SUPREME COURT OF FLORIDA

Case No.: SC00-1916
Lower Tribunal No.: 1D99-3770

FLORIDA DEPARTMENT OF REVENUE,

Petitioner / Appellant,

v.

FLORIDA MUNICIPAL POWER AGENCY and FLORIDA MUNICIPAL ELECTRIC ASSOCIATION, INC.,

Respondents / Appellees.

ANSWER BRIEF OF RESPONDENTS FLORIDA MUNICIPAL POWER AGENCY and FLORIDA MUNICIPAL ELECTRIC ASSOCIATION, INC.

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SUMMARY OF ARGUMENT

The First District Court's decision that the plain meaning of section 212.08(6), Florida Statutes, does not authorize DOR to impose a tax on materials purchased by municipal electric utilities for the repair and refurbishment of their electric transmission and distribution systems, does not represent a matter of great public importance and does not warrant this Court's review. While the First District Court's ruling is correct and significant to Respondents, the Record on Appeal does not demonstrate that the ruling creates a significant revenue impact on the State of Florida.

When the legislature amended section 212.08(6) in 1996, it struck certain language from the statute. By not striking additional language, the legislature demonstrated an intent to retain the remaining language of section 212.08(6). Therefore, the remaining language clearly specifies that the general sales tax exemption for municipal electric utilities does not include materials used "for transmission or distribution *expansion.*" However, the remaining language also clearly specifies that materials purchased by municipal electric utilities for the *repair or refurbishing* of electric transmission or distribution systems are exempt from sales tax (emphasis added). This Court must give full import to these words when interpreting section 212.08(6). To ignore them, or to lessen their effect, would reframe the statute according to an undeclared and purely surmised legislative intent. This the Court cannot do.

Assuming, arguendo, that a drafting error actually occurred, this Court still does not have the authority to alter the wording of the statute in the absence of any indication of legislative intent. If this Court undertook to correct a drafting error that alters the substantive meaning of section 212.08(6), it would be acting as a legislative body rather than as a judiciary body. This Court's function is to interpret the statute as it is written by the legislature, not as the DOR would like to have it written. Section 212.08(6) must be interpreted as it has been written, and full effect must be given to each word in the statute. Accordingly, the purchase of materials by municipal electric utilities for repairs and refurbishment of electric transmission and distribution systems is not subject to sales tax.

The disputed portion of section 212.08(6), Florida Statutes, is an attempt by DOR to impose a tax on Respondents, and this dispute must be strictly construed against DOR. When the legislature first enacted Chapter 212, Florida Statutes, in 1949, municipal electric utilities were exempt from sales and use tax. Although the legislature subsequently eliminated portions of this general exemption by imposing a tax on specified generation, distribution and transmission materials, municipal electric utilities have retained most of their exemption status and remain generally exempt from taxation, subject only to the exclusions designated in section 212.08(6). Therefore, this Court should find that section 212.08(6), according to its plain language, does not impose a tax on municipal electric utilities for the repair or refurbishment of electric transmission and distribution systems.

I. THIS IS NOT A CASE OF GREAT PUBLIC IMPORTANCE

The First District Court's Opinion, which is well-reasoned and entirely correct, is not

of great public importance and does not necessitate review by the Supreme Court pursuant to Rule 9.030(2)(a)(v), Fla.R.App.P. The Department of Revenue's ("DOR") unsubstantiated proclamation that the First District Court's ruling will create a great economic impact on the State of Florida, in contravention of the economic impact statement promulgated by the legislature concerning the 1996 amendment to section 212.08(6),[1] is based on conjecture.

[1] Neither the economic impact statement nor any legislative analysis was introduced into the record by either DOR or Respondents, and any reference by DOR to a fiscal impact on the state's revenues as a basis for review by this Court is improper. Because DOR has referred to an economic impact, albeit inappropriately, we will address the issue solely for making the point that the Record on Appeal is devoid of any evidence that the 1996 amendment creates a significant economic impact or burden on the state revenue. Indeed, Respondents could likewise argue that a significant economic impact to the state will not occur because the disputed exemption does not include sales tax on materials which generate a significant source of revenue for the state.

There is no economic impact statement in the Record on Appeal, and the Record on Appeal contains no such finding or evidence indicating an economic impact. In sum, the Record on Appeal contains no evidence that exempting from sales taxation materials[2] purchased by municipal electric utilities for the repair or refurbishment of electric transmission and distribution systems will deplete the state's revenue base.

Because there is no Record on Appeal demonstrating that an economic impact will occur as a result of the First District Court's ruling, there can be no presumption of a "great" public ramification. The exemption created by Chapter 96-397 is a matter of importance to Respondents because it clearly defines the boundaries of taxation which the DOR may not expand. Consequently, further review of the First District Court's decision by this Court is not warranted.

[2] For linguistic ease, the term "materials" shall be used in place of "tangible personal property" throughout this brief.

I I. ALTHOUGH DOR's ASSERTION MAY BE CORRECT THAT THE TITLE TO CHAPTER 96-397 REFERS TO THE DELETION OF OBSOLETE LANGUAGE IN SECTION 212.08(6), FLORIDA STATUTES, DOR's INTERPRETATION OF THE LEGISLATIVE INTENT OF THE CHANGES TO THE STATUTORY TEXT PURSUANT TO CHAPTER 96-397 IS ERRONEOUS

DOR's assertion that the 1996 amendment to section 212.08(6) merely served as a revisor's bill is misleading and inaccurate. A careful and thorough review of Chapter 96-397[3] clearly demonstrates that substantive changes to numerous laws were made. For example, section 212.12 was amended to reduce a penalty for failing to timely file certain tax returns. Section 125.0104 was amended to allow revenue from a local option tourist development tax to be used for convention center planning and design costs; to waive the prohibition against levying more than two percent local option tourist development tax in certain counties; to allow tax revenues to be used for certain tourism promotion agency administration, erosion control, and for beach park facilities; to prohibit use of local option tourist development tax revenues not expressly authorized; and to specify rules applicable to a county that has elected to assume audit assessment, collection, and enforcement responsibility for such tax. Also, section 72.011 was amended to require counties that administer a local option tourist development tax, or convention development tax, to provide certain requirements and procedures by ordinance with respect to a taxpayer's

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[3] DOR included in its initial brief only a *partial* list of the changes enacted through Chapter 96-397, selectively including only those changes that appear to make the entire Act merely revisionary. DOR's statement that the Act has a "repeated focus on elimination of obsolete material" is a misrepresentation of the Act as a whole.

contest of an assessment or denial of refund. Section 212.0305 was amended to alter the list of ways in which a consolidated county can use proceeds from a tax it has levied.

In spite of misrepresenting Chapter 96-397, DOR is correct in that the specific title of Chapter 96-397 relating to section 212.08(6) refers to the deletion of obsolete words. However, DOR's rendition of the legislature's intent as to the actual text of section 212.08(6) is incorrect. DOR contends that the legislature intended to eliminate words which had lost their relevancy[4] and that, in doing so, the legislature merely deleted obsolete language without changing the substantive meaning of the statute. However, DOR is erroneously divining the mind of the legislature by presupposing that the legislature intended to expand the striking of words past the clear demarcation of the legislature's own print.

[4] There is no evidence in the Record on Appeal to indicate which words had lost their relevancy in the opinion of the drafters of the amendment.

A. Chapter 96-397 demonstrates that the Legislature deleted existing statutory language when it amended Section 212.08(6), but relying only on the text of the title to Chapter 96-397 leaves the unanswered question of exactly *what* obsolete language did the Legislature intend to eliminate?"

The original text of the disputed amendment to section 212.08(6), Florida Statutes, is found in Florida Law Sessions, Chapter 96-397. This text distinctly points out the stricken language at issue in this case:

> . . . this exemption does not include sales, rental, use, consumption or storage for use in any political subdivision or municipality in this state of machines and equipment and parts and accessories therefor used in the generation, transmission or distribution of electrical energy by systems owned and operated by a political subdivision in this state ~~except sales, rental, use, consumption, or storage for which bonds or revenue certificates are validated on or before January 1, 1973,~~ for transmission or distribution expansion.

The title to Chapter 96-397 states that the legislature amended section 212.08 by "deleting obsolete provisions relating to exemptions for political subdivisions . . ." When analyzing the title in conjunction with the actual text of Chapter 96-397, it is readily apparent that the legislature intended to strike and did strike a portion of the statutory language. However, the underlying intent of the legislature in deleting this language cannot be ascertained by looking solely to the title of Chapter 96-397, as DOR requests this Court to do. A vital question remains unanswered by looking merely to the title without concurrently considering the actual text of the disputed amendment,. The correct question to be decided is: *what* language did the legislature intend to delete ?

B. The question of what language the Legislature intended to delete must be answered by looking to the plain language of Chapter 96-397

The First District Court, in ruling on the question of what language the legislature intended to delete, looked to the statute's plain language and determined that the legislative intent was to strike only those words which were actually deleted[5]. DOR requests that this Court reverse that decision and reach a determination that the legislature intended to delete, as obsolete language, words beyond the parameter of the language actually deleted. However, the plain meaning of section 212.08(6) clearly establishes that this Court has no authority to overturn the ruling of the First District Court.

DOR's argument that Respondents are required to pay sales tax on materials purchased to repair or refurbish electric distribution or transmission systems can only be valid if the legislature intended to continue its pen-stroke through the words "for transmission or distribution expansion." Had these words been struck, all materials purchased for electric transmission or distribution systems owned and operated by a municipality would have been excluded from the municipal sales tax exemption and, thus, would be subject to taxation. However, with the words "for transmission and distribution expansion" left in the statute by the legislature, the DOR's authority under Section 212.08(6) to tax is limited. The statute can only be interpreted to exclude materials used for the sole purpose of "transmission or distribution *expansion*" from the municipal sales tax exemption (emphasis added). Thus, materials purchased by municipal electric utilities for

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[5] *See Florida Municipal Power Agency v. Dep't of Revenue,* 764 So.2d 914, 916 (Fla. 1st DCA 2000), citing *Barnett Banks, Inc. v. Dep't of Revenue*, 738 So.2d 502, 504 (Fla. 1st DCA 1999) (quoting *S.R.G. Corp. v. Dep't of Revenue*, 365 So.2d 687, 689 (Fla. 1978)) (Stating that ". . . we cannot accept the department's contention that the statute must be read in light of its history rather than its plain language. 'In statutory construction, case law clearly requires that legislative intent be determined primarily from the language of the statute.'")

purposes beyond the scope of this exclusion, i.e. materials for repair or refurbishment of electric transmission and distribution systems, are not subject to taxation.

Further, absent any legislative intent to demonstrate other exclusions were intended, the statute cannot be construed by this Court according to DOR's interpretation[6]. In order to adopt DOR's interpretation, this Court would have to reframe Chapter 96-397 to omit the pertinent language "for distribution or transmission expansion[7]." However, a court cannot reframe a statute to derive a meaning not intended by the legislature, a concept best stated by this Court in *State ex rel. Seaboard Air Line R. Co. v. Gay,* 35 So.2d 403, 409 (Fla. 1948):

> For us to construe the tax as being of a nature other than that plainly designated by the legislature . . . or as imposed upon one type of property when the legislature has said that it should be imposed upon another, would amount to our reframing the statutes, not construing them. This

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[6] DOR asserts that the First District Court's literal interpretation should not be followed because it "contravenes the obvious intent of the legislature." However, the intent of the legislature is *not obvious* in this case. As stated in *Holly v. Auld*, 450 So.2d 217 (Fla. 1984), citing *State ex rel. Hanbury v. Tunnicliffe*, 98 Fla. 731, 735, 124 So. 279, 281 (1929), "a departure from the letter of the statute, however, 'is sanctioned by the courts *only when there are cogent reasons for believing that the letter [of the law] does not accurately disclose the [legislative] intent*'" (emphasis added). There are no cogent reasons for believing the plain language of Section 212.08(6) does not accurately reflect the legislative intent. Therefore this Court cannot overturn the District Court's literal interpretation.

[7] Such interpretation would render the words "for transmission and distribution expansion" superfluous and inconsequential, which is not permissible under rules of statutory construction. *See Vocelle v. Knight Bros. Paper Comp.,* 118 So.2d 664 (Fla. 1st DCA 1960), rehearing denied (stating "[i]f the language of a statute is clear and not entirely unreasonable or illogical in its operation, the court has no power to go outside the statute in search of excuses to give a different meaning to words used in the statute. A statute should be so construed as to give a meaning to every word and phrase in it and, if possible, so as to avoid the necessity of going outside the statute for aids to construction.")

> we are not authorized to do; our only proper function being to interpret the law as it has been written by the legislature, not to recast it in the mold which we, perhaps, might like to have seen it written had we been responsible for its promulgation.

See also Maas Brothers v. Dickinson, 195 So.2d 193 (Fla. 1967); *Dep't of Revenue v. Ray Construction of Okaloosa County,* 667 So.2d 859, 865 (Fla. 1st DCA 1996)*; Rainey v. Dep't of Revenue,* 353 So.2d 207, 209 (Fla. 1st DCA 1977); *Florida Dep't of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach County*, 747 So.2d 374 (Fla. 1999).

The Record on Appeal is devoid of any indication that the legislature intended to delete more language than was actually struck. Therefore, only one logical conclusion can be reached: the legislature intended to strike only the language actually deleted and to leave intact the remainder of the section. If the Court were to reach any other conclusion, it would have to guess how much farther the legislature intended to draw its pen. Suppose, for example, the legislature intended to continue the stroke of its pen through the words "for transmission," leaving the exclusion from sales tax to include only "machines and equipment and parts and accessories therefor used in the generation, transmission, or distribution of electrical energy systems owned and operated by a political subdivision in this state *for distribution expansion*." Such an interpretation would result in exempting transmission expansion from sales tax.

From this hypothetical it is obvious that any attempt to determine legislative intent, beyond the language struck, would lead to the unstable game by this Court of guessing

which words should remain. However, this Court's role is not to speculate legislative intent, but to interpret the statute according to the narrow rules of law. The narrow rules of law, as confirmed by the First District Court, mandate that a court may not "recast [a statute] in the mold which [the court] . . . might like to have seen it written" but must "interpret the law *as it has been written* by the legislature" *State ex rel. Seaboard Air Line R. Co.* at 409 (emphasis added). Thus, the question of what language the legislature intended to delete can only be answered by looking to the *deleted* language.

I I I. ASSUMING, ARGUENDO, THE LEGISLATURE DID MAKE A DRAFTING ERROR BY NOT STRIKING THE DISPUTED WORDS, THIS COURT CANNOT CORRECT THE ERROR

Even if the legislature made a drafting error when it amended section 212.08(6), by failing to strike the words "for transmission or distribution expansion," this Court does not have authority to change the statute's wording by striking this language. Courts may generally correct clerical or scrivener's errors when the legislative intent is clearly evident and congruous with the correction, and, more importantly, when the correction is inconsequential and will not alter the statute's substantive meaning. *See, e.g., Armstrong v. City of Edgewater,* 157 So.2d 422, 425 (Fla. 1963). However, courts may not alter a statute's wording when "uncertainty as to the legislative intent prevails" or when the alteration would change the statute's substantive meaning. *Id.* at 425.

In cases involving simple clerical errors, courts may alter a statute's wording if the

language altered by the court does not alter the original purpose of the statute. As this Court stated in *Haworth v. Chapman*, 113 Fla. 591, 152 So. 663, 665 (Fla. 1934), citing *Orvil Tp. v. Borough of Woodcliff,* 64 N.J. Law, 286, 45 A. 686, 687, "when the intention can be ascertained with reasonable certainty, words may be altered or supplied in the statute so as to give it effect, and to avoid any repugnancy to or inconsistency with such intention." For example, courts have supplied words in titles of statutes when the title clearly contradicted the body of the statute without the addition of the omitted words. *See In re Sherman's Estate, Rosenbaum v. Spitler*, 1 So.2d 727, 729 (Fla. 1941) (adding the word "not" to statute's title when failure to add the word "throws the body and title of the act out of harmony or makes for an entirely different meaning than would be if inserted"). Courts have also replaced grammatically incorrect language when the text of the statute clearly reflected the legislative intent. *See City of Opa-Locka v. Trustees of the Plumbing Industry Promotion Fund*, 193 So.2d 29 (Fla. 3d DCA 1966) (substituting word "on" for "or" and incorporating the word "of" between two nouns). Courts have also corrected inadvertent omissions of parties, caused by scrivener's error, when the legislature intended the parties to be included. *See Sebesta v. Miklas,* 272 So.2d 141 (Fla. 1972) (adding city and county voter precinct to city home rule charter when the legislature obviously intended it to become part of specified county council district but was omitted due to a clerical error).

Although courts may alter a statute's wording when legislative intent is clear and the alteration does not contravene that intent, courts must be extremely cautious in doing so.

See, e.g., Sebesta v. Miklas, supra. As noted above, most alterations merely consist of correcting clerical errors and do not change the statute's substantive meaning. In *Davis v. Florida Power Co.,* 64 Fla. 246, 60 So. 759 (Fla. 1913)[8], this Court emphasized this rule when it stated that Florida courts do not have the authority to correct drafting errors which are not "merely clerical and inconsequential," and that, when an alteration would change the statute's material meaning, the statute should be "effectuated as the language actually contained in the latest enactment warrants." Accordingly, courts "cannot and should not undertake to supply words purposely omitted," *Armstrong* at 425, or, by implication, cannot and should not strike words purposely included. Thus, courts have refused to eliminate words from a statute when legislative intent did not clearly indicate that the words were surplusage. In *Terrinoni v. Westward Ho!,* 418 So.2d 1143, 1145 (Fla. 1st DCA 1982), the First District stated "statutory language is not to be assumed superfluous . . . [and] a statute must be construed so as to give meaning to all words and phrases contained within that statute." *See also Johnson v. Feder*, 485 So.2d 409 (Fla. 1986); *Allen v. Tyrone Square 6 AMC Theaters*, 731 So.2d 699 (Fla. 1st DCA 1999); *C.R.C. v. Portesy*, 731 So.2d 770 (Fla. 2d DCA 1999) (rejecting State's argument that "occupied residential structure" meant a "dwelling," whether occupied or not because it was impermissible to "follow the State's

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[8] *Davis v. Florida Power Co.* was remanded and reversed in part. The portion of the decision which was reversed pertained to the judgment only and did not alter the court's interpretation of statutory construction.

reading" when this would "ignore the word 'occupied' . . . and words in a statute should not be construed as surplusage.").

Therefore, even if, by some presupposed drafting error, the legislature failed to delete the words "for transmission and distribution expansion," this Court cannot eliminate those words as surplusage without absolute indication that the legislature did indeed intend to eliminate them in the original drafting of the amendment. Instead, this Court must assume the words were intended to be included in the statute and must give proper effect to the meaning of the words. Essentially, "a court is not a super-legislature that second guesses what a legislature really meant to say; the legislated language speaks for itself." *City of Pompano Beach v. Capalbo*, 455 So.2d 468, 469 (Fla. 4th DCA 1984).

If this Court were to alter the wording of the statute by eliminating the words "for transmission or distribution expansion," it would be contravening the rules of statutory construction which clearly indicate courts may not alter statutory language unless the legislative intent is evident and the alteration would not change the substantive meaning of the statute. Neither of these prerequisites exists here. First, neither the Record on Appeal nor the statute itself contains a definite indication of legislative intent. Although the title to Chapter 96-397 indicates that the legislature intended to delete certain obsolete language, there is no evidence in the Record on Appeal demonstrating that the "obsolete" language included words beyond the words actually eliminated. Second, if this Court were to alter the language of section 212.08(6) by eliminating the disputed words, the substantive

meaning of the statute would be drastically changed. The purported failure of the legislature to eliminate the words "for transmission or distribution expansion" does not consist of a mere clerical error which will be inconsequential. The deletion of these words will drastically alter the import of the statute by imposing a tax where one would otherwise not exist. Therefore, this Court does not have the authority to modify the wording of section 212.08(6), Florida Statutes, by deleting the words "for transmission or distribution expansion" but must read the statute as written and enacted, giving full effect to the import of these words:

> . . . this exemption does not include sales, rental, use, consumption or storage for use in any political subdivision or municipality in this state of machines and equipment and parts and accessories therefor used in the generation, transmission or distribution of electrical energy by systems owned and operated by a political subdivision in this state for transmission or distribution expansion.

I V. SECTION 212.08(6) IMPOSES A TAX ON RESPONDENTS AND, THEREFORE, MUST BE STRICTLY CONSTRUED AGAINST THE TAXING AUTHORITY, WITH ALL AMBIGUITIES RESOLVED IN FAVOR OF RESPONDENTS

Municipal electric utilities were not subject to the sales and use tax imposed by the Florida Legislature in 1949 and are specifically exempt from its application. Thus, virtually every alteration in Chapter 212 concerning municipal electric utilities since 1949 has had the effect of imposing a sales tax on municipal electric utilities where none previously existed. Section 212.08(6) was a subsequent modification of Chapter 212, and it imposes a

tax on municipal electric utilities. As a taxing provision, it must therefore be strictly construed against the taxing authority, and all ambiguities must be resolved in favor of Respondents.

A. DOR ignores the fact that municipal electric utilities are generally exempt from sales tax, and thus the disputed portion of Section 212.08(6), Florida Statutes, must be interpreted as an imposition of a tax on respondents, rather than as an exemption

In 1949, the Florida Legislature passed Chapter 212, Florida Statutes, also known as the "Florida Revenue Act of 1949," imposing a tax on sales of tangible personal property at retail. When this Act was passed, governmental entities, including municipal electric utilities, were exempt from the sales tax imposed under the Act[9]. Over subsequent years, the legislature has excluded certain portions of the exemption afforded to municipalities. However, most of the municipal exemptions from sales tax have been left intact. More specifically, municipal electric utilities remain generally exempt from taxation, subject only to the specific, limited exclusions designated in section 212.08(6). For example, municipal electric utilities do not pay sales tax on building materials, furniture, computers, typewriters,

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[9] *See* Laws of Florida, Extra Ordinary Session 1949, Ch. 26319 § 8, at 26, 27 ("There shall likewise be exempted all sales made to or by the United States Government, the State of Florida or any county or municipality within the State, and all sales made to or by any governmental unit, State or Federal, and including sales made to contractors of tangible personal property going into and becoming a part of public works and projects owned by any such government or governmental unit.").

paper, tools, motor vehicles, bucket trucks, and the list goes on. Therefore, the taxing scheme established by Chapter 212, Florida Statutes, is not a delineation of what tangible personal property municipal electric utilities *do not* pay sales tax on, because such a delineation would be impractical, if not impossible. Instead, the taxing scheme established by the statute is a delineation of what tangible personal property municipal electric utilities *do* pay sales tax on, which constitutes a very limited list.

DOR, however, misconstrues section 212.08(6) as determining what tangible personal property municipal electric utilities are *not* obligated to pay sales tax on. DOR states in its Brief filed herein, "Appellees have explicitly acknowledged in their Initial Brief in the District Court that association members are generally subject to tax found in Chapter 212, Fla. Stat." (p. 9, 10). DOR is mistaken. Respondents have *not* acknowledged that municipal electric utilities are generally subject to sales and use tax, but have asserted and continue to assert that municipal electric utilities are largely exempt from paying sales tax[10]. Thus, the disputed portion of section 212.08(6) imposes a tax on municipal electric

[10] Respondents acknowledge that municipal electric utilities must pay sales tax on machines and equipment used in the expansion of electric transmission and distribution systems. However, this is the only category of transmission and distribution materials municipal electric utilities pay tax on – they are not obligated to pay taxes on the vast majority of the other tangible personal property they purchase.

utilities[11].

Respondents are not seeking an exemption from a lawful tax – Respondents are *already* generally exempt from the sales tax imposed by Chapter 212. Rather, Respondents are challenging the validity of a sales tax which DOR is seeking to impose on materials purchased by municipal electric utilities to repair or refurbish electric transmission or distribution systems. Therefore, this Court must construe section 212.08(6), Florida Statutes, as a taxing statute imposing a tax on Respondents.

B. As a Taxing Statute, Section 212.08(6) must be Strictly construed against the taxing authority, and all ambi-guities must be resolved in favor of Respondents

Tax statutes, such as section 212.08(6), must be construed strongly in favor of taxpayers and against the interests of the taxing authority, and any uncertainty in the tax statute's application must be resolved in favor of the taxpayer. *See, e.g., Dep't of Revenue v. Ray Construction of Okaloosa County,* 667 So.2d 859, 865 (Fla. 1st DCA 1996); *Harbor Ventures, Inc. v. Hutches,* 366 So.2d 1173, 1174 (Fla. 1979); *Florida Hi-Lift v. Dep't of Revenue*, 571 So.2d 1364, 1368 (Fla. 1st DCA 1991); *Lloyd Enterprises, Inc. v. Dep't of Revenue*, 651 So.2d 735, 739 (Fla. 5th DCA 1995); *Warning Safety Lights of Georgia, Inc. v.*

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[11] In its Initial Brief before this Court, DOR contends that Respondents are focusing on grounds for exemption (p. 10). Respondents, however, are focusing on selective taxation. Since the inception of the sales tax in 1949, Municipal electric utilities have been generally exempt from taxation. Section 212.08(6) actually imposes taxes on certain tangible personal property from which municipal electric utilities had previously been exempt, thereby rendering it a taxing statute.

Dep't of Revenue, 678 So.2d 1377, 1379 (Fla. 4th DCA 1996). While regulatory agencies typically have leeway to construe a statute within a plausible range of interpretations, *see Motel 6, Operating L.P. v. Dep't of Bus. & Prof. Reg.,* 500 So.2d 1322, 1323 (Fla. 1st DCA 1990), tax statutes do not have a range of plausible interpretations but have only one definite interpretation which must be consistent with the exact language of the statute. *See Overstreet v. Ty-Tan, Inc.,* 48 So.2d 158, at 160 (Fla. 1950); *Lake Garfield Nurseries Co. v. White*, 149 So.2d 576 (Fla. 2nd DCA 1963) ("unless a tax is imposed in clear and certain terms, it will be held not to have imposed a tax.").

The language of section 212.08(6) is not ambiguous but clearly sets forth which materials, when purchased by municipal electric utilities, are subject to tax. Thus, the statute must be interpreted according to its plain language and strictly construed in favor of the Respondents as only imposing a tax on those materials delineated in the statute as being taxable, i.e., materials used in the *expansion* of electric transmission or distribution systems. The exact language of section 212.08(6) does not impose a tax on materials used for the repair or refurbishment of electric transmission systems, and thus the statute cannot be interpreted as imposing a tax on such materials.

CONCLUSION

The First District Court's Opinion does not present a matter of great public

importance warranting this Court's review. If this Court should nonetheless accept review, it should not overturn the First District Court's ruling because the First District Court did not err.[12]

[12] *See Chiles v. Dep't of State,* 711 So.2d 151, 155 (Fla. 1st DCA 1998), citing *Regal Kitchens, Inc. v. Dep't of Revenue*, 614 So.2d 158, 162 (Fla. 1st DCA 1994) (stating that if an "agency's interpretation of the law is clearly erroneous" an appellate court must overturn the agency's declaratory statement). The First District Court found that the DOR's interpretation of section 212.08(6) is clearly erroneous in that it was based on surmise of legislative intent rather than the plain meaning of the statutory language.

RESPECTFULLY SUBMITTED on this **6th** day of November, 2000.

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