead to admissible evidence. If the taxpayer's actual net income records, demonstrated an actual income greater than that hypothecated by the Property Appraiser, than this would certainly be admissible because actual income has on numerous occasions been held by this Court to be admissible. The determination of the weight to be given to such evidence would be a matter for the trier of fact.

In the Third District Court of Appeals decision in the case of Homer v. Connecticut General Life Insurance Company, 213 So.2d 490 (Fla. 3 DCA 1968) the Third District Court recognized the right of the taxing authorities to obtain access to records relating to income attributable to a hotel. In doing so, the Court pointed out that the assessment made may be defended by the presentation of any legally competent and relevant evidence proving or tending

to prove the fair market value of the assessed property. It rejected the argument of the taxpayers that since no access to the documents had been allowed in the determination of the amount of the assessment, and thus since the assessment was made without such access, that access to such documents was not then necessary. The Court stated at page 492:

> To this argument, appellees respond that since that appellants allege that they have heretofore had no access to the documents sought, the assessment now under attack must have been made without use or benefit of them. This being the case, the assessment must stand or fall on the basis of the validity of the criteria used to make it, and therefore, appellees contend, the documents sought are irrelevant, precluding any possibility that good cause can be shown or that the documents can be admitted into evidence. However, we must agree with appellants who point out that the amount of the assessment, not the manner of arrivina at it. is the issue beinu defended in this case. The assessment may be defended by the presentation of any legally competent and relevant evidence proving or tending to prove the fair market value of the assessed property. See: Walter v. Schuler, Fla.1965, 176 So.2d 81. Discovery of material which is relevant to the subject matter of the cause is permitted, even though the information gained may be inadmissible as evidence at trial.

Despite these pronouncements by the Court itself its prior decisions, the Court has chosen to alter this rule somewhat in the case at bar based on the statement made by the taxpayer that he agrees with the net income projected by the Property Appraiser. The taxpayer's agreement or disagreement has nothing to do with the relevance of the information because, it is the ultimate determination of value and amount of the assessment, not the manner of

arriving at it, which is the issue being defended. (See Homer).

Furthermore, there can be no doubt but that actual income data is relevant. The statute, Section 193.011, F. S., specifically requires Property Appraisers to consider the income derived from the property, and this Court in Palm Corporation v. Homer, 261 So.2d 822 (Fla. 1972), discussed the situation which may occur when a taxpayer does not furnish actual income data to the Property Appraiser. It held that even though the Property Appraiser did not have the actual income data, that he was still required to consider the income criteria set forth in the statute, and that if there was adequate data available for his use in applying the income or economic approach he should do so.

In Bystrom v. Equitable Life Assurance Society, etc 416 So.2d 1133 (Fla. 3 DCA 1982) the Third District Court held that taxpayers could not object to use of actual income data which came to light after January 1 of the taxable year by the Property Appraiser.

In the case of Bystrom v. Hotelerama Associates, Ltd., 431 So.2d 176 (Fla. 3 DCA 1983), the Third District Court held invalid the assessment of the Property Appraiser because he did not use actual income data which was available to him. In that case the Court stated:

> The final judgment under review is affirmed upon a holding that: (1) the presumed validity of the property assessment in this case was overcome below when it was shown, without dispute, that the defendant property appraiser [Frank Bystrom]: (a) failed to obtain, although available, the actual

> income data on the subject property from the plaintiff taxpayer [Hotelerama Associates, Ltd.] when utilizing the income approach to valuation herein [and did not by alternative methods make up for said deficiency]; and (b) thereby failed to substantially comply with Section 193.011(7), Florida Statutes (1981), in assessing the subject property in this case.

If actual income data to overcome the assessment as determined by the Property Appraiser is admissible if introduced by the taxpayer, then it should certainly be discoverable and admissible, if sought by the Property Appraiser. In other words, assume that in the case at bar the taxpayer had sought to introduce its actual income data and not controverted the capitalization rate. This would certainly be admissible if introduced by the taxpayer to disprove the amount of the assessment as determined by the Property Appraiser as the Court in Hotelerama Associates, so recognized. Since it is the amount of the assessment which is at issue and not the methodology used in arriving at it, then such actual income data should be discoverable by the Property Appraiser to disprove the amount of the assessment as established by the taxpayer. What is admissible for the taxpayer should be admissible for the Property Appraiser.

The aforementioned authorities clearly demonstrate that actual income data is both admissible and discoverable, and as was held in the Hotelerama case, if available and not used by the Property Appraiser in making the assessment, the assessment may be held invalid. Assume for instance that the Property Appraiser in the case at bar had actual income data available furnished by the taxpayer and had

projected two values, one based on the actual income data with the capitalization rate as determined utilizing this information, and the second, based on projected income data based on other information available to the Property Appraiser, along with the capitalization rate as projected based on this hypothecation. Assume further that the Property Appraiser arrived at a value someplace between the two values, assuming that the use of the actual income information had resulted in a higher value. Both would certainly be admissible since both would bear on the amount of the assessment as ultimately determined by the Property Appraiser. Next, assume, the same situation except that the use of the projected income data generated a higher assessment and the use of the actual income data generated the lower assessment. But assume that the Property Appraiser used the higher income value and rejected totally the actual income data. This use would certainly be admissible and discoverable even though the Property Appraiser had totally rejected the actual income data which had been furnished to him and chose to favor the typical economic income based on other information. If the taxpayer sought to obtain the results of the determination of value based on the actual income data, a Property Appraiser could certainly not render such information and projection non-discoverable because it hadn't been used in the final assessment. Such a projection would certainly be discoverable if sought by a taxpayer. If the taxpayer can

seek such information, then the Property Appraiser should be able to. In other words, the Property Appraiser should be able to discover whether or not the taxpayer has arrived at a value utilizing the income method based on the actual income of the taxpayer. Now if the taxpayer's assessment using actual income data is higher than that of the Property Appraiser, then certainly the taxpayer is going to prefer to "hide" such information. If it is relevant to impeach an assessment of a Property Appraiser then it is relevant to impeach the assessment of the taxpayer.

POINT II

SECTION 195.027(3), F.S., DOES AUTHORIZE A PROPERTY APPRAISER TO OBTAIN ACCESS TO FINANCIAL RECORDS AFTER, A PROPERTY APPRAISER HAS ARRIVED AT A DETERMINATION OF THE VALUE OF A PARTICULAR PARCEL OF PROPERTY AND EXTENDED SAME ON THE TAX ROLL.

The taxpayer contends that the statute is inapplicable because, in the instant case, the Property Appraiser had already arrived at a determination of the assessment on the taxpayer's property. In other words, the taxpayer's contending that this statute is not applicable after suit is filed because the Property Appraiser has already determined the assessment of the property and finalized a value. The statute provides in part:

> "(3) The rules and regulations shall provide procedures whereby the property appraiser, the Department of Revenue, and the Auditor General shall be able to obtain access, where necessary, to financial records relating to nonhomestead property, which records are required to make a determination of the proper assessment as to the particular property in question. Access to the taxpayer's records shall be provided only in those instances in which it is determined that such records are necessary to determine either the classification or the value of the taxable nonhomestead property. Access shall be provided only to those records which pertain to the property physically located in the taxing county as of January 1 of each year and to the income from such property generated in the taxing county for the year in which a proper assessment is made.
> . .

(emphasis supplied).

The District Court agreed with the contention of the taxpayer bottoming its contention on its interpretation of the language of the statute, which, when referring to the records, uses the language ". . . which records are required

to make a determination of the proper assessment as to the particular property in question."

It should be emphasized, that the statute does not limit itself to only the Property Appraiser. The statute embraces and provides statutory authorization for both the Department of Revenue and the Auditor General, in addition to the Property Appraiser. The Auditor General's use of the statute would virtually always occur in a post-audit situation where the Auditor General was auditing the work product of the Property Appraiser and the Department of Revenue with regard to the Department of Revenue's function in the roll review process as set forth under Section 193.1142, Florida Statutes. Similarly, the Department of Revenue in its review of tax rolls is always reviewing tax rolls and the assessments of the particular parcels of property found thereon, after the assessment has been made by the Property Appraiser. This tax roll review process is set forth in Section 195.096, Florida Statues. Thereunder, the Department of Revenue is required to review tax rolls each year. In alternate years the Department of Revenue is to perform an in-depth review of the assessment rolls of each county. See Section 195.096(2), F.S. In the year in which the tax roll is not subject to in-depth review, the Department is required to use the procedure provided for in Section 195.096(3)(b), F.S., which such procedure is referred to as the non-in-depth review process. Both of the processes involve a comparison of the values of parcels of

property as determined by the Property Appraiser on the tax roll, with the value of the same parcels of property as determined by the Department of Revenue through its tax roll in-depth or non-in-depth review process. In the years in which in-depth review is performed, the results of the Department's study are to be reflected as provided for in Section 195.096(2)(f), so that the results of the Department derived through the in-depth review process, and the determinations of the Property Appraiser are then compared and stated in terms of a confidence interval.

Furthermore, the Department of Revenue is also required to perform post-audit review which involves an evaluation of the reviews, studies and findings of the Department as provided for in Section 195.097, Florida Statutes. A periodic review is also required to be performed by the Department of new, rebuilt, and expanded businesses pursuant to the provisions of Section 195.099, F. S.

The Auditor General has the responsibility of performing performance audits of the administration of the ad valorem tax laws by the Department as provided for in Section 195.096(7), Florida Statutes. These audits are to analyze and criticize the administration of the ad valorem tax laws by the Department of Revenue. In other words, the Auditor General performs a post-audit function to determine whether or not the Department of Revenue is properly performing its responsibilities with regard to its in-depth

and non-in-depth year reviews of tax rolls for tax roll approval purposes.

Thus, the holding of the Third District Court limiting the applicability of the statute to situations where the Property Appraiser is seeking the information prior to arriving at the assessment on property and placing same on the tax roll, totally fails to consider the fact that the statute is applicable to the duties and responsibilities of the Department of Revenue and the Auditor General. The post-audit functions of both the Department and the Auditor General require some means of requiring records where necessary to properly perform the post-audit functions, and this is always after the Property Appraiser has determined the assessment to be placed on the property and placed same on the tax roll for that year. The post-audit function usually occurs in the following year or may in some instances occur in as much as two years later. The statute is designed to accommodate all three public officers and bodies. Furthermore, the Court has totally overlooked the language found in the last sentence of the statute which provides in part as follows:

> Access shall be provided only to those records which pertain to the property . . . and to the income from such property generated in the taxing county for the year in which a proper assessment is made.

The income generated in the county for the year in which a proper assessment is made, would include income which was generated after July 1, which is the date upon

which the property appraiser would have to complete his assessment and submit his tax roll to the Department in Tallahassee. This clearly demonstrates that the statute was intended to embrace the functions of the Auditor General and the Department in the post-audit process. In fact, the Auditor General has no other function with regard to the ad valorem process in the State of Florida except the post-audit function previously referred to herein and as set forth in Section 195.096(7), F.S. Thus, if the statute applies to the Auditor General at all, and the language clearly so states, then it must apply in the situation where the Property Appraiser has already arrived at a determination of his assessment and posted same to the tax roll. To read the statute as suggested by the Third District Court is to assume that the legislature did not intend that the Auditor General be included within the parameters of the statutes, and this expressly contradicts the language of the statute whereby the legislature specifically included the Auditor General.

The Amicus suggests that the statute should be read in light of and in pari materia with the statutes relating to the functions and duties of the Department of Revenue and the Auditor General and construed so as to effectuate the stated legislative purpose of such statutes which is to allow access to private records by the Auditor General and the Department of Revenue to perform their functions with regard to tax roll review, approval, and

post-audit review and criticism by the Auditor General. In 82 **C.J.S.** page 801 **it is** stated:

> Statutes that relate to the same person or thing, or to the same class of persons or things, or which have a common purpose are in pari materia, and **it is** a general rule that in the construction of a particular statute, or in the interpretation of **its** provisions, all other statutes, in pari materia should be read in connection with **it,** as together constituting one law, and they should be harmonized, if possible.

The Legislature has chosen to impose certain duties and responsibilities on the Property Appraiser, and certain review and audit duties and responsibilities on the Department of Revenue and the Auditor General. The purpose of Section 195.027(3), **F.S.,** was to provide assistance and a means whereby the Department of Revenue and the Auditor General can effectively perform their post-audit review and tax roll review functions. In one part of the ad valorem tax laws, the legislature has imposed the duties and responsibilities, and in another part, the legislature has provided the necessary assistance to the Department of Revenue and the Auditor General to accomplish and perform the duties and responsibilities conferred. That is, the statute allows access to a taxpayer's records to properly perform the functions. In fact, both statutes are in the same chapter, Chapter 195, Florida Statutes. The duties and the responsibilities of the Department and the Auditor General with regard to tax roll approval and roll review function are found in Section 195.096, 195.097, and Section 195.099, Florida Statutes, while a means of properly

performing these duties and functions is found in Section 195.027, Florida Statutes.

Neither the Department of Revenue nor the Auditor General arrive at the initial assessment of a taxpayer's property to be placed on the tax roll. Their only function in arriving at an assessment on the parcel of property is to compare such assessment with the assessment as determined by the Property Appraiser, except that the Auditor General is also required to compare its determination of the assessment of a particular parcel with that of both the Department and the Property Appraiser. These functions will usually occur after a Property Appraiser has arrived at his determination of value.

The implementing rule of the Department, 12D-1.05, expressly recognizes the post Property Appraiser determination of the assessment effect of the statute in its procedures by providing that the Auditor General or the Department shall first request in writing of the taxpayer and specify in general the records requested. Since the Auditor General's function is to analyze the administration and procedures of the Department of Revenue, this has to be intended to apply <u>after</u> the Property Appraiser has reached his determination of value.

In 82 **C.J.S.** beginning at page 803 it is stated:

> Under the so-called "pari materia" rule of construction, it is well established that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or all statutes having the same general purpose, that is statutes

> which are in pari materia, should be read in connection with it; and such related statutes may or should be construed together as though they constituted one law, that is, they must be construed as one system, and governed by one spirit and policy, and the legislative intention must be ascertained, not alone from the literal meaning of the words of a statute, but from a view of the whole system of which it is but a part.

It is clear from the language of the last sentence of 195.027(3), F.S., that the legislature definitely intends that the Auditor General and the Department of Revenue are to have access to the records because the statute declares that such records shall be deemed confidential in the hands of the "Property Appraiser, the Department, the Tax Collector, and the Auditor General and shall not be divulged to any person, . . .".

Subsection (6) of Section 195.027, F.S., also reflects clearly the legislative intent with regard to certain forms which may be filed with the Clerk of the Circuit Court dealing with the sale of property. It points out that the information form shall be confidential ". . . except that the Department of Revenue and the Auditor General shall have access to it in the execution of their official duties.".

The official duties referred to can only be the official statutory duties referred to previously herein imposed upon the Department of Revenue and the Auditor General with regard to the tax roll approval, and post-audit review process.

Thus, the language in the statute referring to such records as ". . . are required to make a determination of the proper assessment. . .", refers not only to the determination of the assessment of the Property Appraiser, but also to the determinations of the assessment of the Department of Revenue and the Auditor General. Since this determination may be made well after the determination by the Property Appraiser, the statute was obviously not intended to be limited in scope as was held by the Third District.

Furthermore, when an assessment is challenged in Circuit Court, a determination of the proper assessment as to the property is always placed in issue. That determination of the proper assessment is then going to be made through the judicial process and there is no logical reason to suggest that the statute can only be construed to apply to the situation prior to the Property Appraiser arriving at his assessment. In fact, the statute is much more susceptible to the interpretation that it was intended to apply after this point and time because it applies to both the Department and the Auditor General and their duties and functions. Thus, assuming that the statute is susceptible to the limited interpretation suggested by the Third District, the Court should adopt that interpretation which renders such statute consistent with other statutes dealing with the same general subject which are the performance of the duties and responsibilities of the

Department of Revenue and the Auditor General, and the means chosen by the legislature to assist the Department and the Auditor General in performing those functions so as to provide access to taxpayer's records. As stated in 82 C.J.S. beginning at page 799:

> It is a general rule that, where a statute is uncertain and on its face susceptible of more than one construction, the Court may look to prior and contemporaneous statues to determine its meaning. In other words, in construing a statute, consideration may be given to its relation to other statutes, and, if reasonably practicable, a statute is to be explained in conjunction with other statute to the end that they may be a harmonious and consistent body of law.

Thus, in construing the language found in Section 195.027(3), F.S., the Court should also consider the language found in Section 195.096(2), (3)(b), and (7) because these statutes impose specific duties on the Department of Revenue and the Auditor General, which, in some cases will require access to private records to perform such duties. Construing the statute as suggested herein reconciles the provisions of the statute with the other statutes on the same subject. Construing the statute as was held by the Third District, and as suggested by the taxpayer, would require the conclusion that the Auditor General was never intended to be within the authorization provided for in Section 195.027(3), F.S. because the Auditor General's duty and function is always taking place after the Property Appraiser has determined the value of the parcel of property for the current year and placed same on the tax roll. The holding of the Third District means quire simply

that the statute can never be used by the Department of Revenue nor the Auditor General in the post-audit review process. Inasmuch as both the Department and the Auditor General are specifically included within the statute, this construction flies directly in the face of the language of the statute itself. It is stated in 82 C.J.S. beginning at page 810:

> The Court must harmonize statutes relating to the same subject, if possible, and give effect to each, that is, all applicable laws on the same subject matter should be construed together so as to produce a harmonious system or body of legislation, is possible. The statutes should be so construed as to give meaning to all of them, if this can be done, and each statute should be afforded a field of operation. So where the enactment of a series of statutes results in confusion and consequences which the legislature may not have contemplated, the courts must construe the statutes to reflect the obvious intent of the legislature and permit the practical application of the statues.

Construing the statute in this manner obviously conforms to the legislative intention as expressed in these several statutes imposing duties and responsibilities on the Department of Revenue, the Auditor General and the Property Appraiser. In 82 C.J.S. beginning at page 560 it is stated:

> Since the intention of the legislature, embodied in a statute, is the law, the fundamental rule of construction to which all other rules are subordinate, is that the court shall by all aids available ascertain and give effect, unless it is in conflict with constitutional provisions, or is inconsistent with the organic law of the state, to the intention or purpose of the legislature as expressed in the statute. Thus, it is the duty of the court to endeavor to carry out the intention and policy of the legislature, and it has been said that in the construction of a statute, as in the construction of a will, the paramount rule is to give effect to the intention of the maker if it

> does not run counter, in the case of a will, to some positive rule of law, or, in the case of a statute, to some constitutional inhibition.

There is no specific language which expressly limits access to records to the time before the Property Appraiser arrives at a determination of value for that year. In 82 C.J.S page 593 it is stated:

> In construing a statute, the court must look to the object to be accomplished, the evils and mischief sought to be remedied, or the purpose to be subserved, and place on it a reasonable or liberal construction which will best effect its'purpose rather than one which will defeat it.

In 82 C.J.S. beginning at page 705 it is stated:

> Provided always that the interpretation is reasonable and not in conflict with the legislative intent, it is a cardinal rule of construction of statutes that force meaning significance, or effect must be given, if possible, and if it can fairly and reasonably be done, to the whole statute and every part, section, and provision thereof, and to all the lanquage employed or contained therein, according to the decisions on the questions, including every word, term, phrase, expression, clause, sentence, and paragraph, so that no part will become in inoperative, and so as to render the statute a harmonious, consistent, and symmetrical whole.

Continuing at page 712 it is stated:

> In other words, a statute should be so construed that no word, clause, sentence, provision, or part shall be rendered surplusage, or superfluous, meaninaless, void, insignificant, or nugatory, if that result can be avoided.

The effect of the holding of the Third District Court renders wholly inoperative, the language in the statute referring to the Auditor General and the Department of Revenue, insofar as post-audit review functions are involved and the Auditor General has no other function or

duty. In effect, the decision of the Third District has removed the Department of Revenue and the Auditor General from the operation of the statute. In other words, that language and those words has been rendered void, inoperative, and nugatory.

The decision of the Third District would demand, that in the situation where a Property Appraiser requested from the taxpayer access to books and records in January or February of a given year, and if the taxpayer successfully delayed or did not respond to the request, so that suit was filed pursuant to the rule by the Property Appraiser, and if the taxpayer delayed the matter in Court, passed the time when the Property Appraiser had to complete the assessment and submit his tax roll by July 1, then the statute would no longer be operative and the Property Appraiser would not be able to obtain the information sought. Such a holding flies directly in the face of the legislative intent of providing a means whereby access can be afforded to a taxpayer's records.

As worded, the statute would apply to the following situations:

1. Where a Property Appraiser makes demand at the beginning of a tax year for books or financial records which he intends to use or consider in determining the assessment on a particular parcel of property. In this situation, the information furnished may ultimately not be actually relied upon in the final determination of the assessment, but it

would have been considered as Section **193.011**, F.S. requires.

2. Where the Department of Revenue seeks access to records in performing its in-depth roll review process or its non-in-depth roll review process as authorized under Section **195.096(2)** and **(3)(b)**, F.S.

3. Where the Department of Revenue is seeking this information in performance of its post-audit review function as authorized under Section **195.097**, F.S.

4. Where the Auditor General is seeking the information in performance of his post-audit review of the procedures and administration of the Department of Revenue under Section **195.096(7)**.

5. Where the Property Appraiser has arrived at a determination of value which determination is challenged in Court, then the propriety of the assessment is placed in issue. In such a situation, a "proper assessment" has not yet been finalized because the taxpayer is only required to demonstrate his good faith estimate of value, and the final value will not be establislhed until the proceedings are completed. In such a proceeding the Property Appraiser is still attempting to finalize and defend his determination of what is a "proper assessment" of the property.

If the statute was intended to apply to the Department of Revenue and the Auditor General, then the decision of the Third District Court is inconsistent with the legislative intent because such decision would render

the statute inoperative to the Auditor General and the Department.

CONCLUSION

For the reasons herein stated, the Amicus requests that the decision of the Third District Court be quashed.

RESPECTFULLY SUBMITTED this the 14th day of October, 1985.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to DANIEL A. WEISS, Assistant County Attorney, Dade County Courthouse, Sixteenth Floor, Miami, Florida 33130, J. TERRELL WILLIAMS, Assistant Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32301, and STUART L. SIMON, ESQUIRE, Fine, Jacobson, Block, England, Klein, Colan & Simon, P.A., 2401 Douglas Road, Post Office Box 140800, Miami, Florida 33134 on this the 7th day of October, 1985.

Larry E. Levy