IN THE SUPREME COURT OF FLORIDA

CASE NO. 68,995

FRANKLIN B. BYSTROM, Property Appraiser of Dade County, Florida, STEVEN SMITH, Acting Tax Collector of Dade County, Florida, P. RANDY MILLER, Executive Director of the Florida Department of Revenue,

Petitioners,

vs.

MANUEL DIAZ,

Respondent.
_____/

ON REVIEW FROM THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

PETITIONERS' BRIEF ON THE MERITS

ROBERT A. GINSBURG
Dade County Attorney
Metro-Dade Center
Suite 2810
111 N.W. 1st Street
Miami, Florida 33128-1993
(305) 375-5151

By

Daniel A. Weiss
Assistant County Attorney

TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS (cont'd)

TABLE OF CITATIONS (cont'd)

OTHER AUTHORITIES:

PRELIMINARY STATEMENT

This brief on the merits is respectfully submitted by Petitioners, the Property Appraiser and Tax Collector of Dade County and the Executive Director of the Florida Department of Revenue (DOR). References to the Record shall be cited as R. _____. The trial court and district court opinions constitute the Appendix and shall be cited as A. _____. All emphasis is supplied by undersigned counsel.

STATEMENT OF THE CASE AND FACTS

The facts material to this proceeding are not in dispute. See the trial court's "Findings of Undisputed Fact" contained in its Order of Dismissal. R. 35-38, attached hereto at A. 1-4. The issue in this case is whether the district court erred in ruling that post-delinquency payment of undisputed taxes comports with the good-faith payment requirements of §194.171.

The Plaintiff-taxpayer, Manuel Diaz, filed the action below on September 7, 1983. R. 1-3. By his complaint, Diaz sought to overturn the finding of Dade County Property Appraiser in the first instance, and the Dade County Property Appraisal Adjustment Board on review, that the subject property was not used for bona fide commercial agricultural purposes on the January 1, 1982 assessment date. Id.

In 1983, the year after the subject assessment, the subject property was classified by the Property Appraiser as agricultural and assessed at a value substantially below market value, based exclusively on its agricultural use. The taxpayer ignored the minimal $1,009.01 tax bill on the 40-acre property

and this sum consequently became delinquent by operation of law on April 1, 1984. R. 11-12; A. 2 ¶4.

Based upon the taxpayer's failure to make any payment with respect of the 1983 taxes prior to delinquency, the defendant taxing authorities filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction, demonstrating the taxpayer's violation of §194.171(5) and (6), Florida Statutes (1983), the jurisdictional good faith payment requirement to maintaining suit. The delinquent 1983 taxes were eventually paid on May 30, 1984. R. 13-14; A. 2 ¶4. After this payment, the motion to dismiss was heard. The trial court denied the motion, but found:

> The taxes on the subject property for 1983, the year after the challenged assessment, became delinquent on April 1, 1984. The 1983 taxes and penalties owing on the subject property were paid on May 30, 1984.

R. 15-16 ¶5. The Plaintiff-taxpayer (not the Defendant taxing authorities), called up for hearing before a successor trial judge the Motion to Dismiss for Lack of Subject Matter Jurisdiction. See preamble to Order of Dismissal. R. 35; A. 1.

Upon consideration, the successor judge adopted as "Findings of Undisputed Fact" precisely the same findings made by her predecessor on the same record. Cf. R. 35-36 ¶¶1-4 with R. 15-16 ¶¶1-5; A. 1. The trial court concluded that, on the undisputed facts, §194.171(5) and (6), Florida Statutes (1983), mandated dismissal of the taxpayer's complaint and the cause for lack of subject matter jurisdiction. The Third District reversed, holding that the admitted jurisdictional defect was

cured by payment of taxes months after they became delinquent. Diaz v. Bystrom, 487 So.2d 1112 (Fla. 3d DCA 1986). The Third District specifically held that its ruling disagreed with that of Clark v. Cook, 481 So.2d 929 (Fla. 4th DCA 1985).

The Third District denied the taxing authorities' motion for rehearing. Petitioners timely filed a notice and brief invoking the discretionary jurisdiction of this Honorable Court, setting forth as grounds that the Third District decision expressly and directly conflicts with decisions of another district court on the same question of law and expressly affects a class of constitutional officers, namely county tax collectors. Article VIII, §1(d), Florida Constitution (1980).

Petitioners filed as supplemental authority Marshall v. Perkins, 494 So.2d 506 (Fla. 2d DCA 1986), petition for review pending, case no. 69,502. The Marshall court specifically rejected the rationale and ruling of Diaz. Diaz, the respondent-taxpayer herein, has thus far filed nothing in the present proceeding before this Court.

SUMMARY OF ARGUMENT

Florida statutes governing jurisdiction in tax assessment cases require timely good-faith payments as prerequisites to filing and maintenance of such actions. The Third District wrongly held that post-delinquency payment of a subsequent year's undisputed taxes satisfies the jurisdictional statute.

Ad valorem property taxes become delinquent on April 1 of each year. Sections 197.012, 197.0124(1), Florida Statutes (1983) [see also §197.333, Florida Statutes (1985)]. All taxpayers are deemed to know this fact, and are specifically

charged with the duty of ascertaining the amount of taxes due and paying them before April 1 of the year following the year in which the taxes are assessed. Section 197.0151(1), Florida Statutes (1983) [§197.332, Florida Statutes (1985)].

Section 194.171, Florida Statutes, governs the jurisdiction of the circuit court in tax assessment actions. Section 194.171(5), Florida Statutes (1983), unequivocally provides:

> No action to contest a tax assessment may be maintained, and any such action shall be dismissed, unless all taxes on the property assessed in years after the action is brought, which the taxpayer in good faith admits to be owing, are paid before they become delinquent.

If the taxpayer fails to comply with the aforementioned jurisdictional requirement, the action "shall be dismissed." Id. In equally forceful language, §194.171(6), Florida Statutes (1983), provides:

> The requirements of subsections (2), (3) and (5) are jurisdictional. No court shall have jurisdiction in such cases until after the requirements of both subsections (2) and (3) have been met. A court shall lose jurisdiction of a case when the taxpayer has failed to comply with the requirements of subsection (5).

No provision is made for the complaining taxpayer to cure a failure to comply with the jurisdictional timely good faith requirement for maintaining suit. Consequently, Diaz's admitted failure to pay his 1983 property taxes before they became delinquent, A. 2 ¶4, mandated dismissal of his pending challenge to the 1982 assessment of the same property. Section 194.171(5), Florida Statutes (1983). The district court of appeal erred in ruling otherwise, rewriting the statute to

import language authorizing the jurisdictional defect to be cured by late payment. Any such provision is conspicuous by its absence from the plain jurisdictional standard enacted by the Legislature.

The taxpayer's payment of the delinquent 1983 tax does nothing to change the fact that the tax was delinquent when paid. Nothing can change this simple unadorned fact.

Lastly, the statute requiring a taxpayer to timely pay the taxes he admits in good faith to be owing in order to maintain a pending tax case is a reasonable exercise of the Legislature's duty to secure a prompt payment of the annual tax. It was the taxpayer's failure to timely pay the taxes which he himself admitted to be owing that caused dismissal of his complaint. He should not be heard to claim he has been unconstitutionally "deprived" of his day in court by virtue of his own failure to promptly pay taxes admittedly due.

The case at bar, if left undisturbed, will eviscerate the ability of county tax collectors to collect prompt payment of millions of dollars in undisputed taxes from litigants who contest assessments imposed by any of the 67 counties in this state. This Honorable Court should therefore exercise its discretion to rectify the Third District's grave departure from the plain language and intent of the Legislature and to restore the legislatively mandated enforcement mechanism designed to enable county tax collectors to timely collect substantial undisputed taxes annually budgeted for vital public services. The controlling provisions of §194.171 reasonably require

prompt payment of taxes on property in litigation and are not unconstitutional.

It is axiomatic that conflict jurisdiction exists not primarily for the benefit of litigants in any one case, but rather for the purity and clarity of the law. The Third District's result below confuses the law and directly clashes with it. This Court's jurisdiction has been properly exercised and, more importantly, this Court's guidance in this case is necessary to prevent an aberration in the law.

QUESTIONS PRESENTED

I

WHETHER THE THIRD DISTRICT ERRED AS A MATTER OF LAW IN RULING THAT §194.171 PERMITS A TAXPAYER TO MAINTAIN A TAX ASSESSMENT ACTION AFTER FAILING TO PAY SUBSEQUENT YEARS' TAXES BEFORE DELINQUENCY

II

WHETHER §194.171(5) IS UNCONSTITUTIONAL

ARGUMENT

I

THE THIRD DISTRICT ERRED AS A MATTER OF LAW IN RULING THAT §194.171 PERMITS A TAXPAYER TO MAINTAIN A TAX ASSESSMENT ACTION AFTER FAILING TO PAY SUBSEQUENT YEARS' TAXES BEFORE DELINQUENCY

The issue in this case is whether the Third District erred in ruling that post-delinquency payment of undisputed taxes satisfies the jurisdictional requirements of §194.171, Florida Statutes, notwithstanding plain statutory language requiring that such payments be made before delinquency. Section 194.171 contains two good-faith payment requirements. Before filing an overassessment action, the taxpayer must pay not less than the

amount of the tax that he admits in good-faith to be owing. Section 194.171(3), Florida Statutes (1983). This good-faith partial payment is a jurisdictional prerequisite to filing suit. Section 194.171(6), Florida Statutes (1983); Adler-Built Industries, Inc. v. Metropolitan Dade County, 231 So.2d 197 (Fla. 1970); Blake v. R.M.S. Holding Corp., 341 So.2d 795 (Fla. 3d DCA 1977); Millstream Corp. v. Dade County, 340 So.2d 1276 (Fla. 3d DCA 1977). Thus, good-faith partial payment of the contested tax must be made before the taxpayer files his complaint. Such payment is a jurisdictional prerequisite to the filing of the action. In addition, however, the taxpayer must comply with a jurisdictional condition for maintaining the action after it is filed. That is, all taxes on the property assessed in years after the action is brought, which the taxpayer in good faith admits to be owing, must be paid before they become delinquent. Section 194.171(5), Florida Statutes (1983). If that jurisdictional requirement is not met, the lawsuit will be dismissed. Id. Resolution of the appeal herein turns upon the application of §194.171(5) and (6) to undisputed facts.

The gravamen of the taxpayer's complaint below is a request for special classification and favorable tax treatment of certain lands as agricultural. This case involves the

application of an unambiguous jurisdictional statute* to undisputed facts.

---

* Section 194.171, Florida Statutes (1983), provides:

> 194.171 Circuit Court to have original jurisdiction in tax cases.--
>
> (1) The circuit courts have original jurisdiction at law of all matters relating to property taxation. Venue is in the county where the property is located.
>
> * * *
>
> (3) Before a taxpayer may bring an action to contest a tax assessment, he shall pay to the collector not less than the amount of the tax which he admits in good faith to be owing. The collector shall issue a receipt for the payment, and the taxpayer shall file the receipt with his complaint.
>
> (4) Payment of tax shall not be deemed an admission that the tax was due and shall not prejudice the right of a taxpayer to bring a timely action as provided in subsection (2) to challenge such tax and seek a refund.
>
> (5) No action to contest a tax assessment may be maintained, and any such action shall be dismissed, unless all taxes on the property assessed in years after the action is brought, which the taxpayer in good faith admits to be owing, are paid before they become delinquent.
>
> (6) The requirements of subsections (2), (3), and (5) are jurisdictional. No court shall have jurisdiction in such cases until after the requirements of both subsections (2) and (3) have been met. A court shall lose jurisdiction of a case when the taxpayer has failed to comply with the requirements of subsection (5).

It is well-established that unambiguous language in a statute should be given its plain meaning. Quoting at length from its own opinion in the leading case of Van Pelt v. Hilliard, 75 Fla. 792, 78 So. 693, 694-95 (1918), this Court held in State v. Egan, 287 So.2d 1, 4 (Fla. 1973):

> The Legislature must be understood to mean what it has plainly expressed, and this excludes construction. The legislative intent being plainly expressed, so that the act read by itself or in connection with other statutes pertaining to the same subject is clear, certain, and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms. Cases cannot be included or excluded merely because there is intrinsically no reason against it. Even where a court is convinced that the Legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity. If a legislative enactment violates no constitutional provision or principle, it must be deemed its own sufficient and conclusive evidence of the justice, propriety, and policy of its passage. Courts have then no power to set it aside or evade its operation by forced and unreasonable construction. If it has been passed improvidently the responsibility is with the Legislature and not the courts. Whether the law be expressed in general or limited terms, the Legislature should be held to mean what they have plainly expressed, and consequently no room is left for construction. . . .

Where, as here, statutory language is plain and unambiguous, there is simply no occasion for construction or necessity for interpretation. Biddle v. State Beverage Department, 187 So.2d 65, 67 (Fla. 4th DCA), cert. dismissed, 194 So.2d 623 (Fla. 1966). This is so because when the language of a statute is clear and unambiguous and conveys a clear and definite

meaning, that statute must be given its plain and obvious meaning. Holly v. Auld, 450 So.2d 217 (Fla. 1984). The district court decision in Diaz violates these cardinal precepts of jurisprudence, placing Diaz in direct conflict with recent decisions of both the Fourth and Second Districts on the same question of law.

In Clark v. Cook, 481 So.2d 929 (Fla. 4th DCA 1985), the taxpayer was delinquent in paying the amount of taxes he admitted in good faith to be due and thereby violated §194.171(3), Florida Statutes. After filing the action in Clark v. Cook on January 15, 1985, the property owner did tender the good faith amount on January 30, 1985. Under §194.171(6), Florida Statutes, the Fourth District found that the property owner's delinquency rendered the cause of action legally dead. Clark v. Cook, 481 So.2d at 931. Accord Markham v. Corlett, 453 So.2d 907 (Fla. 4th DCA 1984).

Confronting similar facts, the Third District herein found the property owner's cause of action might have been legally dead, but could nonetheless be resurrected by post-delinquency payments. Like the property owner in Clark v. Cook, Diaz was delinquent in complying with the jurisdictional good faith payment requirements of §194.171, Florida Statutes. Diaz failed to pay any 1983 property taxes until nearly two months after these taxes became delinquent. R. 15-16 ¶5; A. 2 ¶4. Diaz thus undeniably violated §194.171(5), Florida Statutes.

Section 194.171(6), Florida Statutes, states that both subsection (3), violated in Clark v. Cook, and subsection (5), violated in Diaz, are "jurisdictional." Subsection (6)

provides that failure to comply with either subsection (5) or (3) deprives the circuit court of jurisdiction. Despite the identity of facts, issues, and law the two district courts came to opposite and conflicting decisions. Clark v. Cook found that violation of the statute rendered the action legally dead and therefore such a violation was not curable. Disagreeing with Clark v. Cook, the district court herein found that violation of the jurisdictional prerequisites was curable and therefore Diaz's cause of action, although legally dead when the unpaid taxes became delinquent, was later revivified when the taxpayer deigned to make his tardy payment.

This Court has directly rejected such notions of miraculous resuscitation of legally dead causes. In Levine v. Dade County School Board, 442 So.2d 210, 213 (Fla. 1983), this Court approved dismissal of a claim for failure to comply with (unlike herein) an apparently purposeless notice requirement. This Court unanimously held:

> Where the time for such notice has expired so that it is apparent that the plaintiff cannot fulfill the requirement, the trial court has no alternative but to dismiss the complaint with prejudice. Dukanauskas v. Metropolitan Dade County, 378 So.2d 74 (Fla. 3d DCA 1979).

Unlike the technical and possibly meaningless notice requirement approved in Levine, the good faith payment requirements of §194.171 patently serve the salutary purpose of encouraging prompt collection of undisputed taxes from litigating taxpayers. Consequently, in Marshall v. Perkins, 494 So.2d 506 (Fla. 2d DCA 1986), petition for review pending, case

no. 69,502, the Second District expressly "disagree[d] with the reasoning and result" in Diaz. 494 So.2d at 507.

The Second District explained:

> In Diaz the Third District attributed threshold significance to the absence of a statutory provision permitting the jurisdictional bar to be overcome by payment, albeit tardy. By holding that the timely payment of taxes is not a jurisdictional prerequisite to maintenance of an action contesting a tax assessment, the Third District has imported the absent language into the statute. The result in Diaz cannot logically be grounded upon the premise that any other construction would be counterproductive of the statute's purpose to generate expendable revenue. The statute achieves that end without judicial refashioning. Its plain language leaves no one in doubt that if a challenge to the assessment is attempted, that challenge will not relieve the challenger of the obligation to pay successive years' taxes.

494 So.2d at 507. Accord Markham v. Corlett, 453 So.2d 907 (Fla. 4th DCA 1984); see also Gulfside Interval Vacations, Inc. v. Schultz, 479 So.2d 776, 778 (Fla. 2d DCA 1985) ("[T]he express language of subsection (6)" renders §194.171 jurisdictional.), review denied, 488 So.2d 830 (Fla. 1986).

In sharp contrast to the Second District's faithful adherence to the unambiguous will of the Legislature, the Diaz decision rewrites §194.171, implying the presence of a curative provision not even so much as suggested by the plain language of the statute. Cf. §607.357(6), Florida Statutes (1985) ("Any corporation failing to file the annual report required by this section shall not be permitted to maintain or defend any action in any court of this state until such report is filed and all taxes due under this chapter are paid . . . .") Diaz

improperly indulges in statutory construction where no ambiguity is present in the statute. Rules of statutory construction, however, should not be used to create doubt, only to remove it. State, Department of Health and Rehabilitative Services v. Miami Herald Publishing Co., 479 So.2d 158, 159 (Fla. 4th DCA 1985). As this Court has held, "The court's function is to find ways within the terms of the act to carry out the purpose of the legislature." Overman v. State Board of Control, 62 So.2d 696, 701 (Fla. 1952) (en banc).

In Diaz, the Third District invades the exclusive preserve of the Legislature, effectively rewriting the statute, in violation of the separation of powers clause, article II, §3, Florida Constitution. As this Court has unanimously ruled, however, "The courts cannot amend or complete acts of the legislature intending to supply relief in instances where the legislature has not provided such relief." Dade County v. National Bulk Carriers, Inc., 450 So.2d 213, 216 (Fla. 1984). Moreover, "[i]t is apodictic that courts are not free to add words to a statute to steer it to a meaning that its plain wording does not supply." Aurora Group, Ltd. v. Department of Revenue, 487 So.2d 1132, 1134 (Fla. 3d DCA 1986).

Additionally, the instant decision seriously impairs taxing authorities' ability to ensure prompt payment of millions of dollars in undisputed taxes. The sound public policy supporting the plain reading of §194.171 urged in this brief is the fostering of "orderly and timely receipt of essential revenues," Fredericks v. Blake, 382 So.2d 368, 371 (Fla. 3d DCA 1980), and avoidance of "undue restraint . . . on

the ability of local government to finance its activities in a timely and orderly fashion." Section 193.1145(1), Florida Statutes. This is particularly important where, as here, the Legislature has provided no penalty to be applied against the recalcitrant taxpayer-litigant other than dismissal of the taxpayer's claim.

In rejecting the rationale of Diaz, the Second District clearly understood the public policy behind the §194.171 prompt payment mandate, when it held:

> Indeed, the threat of an absolute impediment to continuing a judicial attack upon an assessment is a vastly greater source of inducement to meet the tax paying obligation than would be present in sanctioning the delayed delinquent payment by those disputing an assessment. In short, we are convinced that our view of the statute and its effect is wholly within the objective ordained by the Legislature, i.e., the timely availability of revenue with which to maintain governmental functions and obligations.

Marshall v. Perkins, 494 So.2d at 507.

Florida courts have uniformly recognized that county tax collectors and property appraisers are constitutional officers pursuant to article VIII, §1(d), Florida Constitution. See, e.g., Bystrom v. Whitman, 488 So.2d 520 (Fla. 1986); Straughn v. Tuck, 354 So.2d 368, 371 (Fla. 1977); District School Board of Lee County v. Askew, 278 So.2d 272, 276 (Fla. 1973); Chatlos v. Overstreet, 124 So.2d 1 (Fla. 1960); Dorsett v. Overstreet, 154 Fla. 566, 18 So.2d 759 (1944).

Petitioner P. Randy Miller, as Executive Director of the Florida Department of Revenue (DOR), is responsible for establishing uniform statewide standards governing property

assessment and tax collection. Section 195.002, Florida Statutes. With the conflict between Marshall v. Perkins, Clark v. Cook and Markham v. Corlett on the one hand and Diaz on the other unresolved, the Department of Revenue will be hard-pressed to maintain statewide uniformity regarding collection of delinquent taxes in litigation. At the risk of repeating the obvious, the Department of Revenue urges this Honorable Court to approve the aforementioned decisions of the Second and Fourth Districts and to quash Diaz, since the legislative intent of §194.171 is plainly best served by adhering to the clear language of that enactment.

Chapter 83-204, §7, Laws of Florida, added §194.171(6), Florida Statutes (1983), which definitively provides that the requirements of §194.171 are jurisdictional. The Diaz decision is the sole published decision which departs from the statutory mandate to dismiss the complaints of taxpayers who violate the jurisdictional provisions of §194.171(2), (3) and (5). See Turnberry Towers Corp. v. Bystrom, 496 So.2d 198 (Fla. 3d DCA 1986); Valencia Center, Inc. v. Bystrom, 496 So.2d 198 (Fla. 3d DCA), pet. for review dismissed, case no. 69,630 (Fla. December 19, 1986); Bystrom v. [Hon. Donald E.] Stone, case no. 86-2430 (Fla. 3d DCA November 10, 1986); Schild v. Metropolitan Dade County, case no. 86-479 (Fla. 3d DCA September 19, 1986); Marshall v. Perkins, 494 So.2d 506 (Fla. 2d DCA 1986); Hirsh v. Crews, 494 So.2d 260 (Fla. 1st DCA 1986); Clark v. Cook, 481 So.2d 929 (Fla. 4th DCA 1985); Gulfside Interval Vacations, Inc. v. Schultz, 479 So.2d 776 (Fla. 2d DCA 1985), review denied, 488 So.2d 830 (Fla. 1986); Markham v. Corlett,

453 So.2d 907 (Fla. 4th DCA 1984). See also the unappealed trial court decisions in International Society for Krishna Consciousness Inc. v. Bystrom, 15 Fla. Supp. 2d 17 (Fla. 11th Cir. Ct. 1985); Balmoral Condominium Association, Inc. v. Bystrom, 15 Fla. Supp. 2d 34, 36 ¶5 (Fla. 11th Cir. Ct. 1985).

Diaz stands out as the single anomaly; every other decision applying §194.171 has concluded that a taxpayer's failure to comply with the statute is an absolute jurisdictional bar to proceeding further and requires dismissal with prejudice. The conflict jurisdiction of this Honorable Court is invoked herein not only to adjudicate the substantive rights of the parties in this controversy, but also to maintain uniformity of decisions by harmonizing Diaz with the above-cited cases.

II

SECTION 194.171(5), FLORIDA STATUTES (1983), IS NOT UNCONSTITUTIONAL

The taxpayer has a "just in case" argument. "Just in case" §194.171(5) and (6) actually intend what they say, the taxpayer asserts that the enactments are unconstitutional.

The taxpayer invokes no less than three constitutional provisions purportedly violated by §194.171(5) and (6), Florida Statutes (1983). The first constitutional provision cited is article VII, §13, Florida Constitution. That constitutional provision, however, creates only a restriction upon the judiciary, not a "right" of the taxpayer. It restricts a court from granting relief in certain limited instances. The

taxpayer would have this Court interpret article VII, §13, Florida Constitution, to mean:

> "A court shall not be prohibited from granting a taxpayer relief from any voidable tax as long as all legally assessed taxes have been paid."

Unfortunately for the taxpayer, the constitution does not so read. Section 194.171(5), Florida Statutes (1983), creates a requirement that a pending action be dismissed if legally assessed taxes are delinquent, even if such taxes are subsequently paid. That section in no way conflicts with article VII, §13, Florida Constitution, which imposes a condition for granting of relief only, not for filing or maintaining suit. Petitioners agree that the law prior to 1969 did not contain the jurisdictional prerequisites of payment found in current law. Rather, the test was whether the taxpayer had made tender prior to relief being granted. Collins Investment Company v. Metropolitan Dade County, 164 So.2d 806 (Fla. 1964). However, as this Court pointed out in Adler-Built Industries, Inc. v. Metropolitan Dade County, 231 So.2d 197 (Fla. 1970), the Legislature superseded the holding of the Collins case by adopting contrary statutes.

The second constitutional provision assertedly violated by §194.171(5), Florida Statutes (1983), is article I, §9, Florida Constitution, the due process clause. The due process argument has previously been decided adversely to the taxpayer. Due process does not require that the taxpayer be given a hearing on the merits. Rather, due process requires only that the taxpayer be given a meaningful opportunity to be heard. Millstream Corporation v. Dade County, 340 So.2d 1276, 1278

(Fla. 3d DCA 1977), citing Boddie v. Connecticut, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed. 2d 113 (1971). The taxpayer in this action had such an opportunity, and it was only through his own failure to timely pay even those 1983 taxes which were admittedly owing that he was deprived of a hearing on the purported merits of his assessment claim. The trial court's dismissal of the taxpayer's complaint was mandated by law, and should not have been reversed. See Millstream, 340 So.2d at 1278.

The third constitutional provision which the taxpayer contends is violated by §194.171(5), Florida Statutes (1983), is article I, §21, the "access to courts" provision of the Florida Constitution. Because of the constitutional guarantee of access, courts are generally opposed to burdening the rights of aggrieved persons to access to the courts for redress of injuries. Reasonable restrictions on access, however, may be prescribed by law, Carter v. Sparkman, 335 So.2d 802 (Fla. 1976), cert. denied, 429 U.S. 1041, 97 S.Ct. 740, 50 L.Ed.2d 753 (1977), particularly when such restrictions are in the public interest. Pearlstein v. Malunney, 11 F.L.W. 2641, 2641 (Fla. 2d DCA December 10, 1986).

This issue has likewise previously been disposed of adversely to the taxpayer, however. In G.B.B. Investments, Inc. v. Hinterkopf, 343 So.2d 899, 901 (Fla. 3d DCA 1977), the Third District expressly concluded that requiring a taxpayer to make good faith payments as a prerequisite to contesting an allegedly excessive tax assessment does not constitute an unreasonable restriction on access to the courts. Enactment of a requirement that a taxpayer pay taxes he admits to be owing

before the taxes become delinquent is a reasonable exercise of the Legislature's prerogative to limit the conditions under which actions may be brought and maintained. G.B.B. Investments. See also County of Dade v. Saffan, 173 So.2d 138, 140-41 (Fla. 3d DCA 1965) (jurisdictional requirements are matters for legislative act). Moreover, the "Legislature is necessarily vested with power to enact necessary laws to secure a prompt collection of the annual tax." Rudisill v. City of Tampa, 151 Fla. 284, 9 So.2d 380, 380-81 (1942) (en banc).

The requirement of paying before delinquency the amount of taxes admitted by the taxpayer to be due and owing on the property in all years after the action is commenced is a fair and reasonable condition to maintaining suit. Every taxpayer is held to know that taxes are due and payable annually and all taxpayers are charged with the duty of ascertaining the amount of taxes due and of paying such taxes before the date of delinquency. Section 197.0151(1), Florida Statutes (1983) [§197.332, Florida Statutes (1985)].

It is not too much to require of a taxpayer-litigant that he have knowledge of and comply with the provisions of the very statute he filed suit under. See R. 1 ¶1. As recently articulated by the First District Court of Appeal in Special Disability Trust Fund, Dept. of Labor and Employment Security v. Robbins Manufacturing Co., 484 So.2d 54, 56 (Fla. 1st DCA 1986):

> [W]here a statute confers a right and expressly fixes the period within which to enforce the right, such period is treated as the essence of the right to maintain the action, and . . . the statute limiting the

> time to bring [suit] is not regarded as a technical statute of limitations.

Similarly, where a statute confers a right to sue the county taxing authorities and mandates pre-delinquency payment of undisputed taxes, such timely payment is treated as the essence of the right to maintain the action. Failure to comply with such jurisdictional requirements absolutely bars the claim.

CONCLUSION

The Florida Legislature specifically intended by including subsections (5) and (6) in §194.171, Florida Statutes, that tax collectors should be entitled to require prompt payment of unchallenged taxes prior to delinquency. The provisions of §194.171 are not only reasonable as written, but constitute a crucial enforcement mechanism, because no penalty other than dismissal has been prescribed by the Legislature to encourage intransigent litigants to pay prior to delinquency taxes admitted by the litigants themselves to be due and owing. The instant decision eviscerates that enforcement mechanism by allowing maintenance of a property owner's challenge suit even if he is delinquent in paying undisputed taxes. Thus, Diaz removes a powerful tool in the tax collectors' (and therefore the taxing jurisdictions') arsenal.

Based on the foregoing argument and authorities and upon the undisputed delinquency of the taxpayer herein, Petitioners pray this Honorable Court to quash the decision of the Third District, and to approve the expressly and directly conflicting decisions of the Second District in Marshall v. Perkins and of

the Fourth District in Clark v. Cook and Markham v. Corlett on the same question of law.

Respectfully submitted,

ROBERT A. GINSBURG
Dade County Attorney
Metro-Dade Center
Suite 2810
111 N.W. 1st Street
Miami, Florida 33128-1993
(305) 375-5151

By: Daniel A. Weiss
Daniel A. Weiss
Assistant County Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 5th day of January, 1987, to: EMILIA DIAZ-FOX, ESQ., 200 Southeast First Street, Suite 424, Peninsula Federal Building, Miami, FL 33131.

Daniel A. Weiss
Assistant County Attorney