ORIGINAL

SUPREME COURT OF FLORIDA

DEPARTMENT OF REVENUE,

Petitioner,

v. CASE NO. 87,381

SCRIPPS HOWARD CABLE COMPANY,
d/b/a/ LAKE COUNTY CABLEVISION,

Respondent.

ED HAVILL, et al.,

Petitioners

v. CASE NO. 87,357

SCRIPPS HOWARD CABLE COMPANY,
d/b/a LAKE COUNTY CABLEVISION

Respondent.

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AMICUS CURIAE BRIEF OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC.

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(23)

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PRELIMINARY STATEMENT

Petitioner, ED HAVILL, as Property Appraiser of Lake County, shall be referred to as the APPRAISER, and the Petitioner, STATE OF FLORIDA, DEPARTMENT OF REVENUE, shall be referred to as DOR. However, since APPRAISER is the "real party in interest" and for simplicity, the primary reference in this Brief shall be to APPRAISER.

Respondent, SCRIPPS HOWARD CABLE COMPANY d/b/a LAKE COUNTY CABLEVISION, shall be referred to as SCRIPPS. The FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC. shall be referred to as FCTA.

Citations to the Record on Appeal are designated (R). Citations to the Transcript are designated (T).

Petitioners' Initial Brief shall be referred to as the Initial Brief.

The opinion subject to review is Scripps Howard Cable Company v. Havill, 665 So. 2d 1071 (Fla. 5th DCA 1995), and shall be referred to as the Decision.

The assessable tangible personal property located in Lake County and owned by SCRIPPS for the tax years 1989, 1990, 1991, and 1992 shall be referred to as the Tangible Personal Property.

Citations to the official Florida Statutes shall not include the year because 1989, 1990, 1991 and 1992 are involved and the statutes cited by FCTA were not amended during those years except for the addition of §193.085(4)(c). Subpart(c) requires DOR to provide notices of values to railroads and is not applicable to FCTA'S argument.

STATEMENT OF THE FACTS

FCTA adopts SCRIPPS' Statement of the Facts as set forth in its Answer Brief.

INTRODUCTION

FCTA is a Florida non-profit trade association. FCTA represents over 180 cable television systems which provide cable television programming to over 3.6 million Florida households.

FCTA has an interest in this case because it believes that the APPRAISER is impermissibly attempting to rewrite taxing statutes applicable to the tangible personal property of cable television companies. FCTA wishes for its members, including SCRIPPS, to be treated fairly under the law and in the same manner as other locally assessed taxpayers.

FCTA supports the position of SCRIPPS and urges this Court to deny jurisdiction or, in the alternative, adopt the Decision as SCRIPPS' assessments exceeded just value because the APPRAISER departed from the requirements of law and the assessments are not supported by any reasonable hypothesis of legality. See, Aeronautical Communications Equipment, Inc. v. Metropolitan Dade County, 319 So. 2d 101, 104 (Fla. 3d DCA 1969), cert. den., 225 So. 2d 911 (Fla. 1969) and Blake v. Xerox Corporation, 447 So. 2d 1348 (Fla. 1984).

SUMMARY OF THE ARGUMENT

A. The APPRAISER Has Improperly Applied The Income/ Unit Rule Method Of Appraisal To Assess The Tangible Personal Property Of A Cable Television Company.

The APPRAISER used the unit rule method to value the Tangible Personal Property. The unit rule method sanctions the taxation of intangible assets. The unit rule method is applicable only to railroads. SCRIPPS is not a railroad. The application of the unit rule method to SCRIPPS departs from the requirements of the law because it taxes SCRIPPS' non-taxable intangible assets and thus results in an excessive valuation of the Tangible Personal Property.

B. The APPRAISER Has Misconstrued The Definition Of Tangible Personal Property.

The Appraiser has ignored the definition of tangible personal property set forth in §192.001(11)(d), Fla. Stat. Instead, APPRAISER asserts that all assets which do not meet a contrived four part test for exempt intangibles are then assessable as tangible personal property. The APPRAISER is asking this Court to ratify his position and thereby make a fundamental rewrite of Florida law.

C. The APPRAISER'S Discussion of Entrepreneurial Profit is a Red Herring

The APPRAISER'S income approach measured and included entrepreneurial profit in the valuation of the Tangible Personal Property. This appraisal concept only applies to the cost approach and resides exclusively in the domain of real estate appraisal. Therefore, APPRAISER'S argument is meritless on this point.

ARGUMENT

A. The APPRAISER Has Improperly Applied the Income/Unit Rule Method of Appraisal to Assess the Tangible Personal Property of a Cable Television Company.

DOR is vested with the authority to promulgate rules for the unit rule valuation of railroad and railroad terminal company property. Section 193.085(4), Fla. Stat. The unit rule method of valuation, by its terms, applies only to assessments made by DOR of property owned by railroads and railroad terminal companies. Fla. Admin. Code R. 12D-2.002. The assessment at issue in this case was made by the APPRAISER, and not by DOR. Furthermore, SCRIPPS is neither a railroad nor a railroad terminal company. See, Fla. Admin. Code R. 12D-2.001(3) and (5). The APPRAISER ducks this issue by simply failing to discuss the statute or the corresponding rule.

Section 193.052(6), Fla. Stat. also delegates the power to DOR to ensure that railroad and utility property is properly returned in the appropriate county. DOR has only exercised its rulemaking authority with respect to railroads, and has directed the use of the unit-rule method of valuation for those entities. Fla. Admin. Code R. 12D-2.002. Assuming arguendo, that DOR could extend the unit-rule method of valuation to utilities, it has not yet done so. Furthermore, cable television companies are not utilities. Teleprompter Corp. v. Hawkins, 384 So. 2d 648 (Fla. 1980); Devon-

Aire Villas Homeowners Association v. Americable Associates, 490 So. 2d 60 (Fla. 3d DCA 1985).

The APPRAISER attempts to create the illusion at page 19 of the Initial Brief that cable television companies are utilities by falsely asserting that in 1992 the U. S. Congress implemented rate-base regulation for cable television companies in the same manner as telephone companies. The federal law does not contain any such provision. The correct citation for the 1992 act is 47 U.S.C. §521, et seq., and it is known as the Cable Television Consumer Protection and Competition Act of 1992.

Since the unit rule method has not been extended to cable television companies, the APPRAISER attempts to create confusion by referring to the unit method, instead of the unit rule method. As discussed above, the unit rule method is a term of art under Florida law. The unit method, by contrast, is a general appraisal concept which calls for an appraiser to exercise judgment in selecting the assets he or she intends to appraise as a unit. A commonly selected appraisal unit is a house and the land on which the house sits. One can compare that appraisal unit to sales of other homes, which almost always includes the house and the associated land. It is easier to appraise the house and the land as a unit, than to appraise them separately.

The unit method, as opposed to the unit rule method, is discussed in Lowe v. Lee County Electrical Cooperative, Inc., 367 So. 2d 1114 (Fla. 2d DCA 1979). In Lowe, the Second District Court of Appeal validated the use of the unit method to assess the

property of a multi-county electrical cooperative. The unit method, as contrasted to the unit rule method set forth in §193.085(4)(a), Fla. Stat., is an appraisal method which merely calls for the tangible personal property of the entire multi-county business enterprise to be appraised as a unit. Any of the three generally accepted approaches to value - - cost, income or market - can be used to appraise the tangible personal property as a unit. Id., at 1117. In the Lowe case, all of the electrical cooperative's tangible personal property was appraised as a unit and then a portion of that unit value was allocated to Charlotte County. Nowhere in the opinion does the Court explicitly extend the reach of the unit rule method referenced in §193.085(4), Fla. Stat., or defined in Fla. Admin. Code R. 12D-2.001(8), or for that matter even discuss those sections. There was clearly no intention by the Second District Court of Appeal to permit the valuation, as proscribed in Rule 12D-2.001(8), of the "entire operating property, considered as a whole."[1/]

It is important to note that use of the unit method does not mean that all of the assets within that unit are assessable. It is incumbent on the local property appraiser to remove all assets and rights from the unit appraised except for the assessable

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[1/] "Operating Property" is defined in Fla. Admin. Code R. 12D-2.001(1) as including real property, tangible property, and intangible personal property. Although this rule does not address the difference between "tangible property" and "tangible personal property," the difference is of little moment since the entire business enterprise is assessed as a whole.

tangible personal property.[2/] In the case at bar, the APPRAISER used the income method to appraise SCRIPPS' entire business enterprise, and then arbitrarily assigned 20% of SCRIPPS' unit value to its intangible assets. (T 234-36). If the deduction for intangibles is arbitrary, then the resulting 80% residual assigned to tangible personal property must be arbitrary as well.

To justify his arbitrary appraisal, the APPRAISER argues for the applicability of the income/unit rule method[3/] under §193.085(4)(a), Fla. Stat., as interpreted in Fla. Admin. Code R. 12D-2.001(8), because that method sanctions not just the appraisal, but the assessment, of:

> an entire operating property, considered as a whole with minimal consideration being given to the aggregation of the values of separate parts. The rights, franchises and property essential to the continued business and purpose of the entire property being treated as one thing having one value and use.

As noted above, the unit rule method does not apply to the assessment of cable television tangible personal property.

In sum, the APPRAISER cannot cite any authority for his use of the income/unit rule method to assess the Tangible Personal

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[2/] In Lowe, 367 So. 2d at 1114, the unit consisted of tangible personal property only, so the issue of non-assessable assets within the unit did not arise.

[3/] The unit rule method only determines what is assessable within the appraisal unit. It does not dictate how the value is determined. The actual valuation is performed under the three traditional approaches to value - - cost, income and market. Fla. Admin. Code R. 12D-2.006(1)(b). The APPRAISER used the income approach in combination with the unit rule method. Thus, the Decision correctly notes that the APPRAISER used the income/unit rule method.

Property. Instead, he has cited authority for the unit method, which does not excuse an arbitrary allocation to non-assessable assets within that unit.

B. The APPRAISER Has Misconstrued the Definition of Tangible Personal Property.

A local property appraiser is directed to assess all "property" located within his or her county. Section 192.011, Fla. Stat. The only types of property designated for local assessment are real property and tangible personal property. Sections 192.032(1) and (2), Fla. Stat. SCRIPPS' real property, if any, is not at issue in this case. Therefore, the APPRAISER is only concerned with SCRIPPS' tangible personal property.

Although it is a tautology, it bears stating that the assets and rights of a taxpayer which do not meet the definition of tangible personal property are not subject to assessment as tangible personal property. As discussed below, one such subset of nonassessable assets and rights is a taxpayer's intangible assets and rights. Another such subset is property which otherwise meets the definition of tangible personal property but is expressly exempted by law. See, e.g., §196.181, Fla. Stat. [household goods and personal effects], and §196.185, Fla. Stat. [inventory].

The APPRAISER has turned the assessment of tangible personal property on its head. On page 9 of the Initial Brief, he recounts a four part test for intangibles. It is his contention that if an

asset or right does not meet this contrived four part test, it is assessable as tangible personal property.[4/] In order to accommodate the assessment of a vast number of assets and rights which do not meet this four part test, the APPRAISER goes to great length to undercut the plain meaning of §192.001(11)(d), Fla. Stat., which defines tangible personal property.

The definition of tangible personal property is a model of simplicity. In order to be assessable as tangible personal property, a "good", "chattel," or "other article of value" must be

(i) capable of manual possession,

(ii) whose chief value is intrinsic to the article itself.

The APPRAISER's assault on the plain meaning of the Legislature's definition of tangible personal property begins on page 21 of the Initial Brief. He starts with the unsubstantiated assertion that the term . . . "tangible personal property" . . . "do[es] not refer to a physical object." It is self-evident that the APPRAISER's assertion is false. A "good", "chattel", or "other article of value" must be a physical object in order to be "capable of manual possession." The APPRAISER also fails to grapple with the testimony of Deputy Appraiser Robert Ross that the statutory definition of tangible personal property was a "guideline," that he understood "capable of manual possession" as meaning "the right to be bought or sold," and finally, in direct contradiction to §192.001(11)(d), Fla. Stat., that tangible personal property does

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[4/] No authority is cited for the validity of this four part test. FCTA is not aware of any such authority.

not necessarily have its chief value intrinsic to the article itself. Decision, 665 So. 2d at 1075.

The APPRAISER goes to great lengths to rewrite the statutes so that he may then argue that a taxpayer must pass the four part test recounted on page 9 of the Initial Brief in order to garner an "exemption" from the definition of tangible personal property. APPRAISER'S target is, as evident on pages 22 through 36 of the Initial Brief, the assessment of intangible assets and rights. The APPRAISER is quick to note on page 20 of the Initial Brief that "exemptions from taxation are strictly construed in favor of taxability and against exemption."

The APPRAISER's contorted logic is completely flawed. An "exemption" denotes that the asset otherwise meets the definition of tangible personal property but is exempted by the Constitution or the Legislature. The problem with the APPRAISER's logic is that intangible assets and rights do not meet the definition of tangible personal property.

An intangible asset or right, by definition, is not capable of manual possession. It cannot meet the statutory definition of tangible personal property. Section 192.001(11)(d), Fla. Stat. Therefore, no "exemption" from assessment is necessary.

The APPRAISER has ignored the fundamental rule of law that neither he nor the Courts can rewrite tax legislation, and that all doubts regarding taxing statutes must be resolved in the taxpayer's favor. Mikos v. Ringling Bros. - Barnum & Bailey Combined Shows, Inc., 497 So. 2d 630, 632 (Fla. 1986). Moreover, the power to tax

intangible personal property is available only to the state and cannot lawfully be assessed by local property appraisers. Art. VII, Sec. 1(a), 2 and 9(a), Fla. Const., and Gallant v. Stephens, 358 So. 2d 536, 539 n.6 (Fla. 1978).

The only Florida authority which the APPRAISER discusses in any detail are the title company cases Brooksville Abstract Co. v. Kirk, 101 Fla. 175, 133 So. 629 (Fla. 1931) and Schleman v. Guaranty Title Co., 15 So. 2d 754 (Fla. 1943). In both cases the subject property was the abstract records of a title company. The abstract records were contained on paper. The Brooksville decision did not reach the merits of the dispute. The dispute in Schleman did not revolve around whether the paper on which the abstract information was contained was capable of manual possession. Those paper records unquestionably met this part of the test for tangible personal property. The dispute centered on whether the value of the information on the paper was "intrinsic" to the paper. The Court held that the information on the paper was intrinsic to the paper. The decision makes perfect sense. A stock certificate is an example of an article of tangible property which is not tangible personal property for assessment purposes. A paper certificate is capable of manual possession. However, its chief value is extrinsic to the paper itself. The stock certificate represents fractional ownership in a corporation. A stock certificate is not inherently valuable. By contrast, the information on the abstract records is inherently valuable. If sold, the object of the transaction would be the abstract records contained on the paper.

As aptly stated in the Schleman decision, page 761, in characterizing the abstract records, "[t]heir chief value lies not in that which they represent, but in that which they are. Completed and placed before the public for use and profit, they are, in a sense, comparable to the work of an author that has been compiled and offered for sale. They are, in effect, the tools of trade with which the abstracter plies his calling."

The APPRAISER's discussion of the Brooksville Abstract Co. and Schleman cases pertains to the second part of the test for tangible personal property, to-wit, whether the chief value of the article is intrinsic to the article itself. The APPRAISER does not take issue with this part of the test. The APPRAISER's discussion of these cases has absolutely no bearing on whether tangible personal property must be embodied in physical objects and thus capable of manual possession. The APPRAISER cannot cite any Florida authority which calls into question the plain meaning of "capable of manual possession."

The APPRAISER's redefinition of tangible personal property becomes more astounding when, on page 31 of the Initial Brief , he makes a footnote survey of cases throughout the country, which have grappled with the assessability of cable television intangible assets and rights. The APPRAISER breezes over the adverse decisions, including two Florida cases,[5/] with a wave of the hand,

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[5/] Storer Cable TV of Florida, Inc., Plaintiff v. Oliver Lowe, as Charlotte County Property Appraiser, et al., Defendants, Case No. 89-1945-CA (Fla. 20th Cir. Ct. July 24, 1992), aff'd. per curiam as Fuchs v. Storer Cable TV of Florida, Inc., 626 So. 2d 216 (Fla. 2d

(continued...)

stating on page 31 of the Initial Brief that "[c]ourts, unwilling to recognize the tremendous values created by assembling a cable television system, have incorrectly found that the value over and above the cost of the parts is some sort of intangible."

It may be true that cable television systems, like other media businesses such as newspapers or television stations, may have "tremendous values." However, the fact remains that only tangible personal property is assessable, and that eleven different courts, including two in Florida, could not conclude that cable television intangible assets and rights were assessable as tangible personal property. These courts may have been "incorrect" in the APPRAISER's eyes as a matter of tax policy; however the Courts were entirely correct with regard to the application of the law to the facts at hand.

C. The APPRAISER'S Discussion of Entrepreneurial Profit is a Red Herring.

As an afterthought, on page 32 of the Initial Brief, the APPRAISER discusses the concept of entrepreneurial profit. The APPRAISER'S argument is a red herring because (i) the concept of entrepreneurial profit applies only to the cost approach and (ii)

[5/](...continued)
DCA 1993), and Storer Cable V of Florida, Inc., Plaintiff v. John W. Mikos, as Sarasota County Property Appraiser, et al., Defendants, Case No. 90-2197-CA-01 (Fla. 12th Cir. Ct. October 14, 1993), aff'd. per curiam, 651 So. 2d 1204 (Fla. 2d DCA 1995). Copies of each Judgment are contained in FCTA's Appendix hereto.

the concept of entrepreneurial profit resides exclusively in the domain of real estate appraisal. The Appraisal of Real Estate, Tenth Edition, Appraisal Institute (1992), at p. 327; The Dictionary of Real Estate Appraisal, Third Edition, Appraisal Institute (1993), at p. 118. The Dictionary of Real Estate Appraisal, Third Edition, Appraisal Institute (1993), p. 118 defines entrepreneurial profit as:

> A market-derived figure that represents the amount an entrepreneur expects to receive for his or her contribution to a project; the difference between the total cost of a property (cost of development) and its market value (property value after completion), which represents the entrepreneur's compensation for the risk and expertise associated with development. In the cost approach, expected profit is reflected as entrepreneurial profit.

Since the APPRAISER relied upon the income approach to value SCRIPPS' Tangible Personal Property, it is clear that the inclusion of entrepreneurial profit was in direct contradiction to appraisal principles.

The APPRAISER also makes the bold claim on page 32 of the Initial Brief that there are no textbooks just on the appraisal of personal property. He apparently makes this claim to create the inference that the lack of these treatises excuses the APPRAISER'S failure to cite any authority for the proposition that entrepreneurial profit applies to personal property as well as real estate. The APPRAISER'S claim is incorrect. The American Society of Appraisers is an organization dedicated to the appraisal of all forms of property. Directory of Professional Appraisal Services, The American Society of Appraisers (1996), at p. 12. This

organization has over 3,000 members from all 50 states. It certifies appraisers in a number of disciplines, including machinery and technical specialties, and has certified over 300 such individuals in the machinery and technical specialties discipline. The American Society of Appraisers has produced many appraisal textbooks, including one specifically on the appraisal of machinery and equipment. Alico, Appraising Machinery and Equipment, The American Society of Appraisers (1989). Nowhere in that textbook is there any reference whatsoever to the applicability of entrepreneurial profit to the appraisal of tangible personal property. There are also a multitude of appraisal textbooks which discuss both the appraisal of real estate and tangible personal property. Those textbooks do not endorse the addition of entrepreneurial profit to tangible personal property (see, e.g., Babcock, Appraisal Principles and Procedures, American Society of Appraisers (1989)).

There is absolutely no mention of entrepreneurial profit in the portion of the Florida Manual of Instructions which pertains to tangible personal property, nor is there any mention of this concept in the Florida Statutes or Florida Administrative Code. Moreover, FCTA is not aware of any published decision anywhere in the United States which adds entrepreneurial profit to the appraisal of tangible personal property.

Since the concept of entrepreneurial profit only applies to valuation of real property using the cost approach, and because the APPRAISER applied this concept to value the Tangible Personal Property using the income approach, it is plain that APPRAISER'S argument on this point is a red herring.

CONCLUSION

The decision of the Fifth District Court of Appeal should be adopted by this Court.

Respectfully submitted this 3rd day of June, 1996.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of FCTA's Amicus Curiae Brief, together with attached Appendix, has been furnished by U. S. Mail to **Jerry R. Linscott, Esquire and Denis L. Durkin, Esquire**, Baker & Hostetler, 2300 Sun Bank Center, 200 South Orange Avenue, Post Office Box 112, Orlando, Florida 32802, attorneys for Respondent, Scripps Howard; **Gaylord A. Wood, Jr., Esquire**, 304 S.W. 12th Street, Ft. Lauderdale, Florida 33315-1521, attorney for Petitioners, Havill and Hall; **Joseph C. Mellichamp, III, Esquire,** Assistant Attorney General, Tax Section, Room LL-04, The Capitol, Tallahassee, Florida 32301, attorney for Petitioner, FDOR; and to **Robert K. Robinson, Esquire and John C. Dent, Jr., Esquire,** Dent & Cook, P.A., 330 South Orange Avenue, P. O. Box 3269, Sarasota, Florida, 34230, Attorneys for Amicus Curiae John M. Mikos, this 3rd day of June, 1996.

JOHN P. HARLLEE, III

SUPREME COURT OF FLORIDA

DEPARTMENT OF REVENUE,

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Respondent.

---/

APPENDIX TO
AMICUS CURIAE BRIEF OF THE
FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC.

1. Final Judgment in Storer Cable TV of Florida, Inc., Plaintiff v. Oliver Lowe, as Charlotte County Property Appraiser, et al., Defendants, Case No. 89-1945-CA (Fla. 20th Cir. Ct. July 24, 1992), aff'd. per curiam as Fuchs v. Storer Cable TV of Florida, Inc., 626 So. 2d 216 (Fla. 2d DCA 1993).

2. Final Judgment in Storer Cable TV of Florida, Inc., Plaintiff v. John W. Mikos, as Sarasota County Property Appraiser, et al., Defendants, Case No. 90-2197-CA-01 (Fla. 12th Cir. Ct. October 14, 1993), aff'd. per curiam, 651 So. 2d 1204 (Fla. 2d DCA 1995).

NIC CIVIL MH

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR CHARLOTTE COUNTY, FLORIDA

STORER CABLE TV OF FLORIDA, INC., a Florida corporation,

Plaintiff,

vs.

CASE NO. 89-1945-CA
and
CASE NO. 90-2003-CA
(Consolidated Actions)

OLIVER LOWE, as Charlotte County Property Appraiser; L. VICTOR DESQUIN, as Charlotte County Tax Collector; and J. THOMAS HERNDON, as Executive Director of the Florida Department of Revenue,

Defendants.
_____/

FINAL JUDGMENT

These consolidated actions were tried before the Court. On the evidence presented, upon consideration of the parties' trial memoranda, and after hearing argument of counsel, the Court finds:

1. The Court has jurisdiction.

2. The Plaintiff, **STORER CABLE TV OF FLORIDA, INC.** ("Storer") owned tangible personal property located in Charlotte County on January 1, 1989, and January 1, 1990 (the "Property") for use in its cable television business.

3. The Defendant, **OLIVER LOWE**, Charlotte County Property Appraiser (the "**Appraiser**"), is responsible for assessing tangible personal property located in Charlotte County.

4. **The Appraiser** appraised the Property at $14,820,000.00 as of January 1, 1989, and at $14,246,666.00 as of January 1, 1990.

5. **The Appraiser's assessment** resulted in the issuance of tax bills in the amount of $213,499.00 for 1989 and $209,018.00 for 1990.

RECD JUL 28 1992

Certified: A true copy of the original
Barbara T. Scott, Clerk
By _____
Deputy Clerk

OFFICIAL RECORDS BOOK 1229 PAGE 0938
Charlotte County, Florida
INSTRUMENT # 180301

JULY 28 1992

6. Storer admitted in good faith to owing $88,331.00 for 1989 and $109,743.00 for 1990, as taxes, after taking its four percent discount as to which it was legally entitled.

7. A property appraiser's determination of an assessed value is an exercise of administrative discretion within the field of his expertise. His determination of an assessed value is clothed with the presumption of correctness. This presumption is rebuttable.

8. If a property appraiser considers all of the criteria set forth in §193.011, Florida Statutes, the taxpayer has the burden of proving that the property appraiser's assessed values are not supported by any reasonable hypothesis of legality. Blake v. Xerox Corporation, 447 So.2d 1348 (Fla. 1984).

9. If the court determines from the evidence that a property appraiser has not considered all of the criteria set forth in §193.011, Florida Statutes, or that the property appraiser's assessed values are not supported by any reasonable hypothesis of legality, then the court must base its judgment of just value on the criteria set forth in §193.011, Florida Statutes, and/or the weight of the evidence before it. Countryside Country Club v. Smith, 573 So.2d 14 (Fla. 2d DCA 1990).

10. The Appraiser relied upon an indirect market approach in making his assessments of the Property. The Appraiser first determined the value of Storer's business enterprise located in Charlotte County based upon a value for each of Storer's customers. This value was derived by examining 24 sales of cable television businesses throughout the United States from 1984 through 1989 and

then selecting three of those sales as being comparable to Storer's business enterprise.

11. Storer's business enterprise consisted in part of intangible assets which are not subject to property taxation. The Appraiser acknowledged this fact.

12. The Appraiser attempted to exclude the value of Storer's nontaxable intangible assets from Storer's business enterprise value by examining purported allocations among tangible and intangible assets by other cable television business enterprises.

15. The cost and income approaches of the **Appraiser** were deficient because the **Appraiser** never considered the remaining economic life of the Property.

16. The **Appraiser** did not properly consider the criteria set forth in §193.011, Florida Statutes.

17. The **Appraiser's** assessed values for the Property were not supported by any reasonable hypothesis of legality.

18. The **Appraiser's** values are not entitled to any presumption of correctness.

19. The **Appraiser's** indirect market approach was unreliable under the circumstances based upon the data he utilized and therefore is not accorded weight by this Court because it attempts to extract a tangible personal property value from a business enterprise value without any sound basis for making such an extraction based on the range previously cited.

20. **Storer** valued the Property at $6,166,503.00 as of January 1, 1989 and $7,495,911.00 as of January 1, 1990. **Storer's** valuations were based upon the cost approach using **Storer's** historical costs based upon it books and records and the depreciation factors developed by the Florida Department of Revenue.

21. **Storer** gave due consideration to the criteria set forth in §193.011, Florida Statutes, in arriving at the values it presented and which were admitted into evidence.

22. **Storer** is not a public utility regulated by the Public Service Commission. It is therefore not protected from

competition. Storer has a nonexclusive franchise to provide cable television service. Storer is a retailer. Storer has effective competition, even though there is no direct competition from a competing cable television business.

23. Based upon the evidence presented by Storer, which meets the criteria in §193.011, Florida Statutes, the Court further finds that the assessment of the Property for 1989 and 1990 by the Appraiser is invalid to the extent the assessments exceed the values as indicated by Storer's 1989 and 1990 good faith payments to Defendant, L. VICTOR DESGUIN, as Tax Collector of Charlotte County.

24. Storer is entitled to the relief sought and, therefore, it is

ADJUDGED that Storer shall recover as follows against Defendants:

A. The assessments of Storer's tangible personal property for 1989 and 1990 by Appraiser are invalidated to the extent that the assessments exceed the value as indicated by Storer's 1989 and 1990 good faith payments to Defendant, L. VICTOR DESGUIN, as Tax Collector of Charlotte County. Consequently, the assessments of Storer's tangible personal property for 1989 and 1990 are reduced to $6,166,503.00 and $7,495,913.00, respectively.

B. Storer does not owe any further tangible personal property taxes for 1989 or 1990 because its good faith payments equal the amount of taxes due on the reduced assessments.

C. The Court retains jurisdiction of the parties and the subject matter of this action to enter such further orders as may be necessary in the enforcement of this Final Judgment and for the purposes of awarding costs to Storer.

ORDERED in Chambers at Punta Gorda, Charlotte County, Florida, this 24th day of July, 1992.

DONALD E. PELLECHIA, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by U.S. Mail, to **John P. Harllee, III**, Esquire, Harllee, Porges, Hamlin & Hamrick, P.A., P. O. Box 9320, Bradenton, Florida, 34206-9998; and **Douglas Mo, Esquire**, Shartsis, Friese & Ginsburg, 18th Floor, One Maritime Plaza, San Francisco, California, 94111, Attorneys for Plaintiff; to **John L. Polk, Esquire**, P.O. Box 1221, Punta Gorda, Florida 33950, Attorney for LOWE; **Phillip J. Jones, Esquire**, Wilkins, Frohlich, Jones, Hevia & Russell, P.A., 1777 Tamiami Trail, Suite 501, Port Charlotte, Florida 33948, Attorney for DESGUIN; and to **Lee R. Rohe, Esquire**, Assistant Attorney General, Department of Legal Affairs, Tax Section - The Capitol, Tallahassee, Florida, 32399-1050, Attorney for DOR, this 27 day of July, 1992.

Judicial Assistant

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

93122691

STORER CABLE TV OF FLORIDA, INC., a Florida corporation,

Plaintiff,

vs.

CASE NO. 90-2197-CA-01
(Consolidated Actions)

JOHN W. MIKOS, as Sarasota County Property Appraiser; BARBARA FORD COATES, as Sarasota County Tax Collector; and J. THOMAS HERNDON, as Executive Director of the Florida Department of Revenue,

Defendants.

_____/

FINAL JUDGMENT

The consolidated actions were tried before the Court. On the evidence presented, upon consideration of the parties' trial memoranda, and after hearing argument of counsel, the Court finds:

1. The Court has jurisdiction.

2. Plaintiff, **STORER CABLE COMMUNICATIONS OF WEST FLORIDA, INC.**, a Delaware corporation, formerly **STORER CABLE TV OF FLORIDA, INC.**, a Florida corporation ("**STORER**"), owned tangible personal property (the "Property") located in Sarasota County, Florida on January 1, 1989, January 1, 1990, January 1, 1991 and January 1, 1992 (the "Valuation Dates") for use in its cable television business.

3. The Defendant, **JOHN W. MIKOS**, as Sarasota County Property Appraiser (the "Appraiser") is responsible for assessing tangible personal property located in Sarasota County.

4. §192.011(11)(d), Florida Statutes, defines "tangible personal property" for the purpose of imposition of ad valorem taxes.

5. The Appraiser determined the just value of the Property as of the Valuation Dates as follows:

January 1, 1989	$ 39,809,000.00
January 1, 1990	$ 41,900,000.00
January 1, 1991	$ 71,426,000.00
January 1, 1992	$101,000,000.00

6. Appraiser's assessment resulted in the issuance of tax bills to **STORER** for $593,226.51 for 1989; $640,383.85 for 1990; $1,121,131.05 for 1991; and $1,603,184.49 for 1992.

7. **STORER** admitted in good faith to owe as taxes $390,852.65 for 1989; $273,989.10 for 1990; $283,780.29 for 1991; and $262,164.10 for 1992. **STORER** timely paid the amounts it admitted due for each year, after taking its four percent discount to which it was legally entitled.

8. **STORER** claimed a credit or refund of $115,416.20 for an overpayment of 1989 taxes because of an inadvertent mathematical error. **STORER** paid $390,852.65 rather than $275,436.45 which it said was the correct amount.

9. The Appraiser's determination of just value is an exercise of administrative discretion within the field of his expertise. His determination of just value is clothed with the presumption of correctness. This presumption is rebuttable.

10. If a property appraiser considers all of the criteria set forth in §193.011, Florida Statutes, the taxpayer has the burden of proving that the property appraiser departed from the requirements

of law or that the assessments are not supported by any reasonable hypothesis of legality. Blake v. Xerox Corporation, 447 So. 2d 1348 (Fla. 1984).

11. As of the Valuation Dates, **STORER** had intangible personal property. **STORER'S** intangible personal property included its franchises from local governments, subscriber relationships, and going concern.

12. Intangible personal property is not assessable by the Appraiser. The power to tax intangible personal property is available only to the state. Article VII, Sec. 1(a), 2 and 9(a), Florida Constitution; Gallant v. Stephens, 358 So. 2d 536 (Fla. 1978).

13. The Appraiser did not properly consider the criteria set forth in Sec. 193.011, Florida Statutes, including but not limited to the condition of **STORER'S** tangible personal property and the income from **STORER'S** tangible personal property.

14. There is no reasonable hypothesis of legality to support the Appraiser's assessments.

15. The findings in Paragraphs 13 and 14 above, each provide an independent ground for this Court to find, and this Court hereby finds, that the Appraiser's assessments were not entitled to a presumption of correctness for any of the Valuation Dates.

16. Since this Court has determined that the Appraiser's assessments were not entitled to a presumption of correctness for any of the Valuation Dates, this Court must base its judgment of just value on the criteria set forth in Sec. 193.011, Florida

Statutes, and the weight of the evidence before it. Countryside Country Club v. Smith, 573 So. 2d 14 (Fla. 2d DCA 1990).

17. The just values of **STORER'S** tangible personal property are as follows:

Assessment Date	Fair Market Value
January 1, 1989	$ 18,936,889
January 1, 1990	$ 18,354,494
January 1, 1991	$ 18,569,630
January 1, 1992	$ 17,073,138

The Appraiser's assessments are invalid to the extent they exceed the just values found by this Court.

18. Regardless of which appraisal method is used, the "principle of substitution" acts to limit the value of the property to the amount a reasonable substitute could be purchased for on the open market. Metropolitan Dade County v. Tropical Park, 231 So. 2d 243 (Fla. 3d DCA 1970).

19. **STORER** is not a public utility. It is not protected from competition. **STORER** has non-exclusive franchises to provide cable television service. **STORER** is a retailer. **STORER** has effective competition, even though there is no direct competition from a competing cable television business.

20. **STORER** is entitled to the relief sought and, therefore, it is

ADJUDGED as follows:

A. The assessments for **STORER'S** tangible personal property are reduced to $18,936,889 for 1989; $18,354,494 for 1990; $18,569,630 for 1991; and $17,073,138 for 1992. Any amount for each year that exceeds these assessments are invalid.

B. Defendant, **BARBARA FORD-COATES**, as Tax Collector of

Sarasota County, is directed to calculate the amounts due by **STORER** which exceed its good faith payments for the years 1989, 1990, 1991 and 1992, together with any applicable interest or penalties as provided by law. **STORER** shall pay the amounts due within thirty (30) days of receipt of notice of payment from the Defendant, **BARBARA FORD-COATES**, as Tax Collector of Sarasota County.

C. **STORER'S** claimed credit or refund of $115,416.20 for an alleged overpayment of 1989 taxes will need to be resolved through the calculations set forth in Paragraph B above (e.g. recognition and agreement by the appropriate authority of the claimed amount and resulting voluntary refund/credit) or pursuant to resolution in another forum.

D. The Court retains jurisdiction of the parties and the subject matter of this action to enter such further orders as my be necessary in the enforcement of this Final Judgment and for the purpose of awarding costs to **STORER**.

ORDERED in Chambers, in Sarasota County, Florida, this 14th day of October, 1993.

JAMES W. WHATLEY, CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copy of the foregoing Final Judgment has been furnished by U.S. Mail to **John P. Harllee, III,**

Esquire, Harllee, Porges, Hamlin & Hamrick, P.A., P. O. Box 9320, Bradenton, Florida, 34206-9998 and **Douglas Mo, Esquire**, Shartsis, Friese & Ginsburg, One Maritime Plaza, 18th Floor, San Francisco, California 94111, Attorneys for Plaintiff; **John C. Dent, Jr., Esquire, and Robert K. Robinson, Esquire**, Dent, Cook & Weber, 1844 Main Street, P. O. Box 3269, Sarasota, Florida, 34236, Attorney for Defendant, Mikos; to **Richard L. Smith, Esquire**, 2070 Ringling Boulevard, Sarasota, Florida, 34237 and **Scott H. Carter, Esquire**, Assistant County Attorney, 1777 Main Street, 6th Floor, Sarasota, Florida, 34236, Attorneys for Defendant, Ford-Coates; and to **Lee R. Rohe, Esquire**, Assistant Attorney General, Department of Legal Affairs, Tax Section - The Capitol, Tallahassee, Florida, 32399-1050, Attorney for Defendant, Florida Department of Revenue, this 14th day of October, 1993.

Mary Beth Calhoun
Judicial Assistant

RECORDED IN OFFICIAL RECORDS
RECORD VERIFIED
93 OCT 18 AM 9:44
KAREN E. RUSHING
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

"STATE OF FLORIDA, COUNTY OF SARASOTA
I hereby certify that the foregoing is a true and correct copy of the instrument filed in this office. Witness my hand and official seal this 7 day of May, 1996.
Karen E. Rushing, Clerk of the Circuit Court
By: _____, Deputy Clerk"