IN THE SUPREME COURT OF FLORIDA

CASE NO. 67,766

Second District Court of Appeal No. 84-2476

JOHN W. MIKOS, ETC.,

Petitioner,

vs.

RINGLING BROS.-BARNUM &
BAILEY COMBINED SHOWS, INC.,
ETC., ET AL.,

Respondents.
_____/

BRIEF OF AMICUS CURIAE FRANKLIN B. BYSTROM, AS PROPERTY APPRAISER OF DADE COUNTY, FLORIDA

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INTRODUCTION

This amicus curiae brief is submitted on behalf of Franklin B. Bystrom, as Property Appraiser of Dade County, Florida. It is submitted in support of the position of John W. Mikos, as Property Appraiser of Sarasota County, Florida.

Appendices included for the Court's convenience are:

App. A	Slip Opinion of the Second District Court of Appeal in the within cause;
App. B	Decision of the Third District Court in Autotote Ltd., Inc. v. Bystrom, 454 So.2d 661 (Fla. 3d DCA 1984), pet. for rev. den., 461 So.2d 113 (Fla. 1985);
App. C	Affidavit of Hon. Steve Pajcic, sponsor of the 1979 amendments to section 192.032, Florida Statutes, here being reviewed, and then-Chairman of the House Committee on Finance and Taxation.

All emphasis in this brief is supplied by counsel unless otherwise indicated.

STATEMENT OF THE CASE AND OF THE FACTS

Amicus Curiae Franklin B. Bystrom, as Property Appraiser of Dade County, Florida, adopts the statement of the case and satement of the facts submitted in the initial brief on the merits by Appellant John W. Mikos, as Property Appraiser of Sarasota County, Florida

STANDARD OF REVIEW

Initially, it should be noted that the presumption of correctness of a court's ruling based upon a written record of pleadings, affidavits and depositions is not as strong as where the court heard witnesses itself and ruled on conflicting evidence. See West Shore Restaurant Corp. v. Turk, 101 So.2d 123, 126 (Fla. 1958). This is particularly true where, as here, the district court has found the facts to be "undisputed". Slip opinion (App. A) at 2, 10 F.L.W. 2138. Moreover, where a district court certifies its decision as being in direct conflict with the decision of a sister district court of appeal on the same question of law, slip opinion (App. A) at 9, 10 F.L.W. at 2139, it is apparent that the colliding decisions cannot both be blessed with a presumption of correctness.

Furthermore, the legal conclusions of a lower tribunal are not binding on a reviewing court where those conclusions conflict with established law. In re Estate of Donner, 364 So.2d 742, 748 (Fla. 3d DCA 1978). This is particularly true where, as here, the trial and district courts hereinbelow have misapplied the law to established facts, Holland v. Gross, 89 So.2d 255, 258 (Fla. 1956), as will be shown in this brief.

SUMMARY OF THE ARGUMENT

Meaningful analysis of §192.032, Florida Statutes, makes it abundantly clear that the legislature did not intend to make twelve-month presence in the taxing jurisdiction a precondition to the right to tax tangible personal property located in Florida. Judicial rules of statutory construction compel the conclusion that the purpose of §192.032 is to resolve intercounty situs disputes. This conclusion is required by analysis of the entire statute in pari materia, as well as by the legislative history of the statute, including prior judicial construction. Moreover, statements of the legislation's own sponsor clearly, forcefully and unequivocally demonstrate that the intent of the statute is to provide a standard for the resolution of multicounty situs disputes.

The term "permanently located" applies to disputes between counties concerning the location in which tangible personal property is taxed and not the taxability of property present in the state. Application of the personal property situs provision in question to the undisputed facts of this case requires approval of the Third District Court of Appeal decision in Autotote and rejection of the conflicting Second District decision sub judice, which is based on an unconstitutional and erroneous construction of the statute.

ARGUMENT

APPLICATION OF ESTABLISHED RULES OF STATUTORY CONSTRUCTION DEMONSTRATES THAT THE INTENT OF THE 1979 AMENDMENTS TO §192.032(2) AND (5) IS TO DEFINE THE TERM "PERMANENTLY LOCATED" IN RELATION TO INTERCOUNTY SITUS DISPUTES. THE LOWER TRIBUNAL'S CONCLUSION THAT THE INTENT OF THE STATUTORY AMENDMENTS IS TO ESTABLISH A TWELVE-MONTH PRESENCE IN THE TAXING JURISDICTION AS A PRECONDITION TO AD VALOREM TAXATION IS CLEARLY ERRONEOUS AND THE DIRECTLY CONFLICTING AUTOTOTE CONSTRUCTION OF THE STATUTE AS AN INTERCOUNTY SITUS PROVISION IS CORRECT.

A. THIS COURT HAS HELD THAT THE INTENT OF THE STATUTE HERE BEING REVIEWED IS TO ESTABLISH A STANDARD FOR RESOLVING INTERCOUNTY DISPUTES AS TO WHICH COUNTY HAS THE RIGHT TO TAX TANGIBLE PERSONAL PROPERTY, AND THE LOWER TRIBUNAL'S UNPRECEDENTED CONCLUSION THAT THE INTENT OF THE STATUTE IS TO ESTABLISH A TWELVE-MONTH PRESENCE IN THE TAXING JURISDICTION AS A PRECONDITION TO AD VALOREM TAXATION IS CLEARLY ERRONEOUS.

On conflict certiorari between decisions of the First and Second District, this Court has previously determined the legislative intent of the progenitor of present §192.032, Florida Statutes (1983). In Caruthers v. Curcie Brothers, Inc., 195 So.2d 545 (Fla. 1967), this Court addressed the question of situs of certain tangible personal property. The taxpayer was engaged in its business of road construction in Sumter County, using heavy equipment on a temporary or transitory basis. Except for a construction shack at the work site in Sumter County, it did not maintain an office for the conduct of its business in Sumter County, but maintained its business office in Broward County. The taxpayer reported the equipment in question for taxation in Broward County: 90% of the equipment used on the job

in Sumter County was leased or rented or belonged to subcontractors. Id. at 545-46.

This Court determined that the sole issue was whether the personal property located on a construction job on January 1, 1964 was taxable in Sumter County. The Court resolved the issue by applying §200.021(2), Florida Statutes (1963), which provided:

> All taxable tangible personal property which is removed from one county in this state to another county after January 1st of any year shall be subject to taxation for said year in the county where it was located on January 1st.

Curcie Brothers, 195 So.2d at 546 n.3.

This Court declared that it was constrained to hold that property owned by the taxpayer and located in Sumter County on January 1, 1964 was taxable for that year in that county, notwithstanding the far more significant nexus of the property with Broward County. This Court invited the legislature to enact a more equitable standard for resolving intercounty situs disputes than the statutory litmus paper test of January 1st presence vel non in the taxing county:

> Conceivably, taxation under the strict rule imposed may result in both hardship and inconvenience but alleviation is to be found in the legislative halls rather than in the Courts.

Id.

B. LEGISLATIVE HISTORY OF FLORIDA'S TANGIBLE PERSONAL PROPERTY SITUS PROVISION DEMONSTRATES THAT ITS INTENT IS TO RESOLVE INTERCOUNTY SITUS DISPUTES.

The legislature responded to Curcie Brothers by enacting chapter 67-489, §1, Laws of Florida, amending the intercounty situs dispute provision to read:

> All taxable tangible personal property which is removed from one county in this state to another county after January 1 of any year shall be subject to taxation for said year in the county where it was located on January 1; provided, that the provisions of this subsection shall not apply to tangible personal property located in such county on January 1 on a temporary or transitory basis if such property is included in a tax return being filed in the county in this state where such tangible personal property is permanently based.

Section 200.021 (2), Florida Statutes (1967).[1]

The legislature, however, provided no statutory guidelines to define what it meant by "temporary or transitory basis" and "permanently based."

The situs provisions were amended by chapter 70-243, §3, Laws of Florida, to read in pertinent part as follows:

> 192.032 Situs of property for assessment purposes.--All property shall be assessed according to its situs as follows:
>
> (1) Real property. In that county in which it is located and in that municipality in which it may be located.
>
> (2) Tangible personal property.
>
> (a) In that county in which it is permanently located and in that municipality in which it may be permanently located on January 1, of each year, provided that property brought into the state after January 1, and before April 1, of any year shall be considered to have been in the state on January 1, of that year, provided, that tangible personal property brought into the State of Florida after January 1st and before April 1st of any year shall be taxable for that year only if the assessor has reason to believe that such property will be removed from the State of Florida prior to January 1st of the next succeeding year.

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[1]/. Transferred to §194.034(2), Florida Statutes (1969), by chapter 69-55, Laws of Florida.

> (b) All tangible personal property which is removed from one county in this state to another county after January 1 of any year shall be subject to taxation for said year in the county where located on January 1; provided, that the provisions of this subsection shall not apply to tangible personal property located in such county on January 1 on a temporary or transitory basis if such property is included in the tax return being filed in the county in this state where such tangible personal property is permanently located.

The House Committee commented: "This section defines the situs for taxation for all forms of property." Chapter 70-243, Laws of Florida, at p. 713.

The Third District Court later agreed with the legislative Committee that the provision in question is a situs statute, not a right-to-tax provision. In Integrated Container Services v. Overstreet, 375 So.2d 1146 (Fla. 3d DCA 1979), the taxpayer argued that §192.032 required certain tangible personal property to be permanently located in Dade County prior to being subject to taxation. The Dade County Property Appraiser there pointed out that the statute is titled a "situs" provision and contended that when read in its entirety, the provision is not a condition upon the right to tax but a means of resolving disputes over which county had the right to tax particular tangible personal property.

The Third District adopted the lower tribunal's construction of the statute in Integrated Container:

> "Clearly, the statute in question recognizes the taxability of property which comes into and leaves the state, in the same year, consequently the provision does not appear to condition the right to tax upon permanency of location.

> Moreover, if, as the Plaintiff contends, the statute was enacted as a direct result of the Supreme Court's holding in Caruthers v. Curcie Brothers, Inc., (Fla. 1967), 195 So.2d 545, the legislative intent was to settle disputes between counties since that was the problem in Caruthers. The Court holds that F.S. 192.032 is a situs provision and that the right to tax is established by the following statutory mandate:
>
> '196.001. 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 ...'
>
> (emphasis supplied). See Williams v. Jones (Fla. 1975) 326 So.2d 25, 435 [appeal dismissed, 429 U.S. 803, 97 S.Ct. 34, 50 L.Ed.2d 63 (1976)]."

(Emphasis in original.) Integrated Containers, 375 So.2d at 1147.

In Integrated as here, the right to tax the subject property is established by §196.001. Recent amendments to §192.032 do not change this Court's and the Third District's construction of the statute as a situs provision. The 1979 amendments merely serve to clarify the standard for settling multicounty disputes by defining certain statutory terms, as explained below.

Legislative intent may be discerned by tracing the legislative history of an act. Speights v. State, 414 So.2d 574 (Fla. 1st DCA 1982). The legislative history of the situs provision here under review conclusively demonstrates the rectitude of the Autotote court's construction of the statute in question. As explained above, since 1967, "permanent" location in a county has been the statutory determinant of which Florida county may tax tangible personal property, not whether such property might be taxed. See §200.21(2), Florida Statutes (1967), enacted

by chapter 67-489, §1, Laws of Florida. Prior to 1967, such property was subject to taxation "in the county where it was located on January 1st." Section 200.021(2), Florida Statutes (1965). It is well established that earlier enactments may be looked to to determine the legislative intent. Tampa & J.R. Co. v. Catts, 79 Fla. 235, 85 So. 364 (1920). Additionally, statutes should be construed in light of the manifest purpose to be achieved by the legislation. Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693 (1918); Curry v. Lehman, 55 Fla. 847, 47 So. 18 (1908).

The manifest purpose of §192.032 is to provide a standard for settling multicounty, i.e., intercounty, situs disputes. Legislative use of permanent "base" or permanent "location" to decide intercounty personal property tax disputes is well established in Florida tax law. The legislative definition of a term appearing since 1967 in one form or another in the personal property situs statute does not transform the enactment into a right-to-tax provision, as erroneously concluded by the Ringling Brothers court in the instant cause.

C. READING THE SUBSECTIONS OF §192.032, FLORIDA STATUTES, IN PARI MATERIA COMPELS THE CONCLUSION THAT THE LEGISLATIVE INTENT OF THE 1979 AMENDMENTS IS TO ASSIST IN THE RESOLUTION OF MULTICOUNTY SITUS DISPUTES, NOT TO ENACT A TWELVE-MONTH PRESENCE IN THE TAXING JURISDICTION AS A PRECONDITION TO AD VALOREM TAXATION.

The Appellant Sarasota County Property Appraiser and Amicus Curiae Dade County Property Appraiser challenge the validity of the following statutory interpretation by the Second District:

> Section 192.032(5) states that for the property to be taxable it must be habitually located or typically present for a period of twelve months.

Slip opinion (App.A) at 8, 10 F.L.W. at 2139. If approved by this Court, the foregoing judicial gloss on §192.032 would institute for the first time in Florida law a requirement of twelve-month habitual or typical presence in the taxing jurisdiction as a precondition to the tax liability of tangible personal property.[2/]

Ringling Brothers has persuaded the trial court and the Second District in this cause that the 1979 amendments to §192.032 create as a condition precedent to taxation a twelve-month presence in the taxing jurisdiction. Read in its entirety, however, §192.032 clearly lacks any such condition precedent to taxation. As stated in 82 C.J.S. beginning at page 799:

2/ The Second District's twelve-month presence requirement is probably unprecedented in the history of personal property taxation. Tangible personal property is movable property. As a result, tax avoidance and evasion have since ancient times undermined the effectiveness of a general personal property tax. Buehler, "Personal Property Taxation," Property Taxes, chapter 7 (1939). Tangible personal property is regularly removed from the taxing jurisdiction on the eve of tax day; escape from personal property taxation is not unique to this day and age, but was present in the Athenian, Roman and Medieval European tax systems. Seligman, Essays on Taxation, chapter 2 (10th ed. 1931). Modern jurisprudence has responded by authorizing taxation of personal property present in a taxing jurisdiction for as little as a single day. Minnesota v. Blasius, 290 U.S. 1, 54 S.Ct. 34, 78 L.Ed. 131 (1933).

> 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 statue is to be explained in conjunction with other statutes to the end that there may be a harmonious and consistent body of law.

Thus, in construing the 1979 amendments to the personal property situs statute, the Court is charged with the duty of considering all subsections of §192.032, including contemporaneously enacted amendments.

The principal feature of the 1979 amendments to §192.032 is the advent of the definition of the term "permanently located." Section 192.032(5), Florida Statutes (1983), provides:

> For the purposes of this section and with respect to tangible personal property, the term "permanently located" means habitually located or typically present for the 12-month period preceding the date of assessment.[3/]

3/ Section 192.032(1) and (2) was amended in 1979 as follows:

> 192.032 Situs of property for assessment purposes.-- All property shall be assessed according to its situs as follows:
>
> (1) Real property, in that county in which it is located and in that taxing jurisdiction municipality in which it may be located. (cont'd)

Section 192.032(2) provides in part:

> that tangible personal property brought into the state after January 1 and before April 1 of any year shall be taxable for that year if the property appraiser has reason to believe that such property will be removed from the state prior to January 1 of the next succeeding year.

Clearly, the statute contemplates the taxation under certain circumstances of property which is not "permanently located" in the state, as defined

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(footnote cont'd)

> (2) Tangible personal property, in that county and taxing jurisdiction ~~municipality~~ in which it is permanently located on January 1 of each year. ~~Property brought into the state after January 1 and before April 1 of any year shall be considered to have been in the state on January 1 of that year~~; except that tangible personal property brought into the state after January 1 and before April 1 of any year shall be taxable for that year ~~only~~ if the property appraiser has reason to believe that such property will be removed from the state prior to January 1 of the next succeeding year. All tangible personal property which is removed from one county in this state to another county after January 1 of any year shall be subject to taxation for said year in the county where located on January 1; except that the provisions of this paragraph shall not apply to tangible personal property located in such county on January 1 on a temporary or transitory basis if such property is included in the tax return being filed in the county in this state where such tangible personal property is permanently located. The provisions of this subsection shall not apply to goods-in-transit as described in subsection (4).
>
> Chapter 79-334, §5, Laws of Florida.
>
> (Words stricken through are deleted; words underlined are added.)

by §192.032(5). Notwithstanding the legislature's obvious intent to impose a tax on property not habitually located or typically present for a period of twelve months, the Second District in the instant cause simply noted that its interpretation of §192.032(5) conflicts with the above-quoted provision of §192.032(2).

The Ringling Brothers court expressly recognized the conflict which its statutory interpretation had created:

> Admittedly, this interpretation of subsection 5 appears to create an inconsistency with that portion of subsection 2 which permits the taxation under certain circumstances of property brought into the state between January 1 and April 1 of the taxable year.

Slip opinion (App.A) at 8, 10 F.L.W. at 2139. The Second District made no attempt to resolve the admitted inconsistency. Instead, it satisfied itself to adopt what it concluded was the "plain meaning" of the statute, invoking Askew v. Schuster, 331 So.2d 297 (Fla. 1976), for the proposition that in cases of statutory inconsistency, the last expression of the legislative intent prevails. In Schuster, however, this Court found no statutory inconsistency, and simply restated the fundamental rule which would have been applicable were the Court unable to resolve an apparent inconsistency. 331 So.2d at 300.

In failing to resolve the admitted inconsistency between subsections 2 and 5 of §192.032, the Second District substituted the shibboleth of the plain meaning rule for meaningful statutory analysis. Mere incantation of the plain meaning rule, however, cannot substitute for meaningful analysis. New York State Commission on Cable

Television v. FCC, 571 F.2d 95, 98 (2d Cir.), cert. denied, 439 U.S. 820, 99 S.Ct. 85, 58 L.Ed. 2d 112 (1978); see also American Trucking Associations v. ICC, 656 F.2d 1115 (5th Cir. 1981).

The Autotote court was able to resolve the "admitted inconsistency" left unresolved by the Ringling Brothers court. This was accomplished by reading the statute as an intercounty situs dispute resolution provision. In failing to resolve the inconsistency, the Ringling Brothers court overlooked one of the principal tenets of statutory construction:

> 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, if 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 statutes.

82 C.J.S. at 810.

The Autotote court resolved the apparent facial inconsistency between subsections 2 and 5 by construing §192.032 in light of its title and legislative history as a situs statute, rather than as a right-to-tax statute, commenting:

> The term "permanently located" was defined by the Legislature in order to facilitate the resolution of multi-county disputes regarding entitlement to tax property physically present in

> one Florida county on January 1 but typically present in another Florida county during the preceding year. To regard the legislative definition of "permanently located" as imposing an additional stricture on taxing tangible personal property located in Florida on January 1 would be incompatible with the patent intent of the Florida Legislature to render taxable under §192.032(2) property brought into the state after January 1 and before April 1, which assessment is mandated where a property appraiser has reason to believe that such property will be removed from the state prior to January 1 of the next succeeding year.

Autotote, 454 So.2d at 662-63. See also Curcie Brothers and Integrated Containers for judicial recognition that the intent of the statute is to resolve intercounty situs disputes.

D. ESTABLISHED RULES OF STATUTORY CONSTRUCTION DEMONSTRATE THAT THE LOWER TRIBUNAL ERRED IN DETERMINING THAT §192.032 IMPOSES TWELVE-MONTH PRESENCE AS A PRECONDITION TO AD VALOREM TAXATION.

In discerning the intent of §192.032, Florida Statutes, the judiciary is guided by established rules of statutory construction. This Court has said:

> "It is a fundamental rule of statutory construction that legislative intent is the polestar by which the court must be guided, and this intent must be given effect even though it may contradict the strict letter of the statute. Furthermore, construction of a statute which would lead to an absurd or unreasonable result or would render a statute purposeless should be avoided. To determine legislative intent, we must consider the act as a whole -- 'the evil to be corrected, the language of the act, including its title, the history of its enactment, and the state of the law already in existence bearing on the subject.' Foley v. State, 50 So.2d 179, 184 (Fla. 1951)."

State v. Webb, 398 So.2d 820, 824 (Fla. 1981) (emphasis in original). Application of the rules of statutory construction compels the conclusion that the Second District erred in holding that §192.032 imposes twelve-month habitual or typical presence as a precondition to ad valorem taxation.

It is apparent that the amendments to §192.032 embodied in chapter 79-334, Laws of Florida, were not intended to narrow Florida's tax base by freeing from tax liability all tangible personal property not present in the state for a full 365 days or otherwise typically and habitually present during the year prior to the assessment date. Such a reading of §192.032(2) and (5) would render the statute in conflict with the 180-day provision of §192.032(3)(c), which is obviously intended to provide more -- not less -- protection from taxation to transhipped goods than to other species of personal property. Moreover, the Second District's suggested construction of the statute would render meaningless the goods-in-transit provision of §192.032(3)(a) and (b).

Statutes that relate to the same person or thing or to the same class of persons or things or to the same or closely allied subject or object are regarded as in pari materia. Lanier v. Bronson, 215 So.2d 776, 780 (Fla. 4th DCA 1980). The rule that statutes "in pari materia" must be construed together is particularly pertinent with respect to taxation statutes. 82 C.J.S. Statutes §366.

One of the fundamental rules of statutory construction is that the legislative intent must be ascertained and effectuated and that intent must be gathered from consideration of the statute as a whole rather than from any one

part thereof. Paskind v. State ex rel. Salcines, 390 So.2d 1198, 1200 (Fla. 2d DCA 1980). As Representative Pajcic, the sponsor of the legislative amendments being reviewed, commented:

> "The definition of permanently located was not intended to mandate an additional requirement that tangible personal property be present in a taxing jurisdiction for 12 months as a prerequisite to being assessed. The intent of the Legislature that tangible personal property be taxable irrespective of 12 months' prior presence in a taxing jurisdiction is evident from the language of Section 192.032(2), Fla. Stat., which requires that property brought into the state after January 1 and before April 1 of any year be taxed for that year if the property appraiser has reason to believe that such property will be removed from the state prior to January 1 of the next succeeding year."

(App.C, ¶5). In order to harmonize the situs provision of §192.032(2) with the definition of "permanently located" in §192.032(5), the conclusion is inescapable that the situs provision is intended to govern intercounty disputes, not to abrogate previously enacted portions of the very same statute.

Furthermore, in statutory construction, legislative intent is the polestar by which we must be guided, and no literal interpretation should be given that leads to an unreasonable or ridiculous conclusion or a purpose not designated by the legislature. State v. Sullivan, 95 Fla. 191, 116 So.255 (1928); In re D.F.P., 345 So.2d 811, 812 (Fla. 4th DCA 1977). Reading the situs statutes as argued by Ringling Brothers and as adopted by the Second District allows property to escape taxation under one provision of §192.032(2) after an 11-month presence in Florida prior to

January 1, while taxing under another provision of the same subsection property brought into Florida March 30 and destined to be removed from the state only two days later! Such a ridiculous and patently unconstitutional result should be avoided in construing the statutory provisions in question. Where two or more interpretations can reasonably be given to a statute, the one that will sustain its validity should be given and not one that will render it unconstitutional, or defeat its purpose. Dorsett v. Overstreet, 154 Fla. 566, 18 So.2d 759, 763 (1944) (en banc) (rejecting commerce clause challenge to Dade County occupational license tax and concluding that "Even insterstate business must pay its way"). Accord, Walter E. Heller & Company Southeast v. Williams, 450 So.2d 521, 528 (Fla. 3d DCA 1984) pet. for rev.denied, 462 So.2d 1108 (Fla. 1985) (applying the settled rule that construction rendering a statute of doubtful constitutionality will not be adopted if another construction is available). When a statute is susceptible of and in need of interpretation or construction, it is axiomatic that courts should endeavor to avoid giving it an interpretation that will lead to an absurd result. State ex rel. Florida Industrial Commission v. Willis, 124 So.2d 48 (Fla. 1st DCA 1960), cert. denied, 133 So.2d 323 (Fla. 1961).

The Florida Attorney General has opined: §192.032(2) "was designed to reach those businesses which are seasonal in their operation and which operate in Florida only during a portion of the year." 1961 Op.Att'y Gen. of Fla.

061-87 (May 24, 1961) [4]. To harmonize the Attorney General's construction of the statute with the requirements of the equal protection clause, the situs statute must not be construed so as to exonerate Ringling Brothers from the payment of its fair share of taxes. The Second District decision sub judice effectively shifts Ringling Brothers' share of the tax burden to businesses moving property into Florida after January 1 annually and to other property owners, without discerning any rational basis for the shift in tax burden.

Ringling Brothers' circus property is present for 10 weeks annually in Sarasota County, "straddling" the January 1 assessment date. Slip opinion (App.A) at 2, 10 F.L.W. at 2138. The property uses at least as much in the way of costly governmental and other public services as do seasonable businesses which operate in Sarasota County for 10 weeks annually between January 2 and December 31. The latter are subject to taxation under §192.032. See AGO 061-87, supra. There is no rational basis for reading §192.032 as intending to give Ringling Brothers a "free ride" simply because its property arrives after April 1 and before the following January 1 annually.

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[4] "While the official opinions of the Attorney General of the State of Florida are not legally binding upon the courts of this State, they are entitled to great weight in construing the law of this State". Beverly v. Division of Beverage of Dept. of Business Regulation, 282 So.2d 657, 660 (Fla. 1st DCA 1973).

The Autotote construction of the statute which renders Ringling Brothers, Autotote and other seasonal businesses subject to taxation is much to be preferred, particularly because it resolves the "admitted inconsistency" inherent in the Second District decision and opinion in this appeal. Moreover, this Court has said: "The fundamental principles of our democratic system mandate that every taxpayer contribute his fair share to the tax revenues." Dade County Taxing Authorities v. Cedars of Lebanon Hospital Corp., Inc., 355 So.2d 1202, 1204-05 (Fla. 1978). While in Florida, Ringling Brothers property enjoys the protection of Sarasota County to such a degree that the taxpayer should be required to contribute its fair share to support the public services funded by ad valorem tax dollars.

Construing the statute in the manner adopted by the Autotote court resolves the apparent inconsistency identified but left unresolved by the Ringling Brothers court. In giving voice to all sections of the statute and harmonizing the various provisions so as to reach a constitutional construction and application of the statute, the Autotote court adhered to the paramount rule of statutory construction. That rule has been discussed as follows:

> 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.

82 C.J.S. at 560. The interpretation of the situs statute by the Ringling Brothers court creates discord between portions of §192.032 and between the tax treatment of similarly situated taxpayers. Because the Autotote decision creates harmony from the underlying discordant strains, it is to be preferred as a matter of law and as a matter of logic.

E. THE EVIL ADDRESSED BY THE 1979 AMENDMENTS TO §192.032 IS MULTICOUNTY DISPUTES REGARDING SITUS OF TANGIBLE PERSONAL PROPERTY, AND THE LOWER TRIBUNAL'S DECISION REJECTING THIS FINDING IS CLEARLY ERRONEOUS.

Quoting trial Judge David L. Levy, the Autotote court held per curiam:

> Plaintiff-taxpayer contended that the statutory codification in 1979 of the definition of the term 'permanently located' imposed a precondition of 12-month presence of tangible personal property prior to the January 1 assessment date to render such property subject to taxation. Review of Department of Revenue Regulation 12D-1.03(1)(c), Fla.Admin.Code, defining 'normally and usually permanently located' in light of §192.032(2), Fla.Stat., however, clarifies the intent of the Legislature in enacting §192.032(5), Fla.Stat. (Supp. 1982). [now §192.032(6), Fla.Stat. (1983)].

454 So.2d at 662.

The Ringling Brothers panel, like the trial court below it, rejected the Autotote court's construction of the statute and the corresponding administrative regulations, saying:

> With all due respect, we cannot accept the rationale of Autotote. Department of Revenue Regulation 12D-1.03(1)(c) was issued in 1976 to aid in the interpretation of subsection 2 of the statute, a subsection dealing with the taxation of property located in more than one county within the state during the taxable year. This regulation could hardly clarify the intent of a separate subsection enacted three years later which contains different language and makes no reference to multicounty disputes over taxation.

Slip opinion (App.A) at 6-7, 10 F.L.W. at 2139.

Apparently, use of the word "clarify" distracted the Second District from the rule of statutory construction which provides that reference to the language of a parallel administrative regulation is instructive and may properly be considered as an aid to statutory construction if it accords with the statutory provision. E.g., Walter E. Heller & Company Southeast, Inc. v. Williams, 450 So.2d 521, 532 (Fla. 3d DCA 1984), pet.for rev.denied, 462 So.2d 1108 (Fla. 1985). Moreover, the Department of Revenue's own regulations require that such administrative rules be read in connection with related statutes. Department of Revenue rule 12D-1.01(1), Florida Administrative Code.

It is apparent that rule 12D-1.03(1), Florida Administration Code, is to be applied in determining tax situs in instances where more than one Florida county assesses tangible personal property physically present at some time during the year. Comparison of rule 12D-1.03(1) with the 1979 amendments to §192.032, Florida Statues, reveals that the statute merely enacts as law a modified version of the Department of Revenue definition of "'normally and usually permanently located.'" See also, Pajcic Affidavit (App.

C, ¶3), which affirmatively establishes this connection between the statute and the administrative regulation as a matter of record.

Department of Revenue rule 12D-1.03, Florida Administrative Code, provides:

> 12D-1.03 Situs of Personal Property for Assessment Purposes.[5/]
>
> Personal Property not specifically addressed by this rule shall be assessed at its tax situs as determined pursuant to Sections 192.001(11), 192.032 and 192.042 of the Florida Statutes.
>
> (1) Tangible Personal Property physically located in a county on January 1 on a temporary or transitory basis which is normally and usually permanently located in another county may be taxed by either but not both of such counties.
>
> (a) If the Tangible Personal Property is included in a tax return filed in the county where the property is normally and usually permanently located, that county shall tax the property. It shall be the duty of the owner of the property to file a copy of the return filed in the county where the property is normally and usually permanently located with the property appraiser of the county in which, on January 1, the property is temporarily or transitorily located. The copy shall identify the property included in the return and shall be accompanied by a written statement by the signer of the return that the return has actually been filed with the property appraiser of the county in which the property is normally and usually permanently located.
>
> (b) If the owner of Tangible Personal Property temporarily or transitorily located in a county on January 1, fails or refuses to file a copy of the return and a statement by the signer as provided in

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5/ Section 192.032 is titled "Situs of property for assessment purposes." That Department of Revenue regulation 12D-1.03 bears a virtually identical title provides an additional clue that the statute and its parallel regulation address the same subject matter, State v. Webb, supra, 398 So.2d at 824, namely, multicounty situs disputes.

subsection (a), with the property appraiser of that county, the appraiser shall place the property on the Tangible Personal Property assessment roll for the county.

(c) The following definitions are applicable to this rule and to Section 192.032(2) of the Florida Statutes:

1. The phrase "normally and usually permanently located", shall mean the place where an object is generally kept for use or storage, the place to which an object is consistently returned by its owner for use or storage.

2. The term "temporarily and transitorily located" shall mean the place where an object is found for a short duration for limited utilization with an intention to remove the same to another place where it is usually used or stored.

Chapter 79-334, §5, Laws of Florida, provides that for the purposes of §192.032, Florida Statutes, "and with respect to tangible personal property, the term 'permanently located' shall mean habitually located or typically present for the 12-month period preceding the date of assessment."

It is readily apparent from a comparison of the definition of "permanently located" appearing in Department of Revenue rule 12D-1.03(1)(c) and the statutory definition under §192.032(5), Florida Statutes (1983), when read in pari materia with §192.032(2), that the term "permanently located" is defined in both the statute and the parallel administrative regulation for the purpose of resolving multicounty disputes over tangible personal property situated in one county on January 1 but habitually present in another county during the preceding year.

This Court has said that administrative interpretation should not be disregarded in construing statutes, Volusia Jai-Alai, Inc. v. McKay, 90 So.2d 334 (Fla. 1956), and

that the Department of Revenue rules interpreting tax statutes, although made by an extrajudicial body, have considerable persuasive force before a court called upon to interpret the statute. L.B. Smith Aircraft Corp. v. Green, 94 So.2d 832 (Fla. 1957). Accord, Harvey v. Green, 85 So.2d 829 (Fla. 1956).

Under Florida decisional law, the statutory construction derived from Department of Revenue rule 12D-1.03 as it relates to the corresponding provisions of §192.032 should be given great deference. "Construction of a statute by the administrative agency charged with its enforcement and interpretation is entitled to great weight. State v. Florida Development Commission, 211 So.2d 8 (Fla. 1968); Gay v. Canada Dry Bottling Co., 50 So.2d 788 (Fla. 1952); Commissioner v. South Texas Lumber Company, 333 U.S. 496, 68 S.Ct. 695, 92 L.Ed. 831 (1948)." Heftler Construction Co. & Subsidiaries v. Deparment of Revenue, 334 So.2d 129, 132 (Fla. 3d DCA 1976), cert. denied, 341 So.2d 1082. Administrative construction of a statute is entitled to great weight, particularly where, as here, the statute is simply an adoption of a rule already made by an executive body and accepted by the court. King v. Seamon, 59 So.2d 859 (Fla. 1952).

Any doubt that rule 12D-1.03 and §192.032 address the same evil of multicounty tangible personal property situs disputes is dispelled by the affidavit of the author of the legislation in question. (App.C). The Honorable Steve Pajcic was Chairman of the House Committee on Finance and Taxation during the 1979 legislative session. See 1979 Journal of the Florida House of Representatives at 945-46.

In this capacity, Representative Pajcic sponsored the amendments upon which Ringling Brothers stakes its claim to immunity from taxation.

Representative Pajcic's affidavit filed with the lower tribunal wholly negates the Ringling Brothers court's conclusion regarding the legislative intent of 192.032. The affidavit of the legislation's sponsor states clearly that the statutory definition of "permanently located" was intended to address only the evil of multicounty personal property situs disputes, the resolution of which determines the county which shall be entitled to receive the revenues which flow from the assessment and taxation of property. Paragraph 4 of the affidavit says:

> "It was and is my intention and that of the Committee on Finance and Taxation that the definition of the term 'permanently located' as 'habitually located or typically present for the 12-month period preceding date of assessment' apply only to tangible personal property in a county or taxing jurisdiction on January 1 of each year. The definition was intended only as an aid to county property appraisers in determining which county and taxing jurisdictions from among those which were the situs of specific tangible personal property during the year preceding the assessment date, are authorized to assess and collect taxes on such property.

(App.C, ¶4). Such an affidavit, as the statement of the author or prime sponsor of a bill concerning the evil sought to be addressed by that bill, is competent evidence. Department of Revenue v. Markham, 381 So.2d 1101, 1109 (Fla. 1st DCA 1979), quashed on other grounds, 396 So.2d 1120 (Fla. 1981). The Pajcic Affidavit verifies that the evil sought to be addressed is dual taxation resulting from intercounty situs disputes, not assessment of nontaxable property.

Legislative intent must serve as the polestar of judicial construction in resolving an ambiguity within a statute. Wakulla County v. Davis, 395 So.2d 540 (Fla. 1981). Accord, Associated Dry Goods Corporation v. Department of Revenue, 335 So.2d 832, 834 (Fla. 1st DCA 1976). The cardinal rule in the construction of statutes is to ascertain the legislative intent in the enactment of law. It is a settled rule that

> 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.

82 C.J.S. at 593.

The evil to be remedied by defining the statutory term "permanently located" is multicounty situs disputes over which of two or more counties may subject certain tangible personal property to taxation. In the words of the statute's own sponsor:

> This definition was enacted to assist in the determination of situs of tangible personal property, which by its nature may be moved from place to place. The definition of "permanently located" was intended to eliminate differences between two or more county property appraisers each of whom had determined that an item of tangible personal property was taxable in their respective counties.

Pajcic Affidavit (App.C, ¶4). Where there is any doubt as to the meaning of a statute, the purpose for which it was enacted is of primary importance in the interpretation thereof. Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693 (1918).

In light of the record herein containing undisputed facts and the affidavit of the sponsor of the legislative enactment in question, it is abundantly clear that the Florida legislature had no intention of imposing a precondition of twelve-month presence on Florida counties' right to tax personal property brought into and removed from the State annually. Therefore, the conclusion of the Second District to the contrary is plain error.

CONCLUSION

The decision of the Second District in the within cause is erroneous as a matter of law, because it construes §192.032(5) as requiring a twelve-month presence as a precondition to ad valorem taxation. This construction conflicts with the intent of the legislature as articulated in prior decisions of this and other Florida appellate courts, as is inherent in the history of the legislation and as is explained by the legislation's own sponsor and in the parallel regulation of the Department of Revenue, the administrative agency responsible for the overall supervision of tax assessment in this State.

Based on the foregoing argument and authorities, the decision of the District Court of Appeal, Second District, should be reversed and remanded with directions to further remand to the trial court for entry of summary judgment in favor of John W. Mikos, as Property Appraiser of Sarasota County, Florida. The decision of the District Court of Appeal, Third District, in Autotote Ltd., Inc. v. Bystrom, 454 So.2d 661 (Fla. 3d DCA 1984), pet. for rev.denied, 461 So.2d 113 (Fla. 1985), correctly construes §192.032, Florida Statutes (1983), as a standard governing intercounty situs disputes, and should be expressly approved and adopted by this Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief was furnished by mail this 4th day of November, 1985, to: Granville H. Crabtree, Jr., Crabtree Sanchez Parker & Ingram, P.A., 100 South Washington Avenue, Sarasota, Florida 33577; and to Beth E. Antrim-Berger, Esquire, Culverhouse & Dent, 1549 Ringling Blvd., Suite 500, P.O. Box 3269, Sarasota, Florida 33578; Jeffrey P. Kielbasa, Deputy General Counsel, Department of Revenue, 204 Carlton Building, Tallahassee, Florida 32302.

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