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IN THE SUPREME COURT
OF THE STATE OF FLORIDA

LARRY FUCHS, as Executive
Director of the Florida
Department of Revenue,

Appellant,

vs. CASE NO. 82,303

KENNETH M. WILKINSON,
Property Appraiser of
Lee County, Florida,

Appellee.
_____/

REPLY BRIEF OF APPELLANT, LARRY FUCHS, AS EXECUTIVE DIRECTOR OF THE FLORIDA DEPARTMENT OF REVENUE

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STATEMENT OF THE CASE AND FACTS

The Department hereby adopts and incorporates the Statement of the Case and Facts as set forth in its Initial Brief in the instant case.

SUMMARY OF ARGUMENT

This case involves two issues: When does Amendment 10, which limits homestead valuation, become effective; and in which tax year does the limitation (cap) on increases in homestead valuation apply.

Amendment 10 provides in pertinent part:

> (c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.
>
> 1. Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following. . . . (e.s.)

Amendment 10 became effective on January 5, 1993, pursuant to the terms Art. XI, § 5(c), Fla. Const. Amendment 10 instructs property appraisers to assess at just value on January 1, 1994. Appellees suggest the impossible - that the January 1, 1994 assessment be both "at just value" and subject to the limitations imposed by Amendment 10. This is because all homesteads must be assessed at just value as of January 1 of the year following the effective date of the amendment which is January 5, 1993. The limit on assessment at just value begins on January 1, 1995.

The drafters chose not to have an effective date stated in the Amendment. Once they made that choice, the timing of

Amendment 10 was established. Had they wished to have another timing sequence they could have easily provided for it with the "appropriate" language. This Court should not supply after the fact the "appropriate" language.

There is nothing in the ballot summary of Amendment 10 from which anyone could have formed the "intent" Appellee and Amici seek to impose on this case. There is nothing in the ballot summary which conflict with the plain wording of the Amendment 10 or that would give anyone the impression that it was to be implemented in any other way than is suggested by the Department.

ARGUMENT

I. **THE TRIAL COURT ERRED IN HOLDING THAT THERE IS NO BASIS IN THE LANGUAGE OF AMENDMENT 10 FOR A BASE YEAR VALUATION, THUS THE TRIAL COURT ERRED IN HOLDING THAT THE LIMITATION, OR CAPS ON VALUE, CONTAINED IN AMENDMENT 10 APPLY AS OF JANUARY 1, 1994.**[1]

1. AMENDMENT 10 BECAME EFFECTIVE JANUARY 5, 1993.

2. THE LIMITATION ON INCREASES IN HOMESTEAD VALUATION APPLIES TO THE 1995 TAX YEAR.

All property is required to be valued at its just value each and every year. The Department ensures this by conducting in-depth reviews of the assessment rolls of each county once every two years. See § 195.096, Fla. Stat.[2] One of the purposes of such an in-depth review is to ensure that a county's "level of assessment" meets the just value standard. See § 193.1142(1), Fla. Stat.[3] While portions of county assessment rolls can lag

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[1] The "cap", "capping" or "limitation" refers to the provisions of Amendment 10 which does not allow the value of a homestead to exceed a specific percentage beginning in the second year after the effective date of the amendment. See Art. VII, § 4(c)1., (A) and (B), Fla. Const.

[2] Pursuant to § 195.096(2), Fla. Stat. (1991), the Florida Legislature has required the following of the Department:

> (2) Beginning with the 1982 assessment rolls,
>
> the Division of Ad Valorem shall conduct, no less frequently than once every 2 years, an in-depth review of the assessment rolls of each county. (e.s.)

[3] Under Fla. Admin. Code Rule 12D-8.020(1), the Department reviews the assessment rolls to determine "if the rolls are indicative of just value . . . ." Under subsection (1)(a) and (b) of Rule 12D-8.020(1), issues regarding percentage change in the rolls from the preceding year, projections of overall level of assessment, and whether assessments are equalized both within and between property classes must be determined.

behind true just value in any given year, the Department is given the responsibility to review and direct that corrections be made to the various county property rolls, to determine if the rolls are indicative of just value. Appellee contends that the 1994 tax rolls need not necessarily value homesteads at just value. They argue that their homestead assessment for January 1, 1994, may not exceed the limits imposed by Amendment 10. Thus, they will not assess the just value of all homesteads on January 1, 1994.

However, Amendment 10 requires that all homestead property be assessed at just value the year after its effective date and, that annual changes in that assessment shall not exceed the Amendment 10 limits. The effective date of the Amendment is January 5, 1993 and the first assessment thereafter is on January 1, 1994. Annual changes to this assessment shall not exceed certain limits. It is necessary to bring each and every homestead property up to just value on January 1, 1994.

Half of the 67 county rolls were reviewed in 1993. The remainder will be reviewed in 1994. If, as requested by Appellee, homestead property valuations in all counties are limited or capped as of January 1, 1994, any underassessment that may exist in the other half of the counties, will be perpetuated. Homestead property being "frozen" at less than just value for 1994 and capped thereafter is not demanded by Amendment 10. Amendment 10 all but specifies the completion of one full two-year cycle to ensure review of all 67 counties is complete and thereby ensure the fair and equitable assessments of all affected

homestead property in every county in the State as of January 1, 1994.[4]

This is not an attempt by the Department to "gouge" value. Property Appraisers arrive at the individual value of each homestead parcel. See, §§ 192.011, 193.011, 193.023, 193.085, 193.114 and 193.1142, Fla. Stat. The Department seeks to do no more than ensure that the value on the 1994 rolls meet the "just value" standard and that equity in the tax rolls be maximized before assessments are "frozen" by the cap in Amendment 10. The Department has, indeed, "diligently, exhaustively and conscientiously scrutinized each tax roll in Florida" (Amicus Markham's Answer Brief, p. 8). See State, Department of Revenue v. Markham, 426 So. 2d 555 (Fla. 1982), rev. denied, 450 So. 2d 487 (Fla. 1984). It strives to continue to do so for the remainder of the 67 counties.

Appellee's interpretation of Amendment 10 will create conflict with the intent of the Amendment, the plain meaning of all of the words, phrases and provisions contained therein, and the intent of the people who voted for its ratification. Homesteads are intended to be assessed at just value on January 1, 1994 and thereafter, this assessment is subject to the cap.

The trial court recognized that Amendment 10 did not contain a specific effective date. Where no effective date is set out in an amendment, Art. XI, § 5(c), Fla. Const., controls. The amendment is effective on the first Tuesday after the first

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[4] See Jones v. Department of Revenue, 523 So. 2d 1211 (Fla. 1st DCA 1988).

Monday in the January following the election. The first Monday in January following the election was January 4, 1993. The effective day of Amendment 10 is Tuesday, January 5, 1993.

Recognizing that under their plan, assessment at just value as of January 1 of the year following the effective date is impossible, Appellee has argued that the intent of Amendment 10 is to be effective on the date it was approved by the voters. No provision supporting this contention is contained in the language of the Amendment. Altering the constitutionally prescribed effective date could easily have been accomplished.

Neither the Department nor this Court is responsible for rewriting Amendment 10 to fit an after the fact interpretation of the plainly worded Amendment. Had the Amendment contained an effective date prior to January 1, 1993, then what the Appellee proposes to be the operation of Amendment 10 would not be in dispute. The first tax year after the effective date would have been January 1, 1993, and the cap would be applicable on January 1, 1994. It was the drafters' decision not to provide an effective date prior to tax day, January 1, 1993. See Ammerman v. Markham, 222 So. 2d 423 (Fla. 1969).

Amici cites as sole authority the case of Ammerman v. Markham, supra, for the proposition that, even though Amendment 10 did not become effective until January 5, 1993, its provisions should be construed as effective January 1, 1993, thus allowing the cap to become effective on January 1, 1994, instead of January 1, 1995. Amici states that the Ammerman case is similar in many respects to the instant case. It is, but not as support for the contentions of Appellee and Amici.

The Ammerman trial court held that condominium owners were not entitled to the homestead exemption granted by the 1968 Constitution until the tax year commencing January 1, 1970; that Ch. 67-339, Laws of Fla., conflicted with the 1885 Constitution; that the 1885 Constitution was in effect on January 1, 1969; and that insofar as the law purported to grant homestead exemption to owners of cooperative and condominium apartments for the year beginning January 1, 1969 the attempt was unconstitutional. 222 So. 2d at 424.

On appeal it was noted that Ch. 67-339, Laws of Fla., amended §§ 192.12 and 192.13, Fla. Stat., to provide a homestead exemption to each owner-occupied condominium parcel and each apartment occupied by a tenant-stockholder or member of a cooperative apartment corporation. Section 3 of Ch. 67-339 provided that the act was to take effect on the first January 1st, after the House Joint Resolution amending § 7 of Art. X of the 1885 Florida Constitution. That amendment, which granted a homestead exemption to each owner-occupied condominium parcel and each apartment occupied by tenant-stockholder or member in the building owned by a cooperative apartment corporation, was approved in the general election held in November 1968.

In reviewing the action of the trial court, the Court noted that:

> Under Florida Statutes January 1st of the tax year is the date on which property is to be valued, the date on which the inchoate tax lien arises and the date on which certain facts must exist to entitle taxpayers to the various tax exemptions allowed by law.

222 So. 2d at 424.

The Court ruled that:

> The revised Constitution of 1968, Art. VII, § 6 of which grants homestead tax exemption to the plaintiffs' class was approved "by a majority of the qualified electors voting in an election" which was held in November, 1968. The Fla. Const. 1968 became effective on January 7, 1969, six days after the exemption status of the property was determined, and therefore, does not apply to this case. (e.s.)

222 So. 2d at 425.

Having found that the revised Art. VII, § 6, took effect on January 7, 1969, six days after the exemption status of the property was determined, the Ammerman Court upheld the exemption, not based upon any retroactive application of Art. VII, § 6, Fla. Const. (1968), but based upon the fact that the Legislature had permissibly provided the exemption under the existing 1885 Constitution for tax year 1969. 222 So. 2d at 424. Except for the enactment of Ch. 67-339, those owners would not have enjoyed the homestead exemption until January, 1970.

January 1 remains the date on which the taxable status of all property is to be determined for ad valorem tax purposes.[5] 222 So. 2d at 424. As of January 1, 1993, the just valuation of real property for 1993 had been determined and property tax liens had arisen. See § 197.122, Fla. Stat. Since Amendment 10 provides that homesteads shall be assessed at just value as of January 1 of the year following the effective date of this amendment and that "[t]his assessment shall change only as

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[5] See § 192.042(1), Fla. Stat., which requires all real property to be assessed accurately to its just value on January 1 of each year.

provided herein," the trial court erred by failing to recognize that Amendment 10 contemplates just value assessment in 1994 as well.

Appellee claims on one hand that Amendment 10 contains no provision for a "base year," but on the other hand claims that January 1994, is the "year" that the "cap" contained in (c) is imposed on the previous year's just value assessment.

Appellees' position can be best summarized as follows:

> Amendment 10 provides for the assessment of all properties at just value as of January 1, 1993. Thereafter, Amendment 10 prospectively limits the impact of unrealized increases in value to the lesser of the actual increase in just value, the increase in the Consumer Price Index, or 3% of the prior years assessed value.

See Appellees' Answer Brief, pp. 6-7.

The Appellee apparently considers the Amendment to be effective as of the election approving its adoption. Thus, the reference to January 1, 1993, under the Appellee's rationale, would have been the first January following the effective date of the Amendment.[6]

In light of the above interpretations given by the Appellee of the operation of the Amendment, the only conclusion that can be drawn is that the Amendment contemplates that homestead property will be assessed at just value on January 1 following its effective date, which provides a "base" year and that in

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[6] As previously addressed, the effective date of Amendment 10 is January 5, 1993; therefore, the January 1 following that effective date is January 1, 1994, not January 1, 1993.

subsequent years that value is to be revised each year, subject to the cap prescribed in the Amendment.[7]

Since the effective date of Amendment 10 is January 5, 1993, not January 1, 1993, it need only be determined whether there is an intervening "base" year from which the calculations of the "cap" are to be figured. The issue and, thus, the case, can be resolved within the four corners of the Amendment, without resort to speculation about speculative "intent." In fact, the Appellee has already acknowledged "that the literal language of the Amendment indicates a[n] assessment of homesteads "at just value" as of January 1st, 1994. . . ." (R-27.)

Neither the Appellee nor the Amici want to acknowledge this admission. Why? The answer is simple. Under Appellee's theory, the assessment of all homesteads at just value on January 1, 1994, is impossible because, by then, the cap will preclude assessment at "just value" except in specific circumstances. Whereas, the "literal" language of the Amendment requires that homestead property must be assessed at just value as of January 1, 1994, and thereafter, this assessment will be subject to the cap.

Amendment 10 simply states that homestead property will be assessed at its just value on January 1, following its effective date and that, in subsequent years, this assessment is subject to the cap. Since we know that Amendment 10 became effective

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[7] See, Art. VII, § 4(c)3. and 5., Fla. Const., providing for reassessments if there has been a change in ownership or if there are changes, additions, reductions or improvements to the homestead property.

January 5, 1993. The first assessment following the effective date is January 1, 1994. The cap is imposed in the year following the homestead's assessment at full value - January 1, 1995.[8] Nothing could be clearer.[9]

CONCLUSION

WHEREFORE, the Appellant respectfully requests this Court to reverse the trial court and remand with directions to enter an order finding that Amendment 10 took effect on January 5, 1993; the first assessment following the effective date is January 1, 1994; and the cap contained in Art. VII, § 4(c)1., (A) and (B), Fla. Const., is applicable beginning with the 1995 tax year.

Respectfully submitted,

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[8] The amendment provides: All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein. (e.s.)

[9] See Florida League of Cities v. Smith, 607 So. 2d 397, 400 (Fla. 1992); State ex rel. McKay v. Keller, 140 Fla. 346, 191 So. 542 (1939); and, City of Jacksonville v. Continental Can Co., 113 Fla. 168, 151 So. 488 (1933).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **William A. Keyes, Jr., Esquire**, Post Office Drawer 790, Fort Myers, Florida 33902-0790; **Michael C. Tice, Esquire**, 2149 First Street, Fort Myers, FL 33901; **Gaylord A. Wood, Jr., Esquire**, 304 S.W. 12th Street, Fort Lauderdale, FL 33315-1549; **Theodore L. Tripp, Jr., Esquire**, Garvin & Tripp, P.A., Post Office Drawer 2040, Fort Myers, FL 33902; and, **Larry E. Levy, Esquire**, P.O. Box 10583, Tallahassee, FL 32302, this 18th day of October, 1993.

JOSEPH C. MELLICHAMP, III
SENIOR ASSISTANT ATTORNEY GENERAL