

IN THE SUPREME COURT OF THE STATE OF FLORIDA

FLORIDA DEPARTMENT OF
REVENUE AND OFFICE OF
THE COMPTROLLER,

Appellants,

CASE NO. 70,186

vs.

FIRST UNION NATIONAL BANK
OF FLORIDA, a national bank,
and FIRST UNION CORPORATION
OF AMERICA, a bank holding
company,

Appellees.

On Appeal from the Florida First District Court of Appeal

ANSWER BRIEF OF AMICUS CURIAE,
BARNETT BANKS OF FLORIDA, INC.

MAHONEY ADAMS MILAM
SURFACE & GRIMSLEY
Robert J. Winicki, Esquire
Post Office Box 4099
Jacksonville, Florida 32201
(904) 354-1100

TABLE OF CONTENTS

	<u>Page</u>
Table of Citations	ii
Statement of the Case and Facts	1
Summary of Argument	2
Argument	3
THE COURT SHOULD NOT AFFIRM ON A PURELY PROSPECTIVE BASIS	3
Conclusion	5
Certificate of Service	5

TABLE OF CITATIONS

	<u>Page</u>
<u>City of Tampa v. Thatcher Glass Corp.,</u> 445 So.2d 578 (Fla. 1984)	3
<u>Colding v. Herzog,</u> 467 So.2d 980 (Fla. 1985)	3
<u>Gay v. Bessemer Properties, Inc.,</u> 159 Fla. 729, 32 So.2d 587 (1947)	4
<u>Holland ex rel. Williams v. Mays,</u> 155 Fla. 129, 19 So.2d 709 (1944)	4
<u>Osterndorf v. Turner,</u> 426 So.2d 539 (Fla. 1982)	3
<u>State ex rel. Attorney General v. City of Avon Park,</u> 108 Fla. 641, 149 So. 409 (1933).	4
 <u>MISCELLANEOUS</u>	
<u>Note, Article I, Section 21: Access to</u> <u>Courts in Florida, 5 F.S.U.L.Rev. 871 (1977).</u>	4

STATEMENT OF THE CASE AND FACTS

Amicus curiae, Barnett Banks of Florida, Inc. ("Barnett"), does not disagree with the statement of the case and of the facts filed by the Appellants, Florida Department of Revenue and Office of the Comptroller.

Barnett's particular interest in this case is that of a taxpayer under Part VII of Chapter 220 of the Florida Statutes. Barnett has filed suit against the Appellants to obtain a return of the additional taxes paid on the income it earned on United States obligations. Barnett's suit is currently pending in the Florida Fourth Judicial Circuit Court in Duval County.

Barnett's brief will only address the issue of whether the Court's decision should be made on a purely prospective basis.

SUMMARY OF ARGUMENT

Appellants have argued in a footnote of their brief that in the event the Court affirms the Florida First District Court of Appeal, it should do so on a purely prospective basis. To the extent Appellants are requesting a ruling which operates prospectively on taxpayers who have timely judicially challenged the taxing statute at issue in this appeal, such a ruling would be contrary to existing Florida case law.

Beginning in 1982, the Court in a series of three cases which overturned tax assessments has held that its decisions operate prospectively "except for those taxpayers who have timely judicially challenged" the taxes. Barnett is a taxpayer which has timely judicially challenged the taxing statute and is entitled to argue the merits of its position with regard to obtaining a refund.

ARGUMENT

THE COURT SHOULD NOT AFFIRM ON A PURELY PROSPECTIVE BASIS.

In a footnote to the Appellants' brief, they argued that should the Court affirm the Florida First District of Court of Appeal, it should do so "on a pure prospective" basis. Appellants' Initial Brief at 35 n.12. Barnett submits that a purely prospective ruling would be contrary to existing Florida case law.

The Court has decided in a series of three recent cases overturning tax assessments that its decisions operate prospectively "except for those taxpayers who have timely judicially challenged" the taxes. Colding v. Herzog, 467 So.2d 980, 983 (Fla. 1985); City of Tampa v. Thatcher Glass Corp., 445 So.2d 578, 580 (Fla. 1984); Osterndorf v. Turner, 426 So.2d 539, 542 (Fla. 1982).

Barnett has timely judicially challenged the taxing statute at issue in this appeal. Barnett is entitled to argue the merits of its position with regard to obtaining a refund in the event the Court affirms the decision of the Florida First District Court of Appeal. Any other ruling would conflict with Section 21 of Article I of the Florida Constitution which provides:

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

Section 21's constitutional predecessor has been applied by the Court to actions challenging the validity of taxes. See

Gay v. Bessemer Properties, Inc., 159 Fla. 729, 32 So.2d 587, 591 (1947); State ex rel. Attorney General v. City of Avon Park, 108 Fla. 641, 149 So. 409, 417 (1933). See generally Note, Article I, Section 21: Access to Courts in Florida, 5 F.S.U.L.Rev. 871, 878 (1977).

As the Court has stated many times, "for every wrong there is a remedy" in the Florida courts. E.g., Holland ex rel. Williams v. Mays, 155 Fla. 129, 19 So.2d 709, 711 (1944). This maxim requires that an affirmance by the Court not be on a purely prospective basis.

CONCLUSION

The Court should affirm the decision of the Florida First District Court of Appeal and deny the Appellants' request to rule on a purely prospective basis.

Respectfully submitted,

MAHONEY ADAMS MILAM SURFACE & GRIMSLEY

By

Robert J. Winicki

Robert J. Winicki
Post Office Box 4099
Jacksonville, Florida 32201
(904) 354-1100

ATTORNEYS FOR BARNETT BANKS
OF FLORIDA, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to LINDA LETTERA, Assistant Attorney General, Department of Legal Affairs, The Capitol-Tax Section, Tallahassee, Florida 32399-1050, and THOMAS M. ERVIN, JR., ESQUIRE, Post Office Box 1170, Tallahassee, Florida 32302, by U.S. Mail this 16th day of April, 1987.

Robert J. Winicki

Attorney

3282b