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' REPLY BRIEF

ROBERT A. GINSBURG
Dade County Attorney

By

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

ROBERT A. BUTTERWORTH
Attorney General

By

J. Terrell Williams
Assistant Attorney General
Dept. of Legal Affairs
The Capitol, Room LL04
Tallahassee, Florida 32301
(904) 487-2142

TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS
(cont'd)

TABLE OF CITATIONS
(cont'd)

PRELIMINARY STATEMENT

This reply brief 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), pursuant to Fla.R.App. 9.210(a), to address arguments raised by respondent-taxpayer Manuel Diaz in his brief on the merits. References to the taxpayer's brief on the merits shall be cited as Br. ____. The trial court and district court opinions, published respectively at 15 Fla.Supp.2d 23 and 487 So.2d 1112, together with a copy of the expressly and directly conflicting opinion and decision in Marshall v. Perkins, 494 So.2d 506 (Fla. 2d DCA 1986), petition for review pending, case no. 69,502, constitute the Appendix to this reply brief and shall be cited as A. _____. All emphasis is supplied by undersigned counsel, unless otherwise indicated.

SUMMARY OF ARGUMENT

The respondent-taxpayer Diaz raises several arguments in his brief on the merits. Each is wholly without merit. Mr. Diaz has misunderstood petitioners' arguments, failed to distinguish controlling precedent, and ignored the importance of this Court's recognition of the unequivocal jurisdictional character of the statute governing filing and maintaining of tax assessment actions and the limited role of the judiciary in establishing the public policy of this State once the legislature has directly addressed a specific issue.

In this appeal, the respondent-taxpayer contends that the legislature intended §194.171(5) and (6), governing jurisdiction of tax assessment suits, to mean that once delinquent taxes are paid, the court may not dismiss the cause. This result is contrary to the plain language of the statute, and directly contravenes the 1983 legislative amendments.

Notwithstanding the unequivocal language of the statute mandating dismissal once subsequent years' taxes become delinquent, Diaz persists in

arguing that statutory construction negates the language of the statute where the taxpayer pays taxes after delinquency. Diaz fails to rebut the principle that no statutory construction is necessary where the words of the statute are plain and unambiguous. Instead, Diaz supports the Third District's decision to rewrite §194.171 to establish jurisdiction where the legislature has decreed there should be none.

The taxpayer cites precedent superseded by contrary legislation in support of his claim that the access to courts provision of the Florida Constitution permits "unfettered access" to taxpayers. In so doing, Diaz wholly fails to address G.B.B. Investments v. Hinterkopf, 343 So.2d 899 (Fla. 3d DCA 1977), which specifically held the jurisdictional good faith payment requirements of §194.171 a reasonable restriction on taxpayers' access to the courts.

The taxpayer argues that the Third District correctly rewrote §194.171 to provide a curative provision for delinquent taxpayers to avoid the clear mandate of the statute's good faith payment requirements. Diaz dismisses virtually without comment the three cases from the Second and Fourth Districts which expressly and directly conflict with the Third District decision herein. Finally, Diaz fails to address the fact that in rewriting the statute, the Third District invaded the exclusive province of the legislature, thereby violating the separation of powers doctrine.

It is a basic rule of statutory construction that the courts must assume that the legislature intended a statutory amendment to have had some objective and to serve a useful purpose, and the courts should give effect to the amendment. The decision of the district court herein is based entirely on that court's view of what the statute should say, rather than what the statute does say. The district court cites not a single precedent in support of its opinion, and completely ignores the plain language of the 1983 legislative amendments to §194.171. This Court should reverse the

decision of the Third District and adopt the expressly and directly conflicting decisions of the Second District and Fourth District on the same question of law.

ARGUMENT

THE DISTRICT COURT ERRED AS A MATTER OF LAW IN RULING THAT THE TAXPAYER'S CAUSE OF ACTION WAS NOT EXTINGUISHED WHEN THE TAXPAYER FAILED TO PAY BEFORE DELINQUENCY UNCONTESTED TAXES FOR THE YEAR AFTER THE ASSESSMENT.

A. The taxpayer attempts to inject irrelevant facts and inapplicable statutes into this appeal.

In his brief, the taxpayer vainly attempts to firm up his flaccid position by interjecting irrelevant facts and inapplicable statutes. The truly relevant facts are three in number:

1. The taxpayer filed suit to contest a 1982 tax assessment and classification (A.2 ¶2; A.5, 487 So.2d at 1112);

2. The 1983 taxes on the subject property became delinquent by operation of law, §197.012, Florida Statutes (1983) [§197.333, Florida Statutes (1985)] on April 1, 1984; (A.2 ¶2; A.5, 487 So.2d at 1112);

3. No payment whatsoever of 1983 taxes with respect to the subject property was made before delinquency.1/

Controlling provisions of law are two in number. Section 194.171, Florida Statutes (1983), provides in pertinent part:

> 194.171 Circuit Court to have original jurisdiction in tax cases. --
>
> * * *
>
> (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

---

1/ The taxing authorities cheerfully concede that all taxes and interest due on the subject property for 1983 were paid on May 30, 1984, nearly two months after delinquency. (A.2 ¶4). This undisputedly late payment could not revivify Diaz's cause of action, which was extinguished when the 1983 taxes became delinquent.

> 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).

The district court correctly discerned that the only issue on appeal is whether the taxpayer's cause of action contesting a 1982 assessment was extinguished by the taxpayer's failure to pay any 1983 taxes on the subject property before delinquency.[2/] The taxpayer has attempted to fix this Court's attention on the payment of 1982 (rather than 1983) taxes. (Br. 2-3; 11-12). This is a red herring across the trail. Consequently, the taxpayer's (tardy[3/] and insufficient) payment of 1982 taxes is not the subject of this appeal, and does not require this Court's attention.

B. No statutory construction is necessary where, as here, the jurisdictional statute unambiguously requires dismissal.

After attempting to obfuscate the issue of which year's delinquent tax payment is the subject of this appeal, the taxpayer proceeds to argue that

---

[2/] The district court said:

> On May 18, 1984, defendants[/taxing authorities] moved to dismiss the action which challenged the 1982 assessment, asserting as grounds therefor that plaintiff was delinquent in paying his 1983 property taxes which, by statute, divested the trial court of subject matter jurisdiction to hear the challenge to the 1982 assessment.

A.5-6, 487 So.2d 1112-13.

[3/] See §197.0134(1), Florida Statutes (1983) [§197.323(1), Florida Statutes (1985)], which specifically authorizes extension of the tax rolls during property appraisal adjustment board proceedings, so that taxes on petitioned parcels may be collected timely notwithstanding the pendency of taxpayers' petitions.

the courts have a responsibility to avoid holding a statute unconstitutional if the statute can be construed within constitutional limits. The taxing authorities do not quarrel with this elementary principle of law. The taxpayer's argument misses the mark, however, for two reasons. First, no statutory construction is necessary where the statute is unambiguous. Second, even assuming arguendo the necessity of statutory construction, the only construction which comports with the constitution without judicially rewriting the statute is the construction requiring dismissal of the taxpayer's action with prejudice once the taxes become delinquent. That construction has been adopted by the trial court hereinbelow and the Second District in Marshall v. Perkins, 494 So.2d 506 (Fla. 2d DCA 1986), petition for review pending, case no. 69,502, and the Fourth District in Clark v. Cook, 481 So.2d 929 (Fla. 4th DCA 1985), and Markham v. Corlett, 453 So.2d 907 (Fla. 4th DCA 1984).

Subsections (5) and (6) of §194.171, Florida Statutes (1983), unambiguously and unequivocally provide in pertinent part:

> The requirements of subsections (2), (3), and (5) are jurisdictional. *** A court shall lose jurisdiction of a case when the taxpayer has failed to comply with the requirements of subsection (5) [that] [n]o 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.

Apparently, the taxpayer argues that the constitutional validity of the foregoing unambiguous legislation can be sustained only by judicially rewriting the foregoing statute to imply the presence of the following language:

> "Notwithstanding the plain language of subsections (5) and (6), a court shall regain jurisdiction of a case if the taxpayer pays all taxes on the property assessed in years after the action is brought, which the taxpayer in good faith admits to be owing, after they become delinquent but before a hearing on the motion to dismiss for lack of jurisdiction."

The issue in this appeal, however, is not, as the taxpayer seems to believe, whether the constitution would permit the legislature to enact the fanciful and fictitious statutory language quoted above. The threshold issue is whether the unambiguous provision, in the form enacted by the legislature, which unquestionably requires dismissal of an action where, as here, no subsequent year's tax payment has been made before delinquency, requires any statutory construction. The answer to this question must be a resounding "No!"

The 1983 Florida legislature added subsection (6) to §194.171, unequivocally declaring the legislative intent that the 60-day statute of nonclaim period for filing suit and the good faith payment requirements for filing and maintaining suit be regarded by the courts as jurisdictional. Chapter 83-204, §7, Laws of Florida.[4/] Assuming arguendo the necessity of statutory construction, the holding of the district court (totally ignoring the 1983 statutory amendments made by the legislature to the critical provisions of §194.171) violates an established rule of statutory construction that "it should never be presumed that the legislature intended to enact meaningless and useless legislation and it must be assumed that the provisions enacted by the legislature are intended to have some useful purpose." See Smith v. Piezo Technology & Professional Administrators, 427 So.2d 182, 184 (Fla. 1983), and Dickinson v. Davis, 224 So.2d 262, 264 (Fla. 1969).

In the treatise on statutory construction in 49 Fla.Jur.2d, Statutes, §134 (1984), at p. 176, the following general rule of statutory construction is set forth:

4/ These provisions took effect July 1, 1983 and apply to assessment rolls and taxes levied thereon for 1983 and each year thereafter. Chapter 83-204, §43, Laws of Florida.

> With regard to a statutory amendment, the rule of construction is to assume that the legislature intended the amendment to serve a useful purpose. In making material changes in the language of a statute, the legislature is presumed to have intended some objective or alteration of the law unless the contrary is clear from all the enactments on the subject. The courts should give appropriate effect to the amendment.

The inherent power of the legislature to enact general law pertaining to the jurisdiction of circuit courts in cases involving the legality of tax assessments has been expressly recognized by the appellate courts of this state. See Williams v. Law, 368 So.2d 1285, 1287 (Fla. 1979), and State ex rel. Dept. of General Services v. Willis, 344 So.2d 580, 589 (Fla. 1st DCA 1977). In Williams v. Law, at pp. 1286-87 of that decision, this Court observed as follows:

> For many years the circuit courts have had original and exclusive jurisdiction of all cases involving the legality of any tax assessment. Art. V., §6(3), Fla. Const. (1968); Fla. Const. of 1885, art. V, §11. When article V was revised in 1972, this jurisdiction was retained subject to change by general law. Art. V, §20(c)(3), Fla. Const.

Nowhere has the legislature so much as hinted that it intended to allow taxpayers to cure the jurisdictional defect of delinquent good faith payment. Unquestionably, the legislature could have provided such a curative provision if it had so desired.[5/]

The taxpayer has utterly failed to address the threshold principle of law that unambiguous enactments require no construction. Where, as here, no doubts arise from the language or terms of the provision in question, no

---

5/ Cf. §607.357(6), Florida Statutes (1983) ("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 . . . .") with §194.171(5) and (6), Florida Statutes (1983). Plainly, the legislature knows how to enact a provision allowing a litigant to cure a delinquent tax payment. It simply did not do so when it enacted §194.171(5) and (6) governing jurisdiction in tax assessment cases. See chapter 83-204, Laws of Florida.

occasion exists for statutory construction. Under such circumstances, the courts' sole responsibility is to apply the statute as it is written.[6/]

It can scarcely be argued -- and Diaz does not even attempt to argue -- that the applicable provisions are ambiguous. Indeed, outside of penal statutes, the legislature rarely enacts provisions in more ringing categorical terms than those of §194.171(5) and (6), which are "jurisdictional," and which provide that "any" action "shall be dismissed" unless "all" uncontested taxes are paid "before they become delinquent."

C. Dismissal of the taxpayer's claim for failure to pay uncontested taxes prior to delinquency does not violate Florida's constitutional guarantee of access to the courts.

Rather than advance the untenable argument that §194.171(5) and (6) is ambiguous as written, the taxpayer reiterates the same constitutional arguments which confounded the Third District. Without intelligible analysis, at p. 13 of its brief, the taxpayer simply quotes article I, §21 of the Florida Constitution.[7/]

Apparently, Diaz holds the belief that this constitutional access to the courts provision is supposed to serve as some shibboleth or talisman to enable the taxpayer to continue to litigate a claim by paying taxes after delinquency which the legislature has mandated must be paid before delinquency. The Third District was led along the primrose path and persuaded to characterize article I, §21 as a constitutional guarantee of "unfettered

---

6/ See, e.g., Citizens of the State of Florida v. Public Service Commission, 425 So.2d 534, 541-42 (Fla. 1982) ("[W]here the language of the statute is so plain and unambiguous as to fix the legislative intent and leave no room for construction, the courts should not depart from the plain language used by the legislature."); see also Armstrong v. City of Tampa, 106 So.2d 407, 409 (Fla. 1958) (distinguishing between construction and mere application of statutory language).

7/ Access to courts. -- The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

access to the courts." A.6, 487 So.2d at 1113. This is the first time any Florida appellate court has held article I, §21 to provide "unfettered access." It is axiomatic that it is the responsibility of the legislature to determine precisely which fetters on access to the courts public policy demands. For example, in County of Dade v. Saffan, 173 So.2d 138, 140-41 (Fla. 3d DCA 1965), the district court held that "[A]ppeal time, having been held jurisdictional, is a matter for legislative act, not court rule." The court access provision of the Florida Constitution is no more violated by the jurisdictional pre-delinquency good faith payment requirements of §194.171, which prescribes jurisdictional review of tax assessments, than it is by §59.081(2),[8/] which was reviewed in Saffan. The Third District decision must be reversed in order to counteract the anomalous, unprecedented and erroneous ruling that article I, §21 guarantees "unfettered access" to the courts.

Ironically, the jurisdictional character of the good faith payment requirements of §194.171 has specifically been ruled a constitutionally valid legislative "fetter" on taxpayers' access to the courts. See G.B.B. Investments, Inc. v. Hinterkopf, 343 So.2d 899, 901 (Fla. 3d DCA 1977). The taxpayer's brief fails even to attempt to rebut the holding of G.B.B. Investments, which was set forth in petitioners' brief on the merits, at pp. 18-19. Understandably, even Diaz's fertile imagination is stymied by

---

[8/] Section 59.081(2) provides:

> 59.081 Time for invoking appellate jurisdiction of any court. --
>
> * * *
>
> (2) Failure to invoke the jurisdiction of any such court within the time prescribed by such rules shall divest such court of jurisdiction to review such cause.

the express holding of G.B.B. Investments that requiring a taxpayer to make timely good faith payments prerequisite to contesting an allegedly excessive tax assessment does not constitute an unreasonable restriction on access to the courts in violation of article I, §21.

D. The relief from illegal taxes provision of the Florida Constitution imposes no limitation on the legislature, but simply supplements the jurisdictional statute.

After failing to address the G.B.B. Investments decision specifically upholding §194.171 as establishing reasonable limitations on access to the courts in tax assessment actions, Diaz misreads the relief from illegal taxes provision of the Florida Constitution, arguing that it is a limitation on the legislature. (Br. 13-14). Article VII, §13 of the Florida Constitution, however, provides:

> Relief from illegal taxes. -- Until payment of all taxes which have been legally assessed upon the property of the same owner, no court shall grant relief from the payment of any tax that may be illegal or illegally assessed.

Diaz reads the foregoing provision as a limitation on the legislature and essentially argues that under the statutory construction axiom "Inclusio [sic] Unius Est Exclusio Alterius"[9/] (Br.14), the legislature is prohibited from enacting any legislation regarding payment of taxes. The taxpayer's rationale for this erroneous position is that the framers of the Constitution "did not intend any other limitation." (Br.14).

The taxpayer's reading of the constitution's relief from illegal taxes provision is clearly wrong. That constitutional provision places no

---

9/ If the axiom "expressio unius est exclusio alterius" applies in any way in this appeal, it applies to exclude revival of a legally dead action under the facts at bar. This is true because the statute decrees that once a subsequent year's tax payment becomes delinquent, the cause shall be dismissed for lack of jurisdiction, but makes no provision for revival of the cause.

limitation on the legislature. It places a limitation only on the courts. The limitation imposed on Florida courts by this self-executing constitutional provision supplement the jurisdictional limitations imposed by §194.171. The constitutional and statutory requirements are not identical, but are both entitled to enforcement and should be read as cumulative and supplemental.

Unlike the statute, which requires partial payment of taxes before filing an action and before delinquency, the constitutional provision limits the granting of judicial relief without defining specific time limitations. The constitutional provision is broader than the statute, however, in that it demands payment of all legally assessed taxes as a precondition to granting relief, which manifestly includes taxes for both prior and subsequent years, whereas the statute is silent as to payment of taxes for prior years. The constitutional provision also refers broadly to all taxes legally assessed "upon the property of the same owner," which facially does not appear to be restricted to the parcel in controversy. Florida State & Local Taxes, Vol. II, §8.02[03][a] (emphasis in original).

The Third District apparently adopted the taxpayer's erroneous reading of article VII, §13 as a limitation on the legislature, because it cited that constitutional provision as a "constitutional guarantee[] of unfettered access to the courts." A.6, 487 So.2d at 1113. The taxpayer cites as principal support for its misinterpretation the decision of this Court in Collins Investment Co. v. Dade County, 164 So.2d 806 (Fla. 1964). (Br.15-16). The taxpayer conveniently overlooks the fact that this Court explicitly held the Collins decision superseded by enactment of chapter 69-140, Laws of Florida, which required "as a jurisdictional prerequisite, the payment into court of the amount of the tax to be legal and due." Adler-Built Industries, Inc. v. Metropolitan Dade County, 231 So.2d 197, 199 (Fla. 1970).

E. The taxpayer has failed to show why the jurisdictional statute should not be applied as unambiguously written, to require "dismissal" of "any action" where the taxpayer fails to pay uncontested taxes "before delinquency."

Ignoring the fact that Markham v. Corlett, 453 So.2d 907 (Fla. 4th DCA 1984), directly holds §194.171(5) a jurisdictional requirement for maintaining suit, Diaz dismisses Clark v. Cook, 481 So.2d 929 (Fla. 4th DCA 1986), and Marshall v. Perkins, 494 So.2d 506 (Fla. 2d DCA 1986), pet. for review pending, case no. 69,502, in a single paragraph as lacking "reasonable consideration or analysis of the Florida Constitutional limitations considered by the present court." (Br.16). Significantly, Clark v. Cook held that once the time passed for a jurisdictional tax payment, "the action was legally dead for lack of jurisdiction; the late tender could not breathe life back into the action...." 481 So.2d at 931. Diaz makes no attempt to rebut or distinguish the cases which enunciate the underlying principle that once the time for taking a jurisdictional act has expired, the cause of action is extinguished. See, e.g., Levine v. Dade County School Board, 442 So. 210, 213 (Fla. 1983); Dukanauskas v. Metropolitan Dade County, 378 So.2d 74, 76 (Fla. 3d DCA 1979).

By rejecting Marshall v. Perkins without analysis, Diaz deprived himself of the opportunity to discuss the Second District's reasoning:

> 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. 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.

A.9, Marshall v. Perkins, 494 So.2d at 507.

Moreover, a compelling reason to adopt the Second District opinion in Marshall and quash the Third District decision herein is found in the statutory delinquent interest provisions. Interest on delinquent real property taxes for nonlitigating taxpayers is 18% per year. Section 197.0124(1), Florida Statutes (1983) [§197.172, Florida Statutes (1985)]. Litigating taxpayers, on the other hand, pay delinquent interest on deficiencies in taxes at the lower rate of 12% per year. Section 194.192(2). The only imposition on litigating taxpayers which in any way offsets the favorable treatment they receive when delinquent deficiencies are calculated is the threat of absolute dismissal under §194.171(5) and (6) if uncontested taxes are not paid prior to delinquency. Thus, the policy reasons for this consequence support its apparent rigidity.

Under Diaz, the Third District authorizes the taxpayer to avail himself of the advantageous litigation interest rate, but does nothing to require pre-delinquency payment; the taxpayer is safe in the knowledge that he can wait for the taxing authorities to move for dismissal after delinquency before paying even uncontested portions of subsequent years' assessments. The taxpayer sub judice expressly recognizes this, chastising the taxing authorities for waiting until May 18 to file their motion to dismiss for lack of jurisdiction (R.9-10) based on the April 1 delinquency date. (Br.16). Thus, the litigating taxpayer not only is not denied equal protection under the Marshall v. Perkins application of §194.171(5) and (6), but continues to receive more favorable treatment than nonlitigating taxpayers, in the form of (1) reduced rate of delinquent interest, and (2) requirement of only good faith partial tax payment, rather than payment in toto. Thus, sound policy reasons support application of §194.171(5) and

(6) as written by the legislature as an absolute jurisdictional impediment to continuing judicial attack upon an assessment.

Finally, Diaz has failed to address the Third District's breach of the separation of powers clause, article II, §3, Florida Constitution, in judicially amending §194.171 to "import[] absent language into the statute." A.9, Marshall v. Perkins, 494 So.2d at 507. It is the firmly established constitutional policy of this State that while the courts "may determine public policy in the absence of a legislative pronouncement, such a policy decision must yield to a valid, contrary legislative pronouncement." Van Bibber v. Hartford Accident & Indemnity Ins. Co., 439 So.2d 880, 883 (Fla. 1983). Consequently, the district court decision not to dismiss the taxpayer's claim must yield to the valid, contrary legislative pronouncement mandating dismissal.

The applicable public policy has been clearly announced by the legislature. Taxpayers' lawsuits will be "dismissed" in "any" instance where the taxpayer fails to make a good faith payment of uncontested taxes "before delinquency." Section 194.171(5). Even if there were affirmative evidence (there is none) that the legislature intended but inadvertently omitted a curative provision, the Third District would have to be overruled for supplying one. This is true because "courts should not rewrite legislation to cure an omission by the legislature just because it seems to fit overall legislative policy." Capeletti Bros., Inc. v. Dept. of Transportation, 499 So.2d 855, 857 (Fla. 1st DCA 1986). How much more so is it true that the court should not rewrite a statute where there is not even a hint the legislature intended the anomalous result fashioned through judicial legislation herein. Sub judice, the district court has held that the taxpayer's claim should not be dismissed, although the jurisdictional statute expressly mandates dismissal. "It is apodictic [, however,] 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).

CONCLUSION

Neither precedent, logic, nor fairness supports the taxpayer's position. 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.

Respectfully submitted,

ROBERT A. GINSBURG
Dade County Attorney

By: Daniel A. Weiss
Daniel A. Weiss
Assistant County Attorney
Metro-Dade Center
Suite 2810
111 N.W. 1st Street
Miami, Florida 33128-1993
(305) 375-5151

ROBERT A. BUTTERWORTH
Attorney General

By: Daniel A. Weiss for
J. Terrell Williams
Assistant Attorney General
Dept. of Legal Affairs
The Capitol, Room LL04
Tallahassee, Florida 32301
(904) 487-2142

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 17th day of March, 1987, to: EMILIA DIAZ-FOX, ESQUIRE, 44 West Flagler Street, Suite 350, Courthouse Tower, Miami, Florida 33130.

Daniel A. Weiss
Assistant County Attorney