IN THE SUPREME COURT OF FLORIDA

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CASE NO. 70,533

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IN RE: ADVISORY OPINION OF THE GOVERNOR,
REQUEST OF MAY 12, 1987

**BRIEF OF THE HONORABLE ROBERT A. BUTTERWORTH,
ATTORNEY GENERAL OF THE STATE OF FLORIDA**

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## INTRODUCTION

This brief is filed on behalf of the Attorney General of the State of Florida.

While the Governor's request for an Advisory Opinion raises several separate questions, this brief does not address each point. Counsel supporting the tax have coordinated their efforts to insure efficient coverage of all issues. The Attorney General supports the arguments contained in the briefs filed on behalf of the Governor and the Legislature.

This brief first provides a helpful overview of the general rules which would be applied in any legal opinion analyzing constitutional challenges made against the validity of a statute. This section discusses the general rules of constitutional analysis to the degree appropriate to the task of rendering an Advisory Opinion.

The brief then demonstrates that Chapter 87-6, Laws of Fla., does not violate the single subject requirement of Article III, Section 6 of the Florida Constitution.

## STATEMENT OF THE CASE

Pursuant to Article IV, Section 1(c) of the Constitution of the State of Florida, Governor Martinez requested the Justices of the Florida Supreme Court, by letter dated May 12, 1987, to render their opinion to him as to the interpretation of his "executive duties and responsibilities" under the Florida Constitution in light of the Florida Legislature's enactment of Chapter 87-6.

In order to conserve judicial time and resources, the Attorney General supports and joins in the statements contained in the Brief of the Governor concerning the propriety of this Court's rendering an Advisory Opinion to the Governor in this matter.

## STATEMENT OF THE HISTORY OF CHAPTER 87-6, LAWS OF FLORIDA

To fully understand the single subject argument contained in this brief, it is necessary to discuss the immediate history of the passage of Chapter 87-6, Laws of Fla. A statement describing the complete history and operation of the tax can be found in the brief of the Legislature to which the Justices are respectfully referred.

The Legislature first expressed its intent to remove the exemption and affirmatively tax services more than a year ago in Chapter 86-166, Laws of Fla. That chapter would have imposed a tax "[a]t the rate of 5 percent of the consideration for performing or providing any service." Ch. 86-166, § 3. At the same time, the Legislature repealed the exemption for "professional, insurance or personal service transactions which involve sales as inconsequential elements for which no separate charges are made." Ch. 86-166, § 8. (repealing F.S. § 212.08(7)(d)). The Legislature postponed the effective date of these amendments until July 1, 1987.

The Legislature's decision to postpone reflected its recognition that these actions warranted further consideration and, perhaps, future legislative attention. To this end, the Legislature directed that two studies be undertaken. The first studied the revenue effects of Chapter 86-166 and the legal and administrative issues it raised. The Legislature assigned this task to the Department of Revenue (DOR) in consultation with the Revenue Estimating Conference. See Gen. Approp. Act, Ch. 86-167, § 1, line 1588A. The second study was of "the public policy and fiscal impact of the exemptions from the sales

tax" which was to include recommendations as to the exemptions, retention, modification, or repeal. Ch. 86-166, § 9. To carry out this study, the Legislature created a 21-member Sales Tax Exemption Study Commission appointed by leaders of both houses of the Legislature and by the Governor. Both studies were to be completed prior to the Legislature's 1987 session.

The Department of Revenue's study was completed in early March 1987. See Florida Department of Revenue, Report to the Florida Legislature: Legal, Administrative and Revenue Implications of Chapter 86-166, Laws of Florida: Repeal of Sales Tax Exemptions for Services and Selected Transactions (March 1987) (DOR Report) (lodged with the Justices). The DOR Report also contained an extensive legal analysis of Chapter 86-166 and a Model Annotated Revision (Revision) of Florida's preexisting sales tax (Chapter 212). The revision, which was prepared by expert legal consultants retained by DOR, was designed to integrate in a clear, workable, and constitutional manner the preexisting provisions of Chapter 212 with the sales tax on services imposed by Chapter 86-166.

The Sales Tax Exemption Study Commission's study was completed in early April 1987, after months of information gathering, public hearings, and private deliberation. See Sales Tax Exemption Study Commission, Report and Recommendations of the Sales Tax Exemption Study Commission (April 1987) (Commission Report) (lodged with the Justices). The Commission Report recommended the enactment of a broad-based sales tax on services, and endorsed the "technical

recommendations" of the revision that "serve to integrate the taxation of services with the provisions of the current tax law." Id. at 3-4.

During March and April of 1987, the Governor, the Senate, and the House focused on Florida's revenue needs and the sales tax on services. The DOR Report and the Commission Report provided the starting point for legislative consideration. These works were then subjected to intense scrutiny by the Governor, by the Senate and House Finance and Tax Committees and their expert staffs. Other interested parties expressed their views formally at public hearings and informally through communications with representatives of the Executive and Legislative branches. As a result the Revision was examined, refined and modified during the legislative process. The package that emerged on April 23, 1987 as Chapter 87-6, Laws of Fla., was then signed into law by the Governor. More recently, Chapter 87-6 has been amended by Chapter 87-72, Laws of Fla., signed into law by the Governor on June 5, 1987. Counsel to the Governor has filed a copy of Chapter 87-72 with this Court this date.

## SUMMARY OF ARGUMENT

Although the Governor's request raises numerous issues, to conserve the Justices' time and resources, this brief addresses only one issue, whether Chapter 87-6, violates the single subject requirement of Article III, Section 6 of the Florida Constitution. The remaining issues are covered in the briefs filed by the Governor and the Legislature.

Since every law is presumed valid, one challenging an act bears the burden to show its invalidity and must do so beyond all reasonable doubts. This the challengers have failed to do.

The tax does not violate Article III, Section 6 of the Florida Constitution. The process of enactment does not show the earmarks of fraud, surprise or logrolling. Moreover, the various provisions of the Act each are matters properly connected to the subject of taxation. The Legislature may define the subject of the Act. Current case law supports the finding that the subject "taxation" does not violate Article III, Section 6 of the Florida Constitution.

## I. GUIDED BY THE GENERAL PRINCIPLES WHICH WOULD BE APPLIED BY A COURT TO RESOLVE CONSTITUTIONAL ATTACKS ON THE FACIAL VALIDITY OF A STATUTE, THE JUSTICES SHOULD ADVISE THE GOVERNOR THAT OPPONENTS HAVE NOT SHOWN THE TAX TO BE CONSTITUTIONALITY INVALID ON ITS FACE

In calling for the Advisory Opinion the Governor referred to several constitutional challenges. In rendering an opinion advising on the Act's validity, the Justices must see whether it will meet "constitutional muster" if attacked in court. State v. Kaufman, 430 So.2d 904 (Fla. 1983). This section provides an overview of the general principles applied by courts which should be considered by the Justices in reaching their opinion here.

It is beyond peradventure that every law is presumed valid. Bunnell v. State, 453 So.2d 808 (Fla. 1984); Metropolitan Dade County v. Bridges, 402 So.2d 411 (Fla. 1981). Given this presumption, the burden of proving a statute unconstitutional is upon the party challenging the act. Peoples Bank of Indian River County v. State, Dep't. of Banking & Finance, 395 So.2d 521 (Fla. 1981). The challenging party must prove "beyond all reasonable doubt" that the challenged act is in conflict with some designated provision of the Constitution. Metropolitan Dade County v. Bridges, supra; A.B.A. Industries, Inc. v. City of Pinellas Park, 366 So.2d 761 (Fla. 1979).

Here the Justices have only been requested to render their opinion as to the facial validity of the Act. In this effort, the Justices are guided by their test found in Crandon v. Hazlett, 157 Fla. 574, 26 So.2d 638 (1946):

> [T]he vice of constitutional invalidity must inhere in the very terms of the title or body of the act. If this cannot be made to appear from argument deduced from its terms or from matters of which the court can take judicial knowledge, we will not go beyond the face of the act to seek grounds for holding it invalid.

Id. at 643, quoting State v. Armstrong, 127 Fla. 170, 172 So. 861, 862 (1937) (emphasis added). In accordance with this rule, Florida courts have consistently held that examinations of the facial constitutionality of a statute must be restricted to the issue of whether any state of facts, either known or assumed, afford support for the challenged statute. See, e.g., State v. Bales, 343 So.2d 9, 11 (Fla. 1977); State ex rel. Adams v. Lee, 122 Fla. 639, 166 So. 249, 254 (1935), affirmed on rehearing, 122 Fla. 670, 166 So. 262 (1936), cert. denied, 299 U.S. 542, 57 S.Ct. 15 (1936).

Furthermore, in reaching their opinion on the facial constitutionality of the Act, the Justices should recognize that the Florida courts will not pass upon the wisdom of the Legislature in enacting the Tax or question the choice made by the Legislature among the various options available to it. See, Fraternal Order of Police, Metro. Dade County, Lodge No. 6 v. Dep't. of State, 392 So2d 1296 (Fla. 1980). Rather, once the Legislature makes a determination that the law has an important public purpose, such as taxation for revenue sources, the party challenging the determination must show that this legislative determination was so clearly wrong that it was beyond the power of the Legislature to enact. State v. Orange County Indus. Development Authority, 417 So.2d 959 (Fla. 1982).

In sum, because every presumption is indulged in favor of the validity of the Legislature's action, an opinion of invalidity would only be justified here if the Legislature has clearly usurped its power. Eastern Airlines, Inc. v. Department of Revenue, 455 So.2d 311, 314 (Fla. 1984), citing Walters v. City of St. Louis, 347 U.S. 231, 74 S.Ct. 505 (1954). Clearly it has not done so here.

## II. THE ACT EMBRACES BUT ONE SUBJECT - TAXATION - MATTERS PROPERLY CONNECTED THEREWITH

Article III, Section 6 of the Florida Constitution (1968) states in pertinent part that: "Every law shall embrace but one subject and matter properly connected therewith. . . ." As will be seen, in the process of its passage, Chapter 87-6 did not violate the intendments of this restriction. More importantly, the Act deals with but one subject: taxation and matters properly connected therewith.

The purpose behind Article III, Section 6 is two-fold. First, it is to insure that fair and reasonable notice is provided the legislators and the public of the contents of the proposed act, Santos v. State, 380 So.2d 1284 (Fla. 1980), thereby preventing surprise or fraud on the public or legislators. Coldewey v. Board of Public Instruction, 189 So.2d 878 (Fla. 1966). Secondly, the limitation prevents hodgepodge and logrolling legislation. E.g., State v. Lee, 356 So.2d 276 (Fla. 1978); see generally, Department of Education v. Lewis, 416 So.2d 455, 459 (Fla. 1982). Neither purpose of this constitutional limitation was violated by Chapter 87-6.

The Lee court explained the purpose of Article III, Section 6 as follows:

> The purpose of the constitutional prohibition against a plurality of subjects in a single legislative act is to prevent a single enactment from becoming a "cloak" for dissimilar legislation having no necessary or appropriate connection with the subject matter.

State v.Lee, supra, at 282. This statement of purpose was reiterated most recently in Smith v. Department of Insurance, ______ So.2d _____,

12 F.L.W. 189 (Fla. 1987); see also, Fine v. Firestone, 448 So.2d 984, 988 (Fla. 1984) ([A]rticle III, Section 6, prohibits what is known as "logrolling").

"This constitutional provision. . . .is not designed to deter and impede legislation by requiring laws to be unnecessarily restrictive in their scope and operation. . . . This Court has consistently held that a wide latitude must be accorded the legislature in the enactment of laws, and this Court will strike down a statute only when there is a plain violation. . . ." State v. Lee, supra, at 282 (citations omitted). "An extensive body of constitutional law teaches that the purpose of article III, section 6 is to ensure that every proposed enactment is considered with deliberation and on its own merits." Department of Education v. Lewis, supra, at 459.

The purposes of the constitutional limitation being what they are, the judicial branch takes a practical, common sense view of the limitation and acknowledges that the legislative process presents opportunities for review and debate. Smith, infra; Fine v. Firestone, supra.

The circumstances of this case provide no basis for invoking the prohibitions of Article III, Section 6. No matters included in the enactment are foreign to the subject of taxation. There is no suggestion that the Act's provisions produce fraud or surprise; that they were carelessly or unintentionally adopted; that the earmarks of logrolling were present; or that the Act joined different provisions in such a way as to compel the Executive to accept the good with the bad, or that it was timed to do so.

Further, the careful and extended consideration given Chapter 87-6 is almost without precedent in the area of Florida taxation. As set forth in the Statement of the History of Chapter 87-6, the present statute had been preceded by Chapter 86-166, Laws of Fla., by the hearings and reports of the Sales Tax Exemption Study Commission, by the DOR Report and by hearings in both houses of the Legislature. The public had ample notice that a sales and use tax was under consideration by virtue of Chapter 86-166, the Commission activities and Report, the DOR Report and the fact that the tax had been requested by the Governor, who took an active role in the process. There can be no contention that passage of the enactment was pressured by the time constraints of the session. Cf., Fine v. Firestone, at 988. In short there is no indication of fraud, surprise or logrolling.

The reasons for passage of Chapter 87-6 are not difficult to discern given resort to those same sources utilized in prior single-subject analysis and pointed out in the companion brief of the Florida Senate and House of Representatives. Chapter 87-6 represents the Legislature's attempt to equitably broaden the state's tax base to provide, now and in the future, the resources necessary to deal with the enormous strains which growth places on government. This objective was based upon careful studies of Florida's future needs. It is succinctly stated by the Legislature in the preamble to Chapter 87-6: "Florida is one of the nation's fastest growing states and by 1990 will be its fourth largest state and must equitably fund the costs of providing the infrastructure necessitated by such growth

. . . ." This finding is entitled to a presumption of correctness. Moore v. Thompson, 126 So.2d 543, 549 (Fla. 1960). This is the object of Chapter 87-6 providing the logical connection which integrates the various provisions.

The subject of Chapter 87-6 is readily discernible, the Legislature defining it in the title to be "An act relating to taxation. . .." It is clearly the Legislature's prerogative to define the subject. E.g., Smith, supra. The various sections of the Act each appertain to the subject. Rather than violating the Constitution, the Act's singularity eases the burden of those with a duty to examine or act under it by placing related tax matters into one comprehensive package. See, Gibson v. State of Florida, 16 Fla. 291, 299 (1877).

Having kept in mind the purposes behind the constitutional limitation, the judicial branch has previously construed the Constitution to permit the Legislature to enact comprehensive packages geared toward remedying varied social ills. E.g., Lee at 282. This is plainly and simply a tax statute, nothing more, intended to fund the State's needs and administer the program.

As noted earlier, Article III, Section 6, states in pertinent part that, "Every law shall embrace but one subject and matter properly connected therewith, . . .". Thus the constitutional limitation expressly authorizes a law to include any matters properly appurtenant to the subject. Moreover, these matters are not required to have any specific connection to each other, so long as the connection with the subject is present. Furthermore, it is irrelevant

that different parts of such properly connected matter might each stand independently as the "subjects" of legislation.

In Lee, 356 So.2d at 282-83, the issue was the constitutionality of the Insurance and Tort Reform Act of 1977, Chapter 77-468, Laws of Fla. This Act dealt comprehensively with tort claims and particularly with the problem of the substantial increase in automobile insurance rates and related insurance problems. It was contended the Act contained at least two separate subjects, insurance and tort reform, in addition to other matters which were not properly connected to either subject. In upholding the chapter, this Court characterized the Act as a broad and comprehensive legislative enactment and stated that widely divergent rights and requirements could properly be included in statutes covering a single subject.

Three years after Lee, this Court again upheld the constitutionality of legislation containing extensive tort and insurance reform measures. Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981). At issue was Chapter 76-260, which the Legislature enacted in an attempt to resolve the crisis in Florida's tort law and liability insurance system relating to medical malpractice.

This Court ruled this broad legislation dealt with one subject, holding:

> While chapter 76-260 covers a broad range of statutory provisions dealing with medical malpractice and insurance, these provisions do relate to tort litigation and insurance reform, which have a natural or logical connection.

Id. at 1124 (emphasis added). The Court reiterated its previous holding that the subject of an act may be as broad as the Legislature chooses if the matters included therein have a natural or logical connection. Id. This Court has also upheld comprehensive insurance legislation in United States Fidelty and Guaranty Co. v. Department of Insurance, 453 So.2d 1355 (Fla. 1984). At issue was Chapter 80-236, which contained provisions relating to Workers' Compensation, insurance exchanges and excessive profits realized by motor vehicle insurers. See title to Ch. 80-236. The Court ruled this legislation dealt with "the general subject of insurance. Thus the law does not embrace more than one subject." Id. at 1362-63. See also Town of Monticello v. Finlayson, 23 So.2d 843 (Fla. 1945).

Most recently, this Court rendered its decision in the case of Smith v. Department of Insurance, 12 F.L.W. 189 (1987). There this Court held that Chapter 86-160 while extensive, could be divided into five basic areas with each of the challenged sections being an "integral part of the statutory scheme enacted by the legislature to address one primary goal: the availability of affordable liability insurance." Id. at 191. This Court approved the lower court's statement that "the legislature was attempting to meet 'the single goal of creating a stable market for liability insurance in this state.'" Id.

The case of Colonial Investors Company v. Nolan, 131 So. 178, 179 (Fla. 1930), cited in the Initial Brief of the Miami Herald Publishing Company states that Article III, Section 6, prohibits "omnibus"

legislation. This author would not quibble with such limitation if properly defined, even though the word "omnibus" is nowhere to be found in that section of the Constitution. However, the word "omnibus" is used out of context in that brief and without definition in an apparent attempt to circumvent current case law. Article III, Section 6, does not prohibit comprehensive legislation, such as the statute at issue in Smith v. Department of Insurance, infra, Chenoweth v. Kemp, supra, and State v. Lee, supra. The Miami Herald brief would have this Court limit the scope of permissible legislation by engrafting upon Article III, Section 6, a prohibition on comprehensive legislation.

It is submitted that the Article III, Section 6 was not intended to prevent the Legislature from purposefully gathering into one package those matters it feels necessary to deal comprehensively with a problem, so long as the various provisions are properly connected. Arguments resting on the invocation of such general terms as "omnibus legislation" are nothing more than meritless attempts to amend Article III, Section 6, by the addition of non-existent restrictions on legislative discretion. Moreover, recitation of a list of horribles about what it would mean to the continued vitality of the restriction if a particular enactment being attacked is not held violative of the restriction merely serve to illustrate the accuracy of the observation by Professor Rudd that ". . .an argument based on the one subject rule is often the argument of a desperate advocate who lacks a sufficiently sound and persuasive one." Rudd, No Law Shall Embrace More Than One Subject, 42 Minn. L. Rev. 389, 447 (1958).

This Court did not recently thwart legislation concerning insurance regulation and tort reforms, argued to be separate subjects, because under the circumstances of those cases and given the Legislature's objective, the Court could not say that tort law reform and automobile insurance have no logical connection. Lee at 282. The courts should not now abandon current single subject analysis and thwart an attempt to pay for Florida's growth needs based upon a quote from the 1950 Gaulden, infra, case taken entirely out of context.

The provisions listed in the Miami Herald brief as violative of the limitation include sections dealing with sales and use tax, fuel tax, estate tax, intangible tax, tax on oil, gas and minerals, corporate income tax, documentary stamp tax, gross receipts tax, tax on operation of motor vehicles, tax amnesty, statute of limitations on tax proceedings, tax administration and other general tax provisions. These provisions of the act are such as are necessary incidents to, or tend to make effective or promote the objects and purposes of legislation included in the subject "taxation". State v. Canova, 94 So.2d 181, 184 (Fla. 1957). These provisions of Chapter 87-6 are integral parts of the act.

It must be emphasized that no tax legislation has ever been struck down for violation of the single subject requirement. Numerous cases have upheld the inclusion of provisions in a taxing statute dealing with differenct types of taxes. See Lane Drug Stores v. Lee, 11 F.Supp. 672 (N.D. Fla. 1935) (statute dealing with license tax and gross receipts tax contained single-subject); State ex rel. Bouchelle

v. Mathas, 157 Fla. 622, 26 So.2d 652 (1946) (upholds "comprehensive revision" of taxes generally regarding tax liens and enforcement of liens against single-subject challenge); Suits v. Hillsborough County, 147 Fla. 53, 2 So.2d 353 (1941) (Id.); State v. Volusia County Industrial Development Authority, 400 So.2d 1222, 1225 (Fla. 1981) in which this Court stated:

> Nor do we accept appellants' contention that the 1980 amendment embraces more than one subject. This Court has held that the one-subject requirement is not violated so long as all of the provisions appear to be "incidentally related and properly connected to primary subjects expressed in the title and naturally germane thereto." Rianhard v. Port of Palm Beach District, 186 So.2d 503, 506 (Fla. 1966). "The subject of a law is that which is expressed in the title. . .and it may be as broad as the legislature choses provided the matters included in the law have a natural and logical connection." State v. Lee, 356 So.2d 276 (Fla. 1978). The subject of the statute in this case is industrial development financing. It is obvious that such a subject may include many diverse areas, and is not necessarily limited to a traditional concept of "industry." We hold that the areas included in the 1980 amendment are logically related and it does not violate the single subject rule.

See also, Yon v. Orange County, 43 So.2d 177 (Fla. 1950) (statute authorizing special right of way and also authorizing county boards to issue certification of indebtedness did not violate single-subject).

Finally, any reliance on this Court's Gaulden decision to invalidate Chapter 87-6 is misplaced. In Gaulden v. Kirk, 47 So.2d 567, 575 (Fla. 1950), this Court stated in addition to the language quoted in the Miami Herald brief the following:

> The fact that it is an act which was passed as part and parcel of a comprehensive tax program devised by the legislature in the exercise of its law-making power, makes it none the less a single law within the purview of Section 16, Article III of our Constitution. Indeed, the legislature could not perform its duties or measure up to its responsibilities if we were to give the narrow construction to Section 16, Article III of the Florida Constitution which is suggested by counsel for appellant.

The tax, challenged on the basis of a single subject violation, was upheld. The dicta of that case is read too narrowly. The case should not be read for the proposition that the Legislature cannot combine a comprehensive tax package into a single enactment. Insofar, as single subject analysis goes, nothing suggests that courts should treat taxing statutes differently from enactments on any other subject. Insurance and tort reform, like taxation, affect the general welfare to a great degree. Any notion that Gaulden prohibits the subject "taxation" as constitutionally permissible is laid to rest under the present state of the law as found in Smith, supra, Chenoweth, supra, and Lee, supra.

Given the gravity of the infrastructure problems facing the State of Florida and the enormity of the needs requiring legislative attention as outlined above, it is clear that Chapter 87-6, in its attempt to deal with pressing concerns, is necessarily comprehensive. Upon examination of Chapter 87-6 to determine whether its provisions are fairly and naturally germane to the subject of the act, it cannot be said that the act's opponents demonstrate a plain violation of Article III, Section 6 of the Constitution beyond

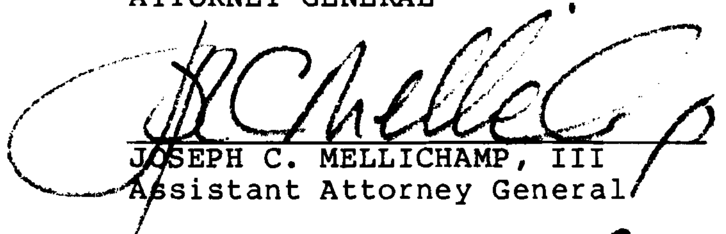
reasonable doubt. The act does not violate the Constitution's single subject requirement, nor the policies behind this limitation.

## CONCLUSION

Based on the foregoing and the briefs filed on behalf of Governor and the Legislature, the Attorney General respectfully submits that the Justices should render an opinion upholding the validity of Chapter 87-6, Laws. of Fla.

Respectfully submitted,


ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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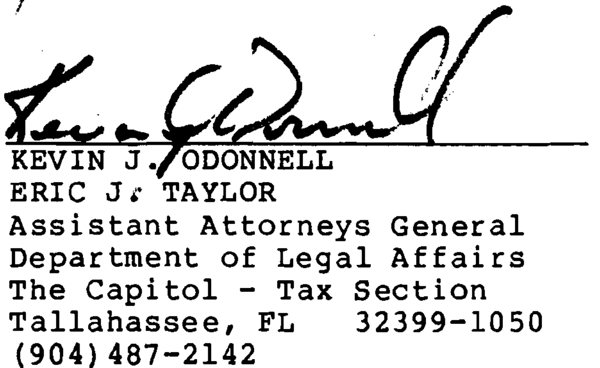

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 8th day of June, 1987 to:

Gregory L. Diskant, Esquire
Patterson, Belknap, Webb & Taylor
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