IN THE SUPREME COURT
STATE OF FLORIDA

LAWRENCE FUCHS, as the Executive Director of the Department of Revenue, State of Florida, and, **THE MIAMI BEACH OCEAN RESORT, INC.**,

Appellants,

vs.

JOEL W. ROBBINS, Property Appraiser, Dade County, Florida,

Appellee.

Consolidated Case Nos. 96,182 and 96,183

Third District Court of Appeal Consolidated Case Nos. 98-275 and 98-274

11th Judicial Circuit Case No. 93-21009

APPELLANT, LAWRENCE FUCHS' INITIAL BRIEF

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

Joseph C. Mellichamp, III
Senior Assistant Attorney General
Fla. Bar No. 133249

Office of the Attorney General
Tax Section, Capitol Bldg.
Tallahassee, FL 32399-1050
850/414-3300
850/488-5865 (FAX)

Counsel for Appellant
Lawrence Fuchs, as
Executive Director of the
Department of Revenue,
State of Florida

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CERTIFICATE OF TYPE STYLE AND SIZE

I HEREBY CERTIFY that the type style and size used in the Department's Initial Brief is Courier New 12 point.

PRELIMINARY STATEMENT

Lawrence Fuchs, as the Executive Director of the State of Florida Department of Revenue (hereinafter "the Department"), serves this Initial Brief through his undersigned counsel. The Department was a Defendant below and is an Appellant in this appeal. The Miami Beach Ocean Resort, Inc., (hereinafter "Miami Beach") was the other Defendant below and is the other Appellant in this appeal.

Joel W. Robbins, as Property Appraiser of Dade County, Florida, (hereinafter "the Property Appraiser"), was the Plaintiff below and is the present Appellee.

The trial court below was the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, and will be referred to as "the trial court" in this Initial Brief. The Court below was the District Court of Appeal of Florida, Third District, and will be referred to as "the District Court" in this Initial Brief.

References to the record on appeal will begin with the letter V followed by the appropriate volume numbers, then the letter R followed by the appropriate page number, e.g., VIIR-327-328. References to the Department's Appendix to the Initial Brief will be prefixed with App., followed by the appropriate appendix number, followed by the appropriate page number(s), e.g., App. 1., pp. 1-6.

STATEMENT OF THE CASE AND FACTS

On or about November 8, 1993, the Property Appraiser brought this action contesting a reduction by the Dade County Value Adjustment Board (hereinafter "the VAB"), of the ad valorem tax assessment on a hotel owned by Miami Beach for the tax year 1992 and challenged the constitutionality of § 192.042(1), Fla. Stat. VIR-1-5. The Property Appraiser joined the Department as a party defendant pursuant to § 194.181(5), Fla. Stat. The Property Appraiser alleged that the tax assessment, "as reduced by the VAB [was] being contested on the ground that it [was] contrary to the laws and Constitution of Florida." VIR-2.

After stipulated mediation failed to resolve the issues between the parties, (VIR-98-99, VIR-104-105), the trial court referred this case to a Special General Master (hereinafter "the General Master"). VIR-122-123.

The General Master issued his Report on or about May 29, 1997, (VIIR-307-326), after an evidentiary hearing. VIIR-268-269. In his Report, the General Master found that on January 1, 1992, the subject property was not substantially completed as this phrase is defined in § 192.042(1), Fla. Stat. The General Master then considered the Property Appraiser's constitutional challenge to § 192.042(1), Fla. Stat., and found that subsection to be unconstitutional. VIIR-325. The trial court adopted the Report of the General Master as its own, including the finding that § 192.042(1), Fla. Stat. was unconstitutional. See, Final

Judgment and Order, dated January 7, 1998. VIIR-327-328. The Department and Miami Beach served timely notices of appeal. VIIR-280-303. On March 10, 1998, the District Court granted the Department's unopposed Motion to Consolidate Appeals. The parties submitted briefs and the District Court heard oral arguments. On November 18, 1998, the District Court rendered its decision which reversed the trial court and found § 192.042(1), Fla. Stat. constitutional. See, Fuchs and the Miami Beach Ocean Resort, Inc. v. Robbins, Consolidated Case Nos. 98-274 and 98-275 (Fla. 3d DCA November 18, 1998)(App. 1).

The Property Appraiser filed his Motion for Rehearing, Rehearing En Banc or Certification, which both the Department and Miami Beach opposed. The District Court granted Rehearing En Banc, ordered the parties to file supplemental briefs, and held oral argument. On June 30, 1999, the District Court rendered its decision on Rehearing En Banc. See, Fuchs and the Miami Beach Ocean Resort, Inc. v. Robbins, Consolidated Case Nos. 98-274 and 98-275 (Fla. 3d DCA June 30, 1999)(App. 2). In its decision on Rehearing En Banc, the District Court reversed its prior decision, upheld the trial court's Final Judgment and Order, and found § 192.042(1), Fla. Stat., unconstitutional. Both the Department and Miami Beach timely appealed this decision.

SUMMARY OF ARGUMENT

The District Court on Rehearing En Banc in the case of Fuchs and the Miami Beach Ocean Resort, Inc. v. Robbins, Consolidated

Case Nos. 98-274 and 98-275 (Fla. 3d DCA June 30, 1999)(App. 2), found § 192.042(1), Fla. Stat., unconstitutional. This decision is in conflict with this Court's decision of Culbertson v. Seacoast Towers East, Inc., 212 So. 2d 646 (Fla. 1968), the Fourth District Court's decision of Markham v. Yankee Clipper Hotel, Inc., 427 So. 2d 383 (Fla. 4th DCA 1983), review denied, 434 So. 2d 888 (Fla. 1983), and the Fifth District Court's decision of Hausman v. Bayrock Investment Company, 530 So. 2d 938 (Fla. 5th DCA 1988). This Court needs to resolve this conflict between the Districts because without resolution there is lack of uniformity in the administration of the ad valorem tax laws in the area of improvements where those improvements are not substantially complete as of January 1 of each tax year.

ARGUMENT

I. THIS COURT SHOULD SETTLE THE CONFLICT BETWEEN DISTRICTS CREATED WHEN THE DISTRICT COURT BELOW FOUND § 192.042(1), FLA. STAT., UNCONSTITUTIONAL.

This is a real property ad valorem tax case.[1]/ The case

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[1]/ The Department has general supervision over the assessment and collection of property taxes. This responsibility includes supervision of all aspects of the administration of property taxes including the assessment and valuation of property so that all property in the state is valued according to its just valuation, and the collection of taxes. The supervision of the Department consists primarily of aiding and assisting County officials in the assessing and collection functions. See, § 195.002, Fla. Stat. The role of the Department is to help assure the assessment of property, and the administration and collection of taxes will be uniform, just, and in compliance with law and the constitution. See, § 195.027, Fla. Stat.

The Department is responsible under the Constitution for measuring the relative levels of assessment in and among the counties and for certifying these levels of assessment to the

involves the constitutionality of § 192.042(1), Fla. Stat.

The District Court on Rehearing En Banc in the case of Fuchs and the Miami Beach Ocean Resort, Inc. v. Robbins, Consolidated Case Nos. 98-274 and 98-275 (Fla. 3d DCA June 30, 1999)(App. 2), found § 192.042(1), Fla. Stat., unconstitutional.[2]/ This decision is in conflict with this Court's decision of Culbertson v. Seacoast Towers East, Inc., 212 So. 2d 646 (Fla. 1968), the Fourth District Court's decision of Markham v. Yankee Clipper Hotel, Inc., 427 So. 2d 383 (Fla. 4th DCA 1983), review denied, 434 So. 2d 888 (Fla. 1983), and the Fifth District Court's decision of Hausman v. Bayrock Investment Company, 530 So. 2d 938 (Fla. 5th DCA 1988). This Court needs to resolve this conflict between the Districts because without resolution there is lack of uniformity in the administration of the ad valorem tax laws in the area of improvements where those improvements are not substantially complete as of January 1 of each tax year.

A. PROPER CONSTITUTIONAL INTERPRETATION OF A STATUTE

The District Court affirmed the trial court order that held unconstitutional § 192.042(1), Fla. Stat., which states:

Department of Education to be used as the basis of the disbursement of state educational funds. See, Art. VII, § 8, Fla. Const., and § 236.081(4)(c), Fla. Stat. As part of this process, the Department approves the county tax rolls if the requirements of the law are met. See, §§ 193.1142, 193.1145, and 195.096, Fla. Stat.

[2]/ The effect of the District Court's opinion has a similar result as the proposed mid-year assessment legislation which has been considered, but not enacted by the Legislature on numerous occasions in recent years.

> (1) Real property, on January 1 of each year. Improvements or portions not substantially completed on January 1 shall have no value placed thereon. "Substantially completed" shall mean that the improvement or some self-sufficient unit within it can be used for the purpose for which it was constructed.

See, App. 2, pp. 2-20. See also, VIIR-307-326; VIIR-327-328.

Article VII, § 4, Fla. Const., provides, in a non-self executing provision, that the Legislature shall by general law prescribe regulations which shall secure just valuation of all property for ad valorem taxation.[3]/ Likewise, the constitution gives the Legislature the authority to define "property," "real property," and "tangible personal property." See, Park-N-Shop v. Sparkman, 99 So. 2d 571 (Fla. 1957).[4]/

The Legislature implemented Art. VII, § 4, Fla. Const., with the various enactments contained in Chs. 192-196, Fla. Stat. Sections 193.011, 192.001(11)(d) and (12), and 192.042(1), Fla. Stat., directly apply to the case at bar.

Article VII, § 4, Fla. Const., does not specify a date on which the Property Appraiser is to assess or establish "just

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[3]/ One must attribute to the words "By general law regulations shall be prescribed which shall secure a just valuation" their plain meaning; legislative authorization is required to trigger this provision; it is not self-executing. Florida Department of Education v. Glasser, 622 So. 2d 944 (Fla. 1993).

[4]/ Article IX, § 1, Fla. Const. (1885), provided in pertinent part, that "[t]he Legislature . . . shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, education, literary, scientific, religious or charitable purposes."

value" of all property. The constitution left timing issues and establishment of a date for assessment to the Legislature. Were it not for the Legislature's adoption of timing statutes like the one now in dispute, the taxing system would have no beginning.[5]/

Section 192.042(1), Fla. Stat., is part of the integrated and comprehensive Legislative implementation of Art. VII, § 4, Fla. Const. The Legislature has properly specified the date, not a classification of property, on which property, both real and tangible, will be assessed. That date is January 1 of each year.[6]/ It has likewise determined that improvements or partial improvements to real property that are not substantially complete as of January 1 are not real property and shall not be assessed until the January 1 after the improvements have become substantially complete.

"Substantially complete" is defined as meaning that the improvement or some self-sufficient unit within it can be used for the purpose for which it is constructed. See, § 192.042(1), Fla. Stat. The Legislature's determination that an incomplete structure, unusable for the purpose intended upon its completion,

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[5]/ The Amendment to Art. VII, § 4(c), Fla. Const., (Save Our Homes, Proposition 10), established January 1 as the date for assessing homestead property.

[6]/ The Constitution has historically implied a yearly tax. The Legislature has provided that January 1 is the day all property shall be assessed. See, e.g., Ch. 4322, §§ 3, 68, Laws of Fla. (1895). See, Ch. 5596, § 3, Laws of Fla. (1907), (which is the forerunner of present day § 192.053, Fla. Stat.), wherein the Legislature set a date that a lien on the property shall attach.

should not be assessed in that condition is a reasonable implementation of Art. VII, § 4, Fla. Const.[7]/

An issue in this case is whether there was a change in the 1968 Constitution which prohibited the Legislature from defining the term "property" and establishing a specific statutory scheme for the timing of the valuation and assessment of real property. As this Court has recently stated, both the 1885 and 1968 Constitutions required the Legislature to enact general law implementing the collection of ad valorem taxes. Collier County v. Florida, et al., 733 So. 2d 1012 (Fla. 1999).

After the issuance of the District Court's first opinion[8]/ and before the en banc oral argument, this Court issued its decision in Collier County, supra. The decision in Collier County involved the application of § 192.042(1), Fla. Stat., to a county ordinance. The District Court in its decision on Rehearing En Banc correctly opined that the constitutionality of § 192.042(1), Fla. Stat., was not an issue in the Collier County decision. Fuchs and the Miami Beach Ocean Resort, Inc. v. Robbins, Consolidated Case Nos. 98-274 and 98-275 (Fla. 3d DCA June 30, 1999)(App. 2, p. 17-20). However, The District Court overlooked the impact of the Collier County decision on the debate in this case, the focal point of which is whether §

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[7]/ The "substantially complete" criteria is also reasonable when viewed within the definition of "real property" contained in § 192.001(12), Fla. Stat.

[8]/ See, App. 1, p. 1-6.

192.042(1), Fla. Stat., is a general law regarding the timing of the valuation, assessment, and collection of ad valorem taxes, or whether § 192.042(1), Fla. Stat., is an impermissible arbitrary classification of a specific type of property or a limitation of the just value.

This Court in the Collier County case found, as it had previously done in Culbertson, that § 192.042(1), Fla. Stat., was part of a specific statutory scheme for the timing of the valuation and assessment of real property.[9]/

The constitution requires the Legislature to enact the general law regarding the collection of ad valorem taxes, and the Legislature has established a specific statutory scheme for the timing of the valuation and assessment. As this Court stated in the Collier County case, the enactment of § 192.042(1), Fla. Stat., makes clear that partial year assessments are not authorized for improvements to real property substantially completed after January 1, which "shall have no value placed thereon." This Court concluded that there was no ambiguity in the statute.

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[9]/ Until the instant decision both this Court and other District Courts have rejected the contention that § 192.042 Fla. Stat., created an impermissible classification or implicated just value. See, Sherwood Park Ltd., v. Meeks, 234 So. 2d 702 (Fla. 3d DCA 1970), aff'd sub nom., Markham v. Sherwood Park Ltd., 244 So. 2d 129 (Fla. 1971); Metropolitan Dade County v. Colsky, 241 So. 2d 440 (Fla. 3d DCA 1970); Forte Towers East v. Blake, 275 So. 2d 39 (Fla. 3d DCA 1973); Manufacturers National Corporation v. Blake, 287 So. 2d 129 (Fla. 3d DCA 1973); Markham v. Kaufman, 284 So. 2d 416 (Fla. 4th DCA 1973); and, Yankee Clipper, supra.

1. COURT DECISIONS UNDER THE 1885 CONSTITUTION.

In Culbertson v. Seacoast Towers East, Inc., 212 So. 2d 646 (Fla. 1968), the hotel corporation brought suit contesting its tax assessment as illegal on the grounds that the improvements included in the valuation were not substantially completed as of January 1, 1967, pursuant to § 193.11(4), Fla. Stat., (1967). The taxing authority filed its answer and a motion for summary judgment contending that the statute was unconstitutional by granting an exemption from ad valorem taxation in violation of Art. IX, § 1, Fla. Const. (1885). The trial court denied the taxing authority's motion for summary judgment. The taxing authority took an interlocutory appeal to the Supreme Court on the grounds that the trial court had passed on the validity of the statute.

On appeal, the taxing authority argued that § 193.11(4), Fla. Stat. (1967), granted an exemption from ad valorem taxation in violation of Art. IX, § 1, Fla. Const. (1885), and that the statute had failed to define or prescribe standards for the administrative application of the terms "substantially completed," in violation of Art. [IX], § 1, Fla. Const. (1885). The Supreme Court disagreed with the taxing authority and found that "[t]he statute constitutes only a temporary postponement of valuation and assessment of incomplete improvements on real property provided the prescribed conditions are met on the annual assessment date." Culbertson, 212 So. 2d, at 647 (footnotes

omitted).[10]/

2. COURT DECISIONS UNDER THE 1968 CONSTITUTION.

The starting point for the court decisions under the 1968 Constitution is just valuation mandated by Art. VII, § 4, Fla. Const. (1968).[11]/ The common thread which ran through the case law under the 1885 Constitution construing the statutes concerning assessments on improvements and what was "substantially complete" continued in the case law construing the statute enacted under the 1968 Constitution.[12]/ That common thread is that a building is "substantially complete" when it has reached the stage where it can be put to the use for which it was intended, even though some minor items might be required to be added. Whether a building is substantially complete has been delegated to the discretion of the property appraiser. The taxpayer challenging the decision of the property appraiser assumes the burden of proving that the property appraiser's determination is incorrect. See, City National Bank v. Blake, 257 So. 2d 264 (Fla. 3d DCA 1972).

Markham v. Yankee Clipper Hotel, Inc., 427 So. 2d 383 (Fla. 4th DCA 1983), review denied, 434 So. 2d 888 (Fla. 1983), was an

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[10]/ See, Markham v. Sherwood Park LTD., 244 So. 2d 129 (Fla. 1971).

[11]/ Both the 1885 Constitution and the 1968 Constitution mandated that all property shall secure a just valuation. Compare, Art. IX, § 1, Fla. Const.(1885), with Art. VII, § 4, Fla. Const.(1968).

[12]/ See, Ch. 70-243, § 4, Laws of Fla.

action brought by the property appraiser challenging the constitutionality and application of § 192.042(1), Fla. Stat. (1977). The trial court held that the improvements to the subject property were not substantially completed as of January 1, 1979, and that § 192.042(1), Fla. Stat. (1977), was constitutional.

On appeal, the Fourth District rejected the property appraiser's arguments that the statute at issue had the effect of taxing property at less than a uniform rate and that the statute provided for a tax at less than just value in violation of Art. VII, § 4, Fla. Const. (1968). The Fourth District found § 192.042(1), Fla. Stat., constitutional in that "[the] statute does not have the effect of making the levy of each taxing district at less than a uniform rate within that district in violation of article VII, section 2, Florida Constitution."

The Court further stated that § 192.042(1), Fla Stat.:

> [D]oes not violate article VII, section 4, Florida Constitution, by taxing at less than just valuation. That term equates with fair market value, the formula for which is "the amount a purchaser willing but not obliged to buy will pay to one willing but not obliged to sell." ITT Community Development Corp. v. Seay, 347 So.2d 1024, 1027 (Fla.1977). It strains credulity to suggest that sale of an unusable hotel, in the middle of construction, would normally be the result of action by a seller "not obliged to sell." This clause does not contemplate forced sales.

The Court concluded that § 192.042(1), Fla. Stat:

> [D]oes not violate article VII, section 4, Florida Constitution, by not securing a just valuation of all property. All substantially completed property is taxed.

Yankee Clipper, 427 So. 2d, at 385-386 (footnotes omitted.)[13]/ Accordingly this Court should resolve the conflict between the Districts.[14]/

II. APPLICATION OF SECTION 192.042(1), FLA. STAT.

The enactment of § 192.042(1), Fla. Stat., actually effectuates the constitutional directive in Art. VII, § 4, Fla. Const., that the Legislature prescribe, by general law, regulations which shall secure a just valuation of all property for ad valorem taxation. The Florida Legislature enacted just such a regulation when it required that an improvement to real property be "substantially complete" so that "it can be used for the purpose for which it was constructed" before being assessed.

Section 192.042(1), Fla. Stat., previously has been held constitutional by this Court. The Florida Constitution of 1968 did not remove the authority of the Florida Legislature to provide direction as to when and how just valuation of property is to be determined. Article VII, § 4, Fla. Const. (1968), like

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[13]/ See also, Hausman v. Bayrock Investment Co., 530 So. 2d 938 (Fla. 5th DCA 1988).

[14]/ This Court should also be aware of conflict between the recent decision of the Second District Court of Appeal concerning the standing of the property appraiser to challenge the constitutionality of a statute in an action brought pursuant to § 194.036(1)(a), Fla. Stat. See, Turner v. Hillsborough County Aviation Authority, __ So. 2d __, 1999 WL 682598 (Fla. 2d DCA September 3, 1999) and the instant case. This conflict creates a lack of uniformity among the Districts which this Court needs to address concerning whether a property appraiser has standing in a case brought under § 194.036(1)(a), Fla. Stat., to challenge the constitutionality of a statute.

Art. IX, § 1 Fla. Const. (1885), authorizes the Legislature to provide regulations which shall secure just valuation of all property.[15]/

Section 192.042(1), Fla. Stat., is constitutional. The decisions of the Florida Supreme Court in Culbertson v. Seacoast Towers East, Inc., 212 So. 2d 646 (Fla. 1968), and the Fourth District Court of Appeal in Markham v. Yankee Clipper Hotel, Inc., 427 So. 2d 383, 385 (Fla. 4th DCA 1983), review denied, 434 So. 2d 888 (Fla. 1983), both of which determined that § 192.042(1), Fla. Stat., was constitutional, should be followed.

An analysis of the constitutional issues raised in the instant case necessitates the application of this Court of the following basic guidelines to actions challenging the constitutionality of tax statutes.

The Legislature is presumed to know the law as it exists when a statute is enacted and is also presumed to be acquainted with the judicial construction placed on the former laws on the subject. Williams v. Jones, 326 So. 2d 425, 435 (Fla. 1975). Nicoll v. Baker, 668 So. 2d 989, 991 (Fla. 1996). Furthermore, the Legislature is presumed to know the meaning of the words used and to have addressed its intent by using them in the enactment.

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[15]/ One must attribute to the words "[b]y general law regulations shall be prescribed which shall secure a just valuation" their plain meaning; legislative authorization is required to trigger this provision; it is not self-executing. Florida Department of Education v. Glasser, 622 So. 2d 944 (Fla. 1993).

S.R.G. Corporation v. Department of Revenue, 365 So. 2d 687 (Fla. 1978); Zukerman v. Alter, 615 So. 2d 661, 663 (Fla. 1993); and, Zukerman v. Hofrichter & Quiat, P.A., 646 So. 2d 187, 188 (Fla. 1994).

When assessing the constitutionality of a statute a court should resolve all doubts as to the validity of the statute, provided the statute may be given a fair construction that is consistent with the federal and state constitutions as well as legislative intent. State v. Stadler, 630 So. 2d 1072, 1076 (Fla. 1994). If an issue can be determined without declaring a statute unconstitutional, a court should endeavor to do so. Lloyd Enterprises, Inc., v. Department of Revenue, 651 So. 2d 735, 738 (Fla. 5th DCA 1995).[16]/

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[16]/ Florida courts have consistently held that examinations of the 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), aff'd on rehearing, 122 Fla. 670, 166 So. 262 (1936), cert. denied, 299 U. S. 542, 57 S. Ct. 15. (1936).

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, Department of Banking and 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).

Furthermore, 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

Statutes are presumed to be constitutional and the courts must construe them in harmony with the constitution. Florida Department of Education v. Glasser, 622 So. 2d 944, 946 (Fla. 1993). Statutes are presumed constitutional and if there is any reasonable way for the statute to be construed not in conflict with the constitution, it must be so construed. State v. Globe Communications Corp., 648 So. 2d 110, 113 (Fla. 1994); Florida League of Cities v. Administration Commission, 586 So. 2d 397, 412(Fla. 1st DCA 1991). When reasonably possible, a court is obligated to interpret a statute in such a manner as to uphold its constitutionality. Capital City Country Club v. Tucker, 613 So. 2d 448, 452 (Fla. 1993); Lykes Bros., Inc., v. City of Plant City, 354 So. 2d 878 (Fla. 1978).

CONCLUSION

The Department moves this honorable Court to resolve the conflict between the Districts, reverse the District Court and

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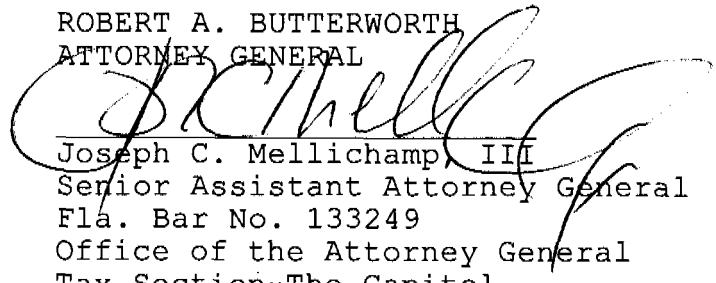
County, Lodge No. 6, v. Department of State, 392 So. 2d 1296 (Fla. 1980). Rather, once the Legislature makes a determination that the law has an important public purpose, such as taxation for revenue sources, the party challenging the determination must show that this legislative determination was so clearly wrong that it was beyond the power of the Legislature to enact. State v. Orange County Industrial Development Authority, 417 So. 2d 959 (Fla. 1982). Public purpose determinations are reserved for Legislature and the party challenging such determination must demonstrate that law enacted was beyond power of Legislature. State v. Hodges, 506 So. 2d 437 (Fla. 1st DCA 1987), rev. denied, 515 So. 2d 229 (Fla. 1987). Finally, legislative determinations of public purpose and facts are presumed correct and entitled to deference, unless clearly erroneous. University of Miami v. Echarte, 618 So. 2d 189 (Fla. 1993), cert. denied, 510 U.S. 915 (1993).

uphold § 192.042(1), Fla. Stat., as a constitutionally valid statute as set forth in Culbertson.

Respectfully Submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



Joseph C. Mellichamp, III
Senior Assistant Attorney General
Fla. Bar No. 133249
Office of the Attorney General
Tax Section-The Capitol
Tallahassee, FL 32399-1050
Phone (850) 414-3300
Fax (850) 488-5865

Counsel for Appellant
Lawrence Fuchs, as
Executive Director of the
Department of Revenue,
State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished by U.S. Mail this 20th day of September, 1999 to: **Jay Williams, Assistant County Attorney**, Stephen P. Clark Center, Suite 2810, 111 N.W. First Street, Miami, Florida 33128-1993; **Kenneth M. Bloom, Esq.**, Bloom & Minsker, Suite 700, 1401 Brickell Avenue, Miami, Florida 33131; **Arnaldo Velez, Esq.**, 255 University Drive, Coral Gables, Florida 33134; **Larry E. Levy, Esq.**, and **Loren E. Levy, Esq.**, The Levy Law Firm, 1828 Riggins Road, Tallahassee, Florida 32308; **Victoria L. Weber, Esq.**, and **Donna E. Blanton, Esq.**, Steel Hector & Davis, LLP, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301-2398; **Thomas R. Julin, Esq.**, and **Edward M. Mullins, Esq.**, Steel Hector & Davis, LLP, 200 South Biscayne Blvd., 40th Floor, Miami, Florida 33131-2398; **Charles A. Stampelos, Esq.**, McFarlain, Wiley, Cassedy & Jones, 215 South Monroe Street, Suite 600, Tallahassee, Florida 32301; **Stuart H. Singer, Esq.**, **Richard Brener, Esq.**, and **Rima Y. Mullins, Esq.**, Miami Center 20th Floor, 201 South Biscayne Blvd., Miami, Florida 33131-2399; **Dan R. Stengle, Esq.**, **David L. Powell, Esq.**, and **T. Kent Wetherell, II, Esq.**, Hopping, Green, Sams & Smith, P.A., P.O. Box 6526, Tallahassee, Florida 32314; **Robert M. Rhodes, Esq.**, The St. Joe Company, 1650 Prudential Dr., Suite 400, Jacksonville, Florida 32307; and, **Keith Hetrick, Esq.**, Florida Home Builders Association, 201 East Park Avenue, Tallahassee, Florida 32301.

Joseph C. Mellichamp, III
Senior Assistant Attorney General

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