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CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

PORT OF PALM BEACH DISTRICT,
etc., et al.,

Petitioner,

vs.

STATE OF FLORIDA, DEPARTMENT
OF REVENUE, et al.,

Respondent.

CASE NO. 85,434
FOURTH DISTRICT COURT
OF APPEAL CASE NO. 93-03053

RESPONDENT'S JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE

The respondent accepts the statement offered by the petitioner, but adds that in the case of Florida Department of Revenue, et al. v. Canaveral Port Authority, cert. accepted, Case No. 84,743 (Fla. Feb. 16, 1995), the briefing schedule is well under way and six (6) amicus briefs have been filed or will be filed shortly.

Additionally, it must be noted that the Department of Revenue is a party to both this appeal and the one pending before this Court in Port Canaveral, supra.

SUMMARY OF THE ARGUMENT

The respondent concedes that this court has the discretion to exercise jurisdiction over this appeal grounded on an apparent express conflict between district court of appeal decisions, although the grounds for the conflict are separate from those set forth by the petitioner.

However, largely the same issues raised by this appeal have been raised and extensively briefed in the pending Canaveral case, and it would be redundant to grant jurisdiction only to visit these issues again. The better course is to deny jurisdiction and to allow the trial court the opportunity to enter a stay pending the outcome of the Canaveral appeal.

If the Court does exercise it's discretion and accept jurisdiction, a stay should be entered pending the outcome in the Canaveral appeal so as to avoid a waste of efforts.

ARGUMENT

I. THE COURT SHOULD DENY JURISDICTION IN THIS CASE AS IT HAS FOR CONSIDERATION PORT CANAVERAL V. D.O.R., AND THERE IS NO ADVANTAGE TO EXERCISING JURISDICTION IN BOTH CASES GIVEN THE NEAR IDENTITY OF ISSUES RAISED.

Respondents agree that this court may have jurisdiction grounded upon an apparent conflict between the matters of Florida Department of Revenue, et al. v. Canaveral Port Authority, 642 So.2d 1097 (Fla. 5th DCA 1991), cert. accepted, Case No. 84,743 (Fla. Feb. 16, 1995) and Sarasota-Manatee Airport Authority v. Mikos, 605 So.2d 132 (Fla. 2d DCA 1992), rev. denied, 617 So.2d 320 (Fla. 1993) although the grounds for this conflict are somewhat different than those set forth by the petitioner. See Port Canaveral v. D.O.R., supra, D.O.R.'s jurisdictional brief at docket entry number 4, filed on December 7, 1994. However, respondents emphasize that such jurisdiction is discretionary, and respectfully request this court decline to exercise this discretion in favor of granting jurisdiction, as to do so would cause a needless duplication of both the Court's efforts and those of the respective litigants.

The Court currently has for consideration the case of Port Canaveral v. D.O.R., supra. The briefing schedule in that case is well under way and six amicus curie briefs have been or are scheduled to be filed shortly. In addition to those memorandum the Court will have for it's consideration in Port Canaveral the parties' briefs. One of the parties is the Department of Revenue

who is also a party to the Port of Palm Beach decision under consideration here. Plainly the matter is well represented and does not require further argument.

While a perfect identity of issues between these appeals is not necessarily present, both deal largely with the same narrow question; whether a Port District organized for a sole purpose of operating a commercial port is a subdivision of the State, in the nature of a county, and immune from ad valorem taxation. To accept jurisdiction in this case and to cause the same issue to be re-argued would be a needless duplication of the Court's effort.

Similarly, a decision in Port Canaveral will undeniably bear substantially if not conclusively in any future consideration of this matter, whether it be by this court or the trial court below. Therefore, it is simply unnecessary for this Court to accept jurisdiction given the considerable likelihood that the Port Canaveral decision will have important application to the outcome of the issue presented here.

Respondent respectfully suggests that the more reasonable course of action is to deny jurisdiction and thereby allow the trial court, upon proper motion, to enter an order staying the action until such time as this Court issues its decision in Port Canaveral. This outcome would preserve judicial economy and conserve the public funds which would otherwise be spent by the parties in pursuit of an appeal that may largely be moot before it is finally decided.

II. IF THIS COURT DOES EXERCISE JURISDICTION, IT SHOULD ENTER A STAY PENDING THE OUTCOME OF THE CANAVERAL CASE.

In the alternative, should this court accept jurisdiction it should grant a stay of all matters pending it's decision in Port Canaveral, for those same reasons set forth above. No prejudice will accrue to the petitioner as the respondent Property Appraiser and The Palm Beach County Tax Collector remain subject to the terms of the trial court's injunction preventing the assessment and collection of the ad valorem taxes at issue in this appeal.

CONCLUSION

The court should deny jurisdiction to visit issues already addressed in Port Canaveral v. D.O.R. in order to preserve judicial economy or it should grant jurisdiction and enter a stay to reach the same reasonable conclusion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing jurisdictional brief has been furnished by U.S. Mail to ROBERT A. BUTTERWORTH, ATTORNEY GENERAL, Tallahassee, and LEE R. ROHE, ASSISTANT ATTORNEY GENERAL, Office of the Attorney General, The Capitol, Tax Section, Tallahassee, FL 32399-1050; JACK J. AIELLO, ESQUIRE and DAVID P. ACKERMAN, ESQUIRE, 777 S. Flagler Drive, Suite 500, East Tower, West Palm Beach, FL 33401; and ROBERT B. COOK, ESQUIRE, 11911 U.S. Highway One, Suite 308, North Palm Beach, FL 33408 this 27th day of April, 1995.

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