SUPREME COURT
STATE OF FLORIDA

DEPARTMENT OF REVENUE,

Petitioner/Appellant,

CASE NO. SC00-1916

v.

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

Respondent/Appellee,
_____/

PETITIONER, DEPARTMENT OF REVENUE'S INITIAL BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JAMES MC AULEY
FLA. BAR NO. 381233
JARRELL L. MURCHISON
FLA. BAR NO. 182894
ASSISTANT ATTORNEYS GENERAL
OFFICE OF ATTORNEY GENERAL
TAX SECTION, CAPITOL BLDG.
TALLAHASSEE, FL 32399-1050
COUNSEL FOR PETITIONERS

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CERTIFICATE OF TYPE STYLE AND SIZE

I HEREBY CERTIFY that the type style and size used in the Respondents' Jurisdictional Brief is Courier New 12 point.

PRELIMINARY STATEMENT

Petitioner/Appellant, Department of Revenue, will be referred to as “the Department” or “DOR” in the Department’s Initial Brief.

Respondent/Appellee, will be referred to as “FMPA” “FMEA” or “Appellees” in the Department’s Initial Brief.

References to the Record on Appeal will be prefixed with Vol., followed by the appropriate volume number, then the letter R, followed by the appropriate page number, e.g. Vol. I, R-1-5.

STATEMENT OF THE CASE AND FACTS

The Florida Municipal Agency (hereinafter "FMPA") is a non-profit, wholesale electric power supplier, owned by the municipalities it serves, and created under Ch. 163, Part I, Fla. Stat. (1997). FMPA is a municipal electric utility, subject to s. 212.05 (1)(f), Fla. Stat., and Fla. Admin. Code R. 12A-1.001(9), promulgated by the Department of Revenue (hereinafter "Department"). (Vol. I, R-13)

The Florida Municipal Electric Association, Inc. (hereinafter "FMEA") is a trade association that represents the interests of 32 municipally owned electric utilities in the State of Florida. FMEA's members are municipal electric utilities, subject to Fla. Admin. Code R. 12A-1.001(9), promulgated by the Department. (Vol. I, R-13)

The Department is an agency of the executive branch of state government with the authority to interpret Section 212.05 (1)(f) Fla. Stat., and Section 212.08(6), Fla. Stat. (Supp. 1998), and to promulgate rules relating to the administration of these statutes, including Fla. Admin. Code R. 12A-1.001(9).

The Department is given jurisdiction to issue a declaratory statement interpreting Section 212.05(1)(f), Fla. Stat., and Section 212.08(6), Fla. Stat. (Supp. 1998), pursuant to Sections 20.21 and 120.565, Fla. Stat., and Fla. Admin. Code R. 12-3.007.

The Department issued a Declaratory Statement in this instant case based upon a Petition filed with the Department on June 3, 1999. The Department issued a Declaratory Statement on September 10, 1999 which is the subject matter of this appeal. (Vol. I, R-28-33). The Department declaratory statement rejected the Appellee's contention that Ch. 96-397, Section 26, at 2488, Laws of Fla., was intended to create a new statutory exemption from sales tax for machinery and equipment purchased to carry out maintenance or repair.

On August 16, 2000 the First District Court of Appeal issued an opinion declaring that the statute, as currently written, does provide for such a sales tax exemption and certified the case as a matter of great public importance. See Florida Municipal Power Agency and Florida Municipal Electric Association, Inc. v. Department of Revenue, 25 Fla. L. Weekly D1933 (Fla. First DCA August 16, 2000). On September 13, 2000 the Department timely filed its Notice of Appeal.

SUMMARY OF ARGUMENT

The case is an appeal of Florida Municipal Power Agency and Florida Municipal Electric Association, Inc. v. Department of Revenue, 25 Fla. L. Weekly D1933 (Fla. First DCA August 16, 2000) [hereinafter "Power."]. The appeal in this case concerns the Department of Revenue's Declaratory Statement interpretation of the application of Section 212.08(6), Fla. Stat., to the members of Appellants' Association and FMPA . This court has jurisdiction under Article V, Section 3(b)(4) of the Florida Constitution.

The issue for this court to decide is a question of great public importance as framed by the First District in its opinion: WHETHER SECTION 212.08(6), FLORIDA STATUTES, EXEMPTS FROM SALES TAXATION THOSE MATERIALS PURCHASED BY MUNICIPALLY OWNED UTILITIES FOR USE IN THE REPAIR, REPLACEMENT, OR REFURBISHMENT OF THEIR EXISTING ELECTRIC ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS? Power, at D1933.

The Department submits that this case is a case of great public importance because the ruling by the First District in this case will have a substantial economic impact to the state through the creation of a tax exemption in a major Florida industry where none previously existed and where no economic impact was anticipated. Further, this new unanticipated tax exemption will affect only one portion of the entire electric

industry within this state. Private electric companies in this state will not enjoy the benefits of this tax exemption. The First's adoption of FMPA's plain language argument produces an incorrect and erroneous result when examined in the context of Chapter 96-397, a revisor's bill, which by its plain language was directed toward deletion of obsolete statutory language. The First's decision produces a substantial unanticipated windfall to the public electric industry. The First District's interpretation of this statute is contrary to the Department's long-standing interpretation of the statute based upon its prior administration of the statute, upon the legislative history of the statute, upon this Court's long-standing case law that tax exemptions are to be construed narrowly and against the taxpayer, and upon jurisprudence of this Court counseling avoidance of unreasonable results.

It is well established in Florida's jurisprudence that a tax exemption must be strictly construed against the party claiming the exemption. State Department of Revenue v. Anderson, 403 So. 2d 397 (Fla. 1981). The legislature has codified this same policy in the Florida Statutes. See Section 212.08(13), Fla. Stat. The Department has correctly applied this jurisprudence and indeed the statutes in its Declaratory Statement concerning the exemption found in Section 212.08(6), Fla. Stat. The Department is without authority to give an exemption through a rule to that

which is not expressly created by statute.

The First District supported its holding with a misapplication of a line of cases recognizing strict construction of statutes according to their plain meaning. Power, at D1934. This construction does not apply in construing an exemption statute which must be construed *against* the taxpayer. State Department of Revenue v. Anderson, 403 So. 2d 397 (Fla. 1981). Moreover, it is contrary to this court's repeated iteration "[we] will not give a statute a literal interpretation [that] would produce "an unreasonable or ridiculous conclusion." Florida Dept. of Business and Professional Regulation, Div. of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach,747 So. 2d 374, 383 (Fla. 1999) [quoting Holly v. Auld, 450 So. 2d 217, 219 (Fla.1984)].

Sales tax is imposed equally on both public and private utility service providers. The tax imposed on the Appellees is found in Section 212.05(1)(f), Fla. Stat., not in Section 212.08(6), Fla. Stat. Section 212.05(1)(f), Fla. Stat., provides in part that the tax is also imposed:

> At the rate of 6 percent on the sale, rental, use, consumption, or storage for use in this state of machines and equipment, and parts and accessories therefore, ... to be used in furnishing ... public utility services.[1]

[1] The term "utility service" is defined in s. 203.012(9), Fla. Stat., to mean "electricity for light, heat, or power;..."

Governmental units are granted a specific exemption from the payment of sales or use tax to the extent provided in s. 212.08(6), Fla. Stat. Generally, a municipal electric utility would be subject to sales tax to the extent it does not enjoy an exemption because it is a political subdivision.[2] The 1996 amendment[3] resulting in the present statutory language, with stricken words included, is as follows:

> 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 therefore 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 sales, rental use, consumption, or storage for bonds or revenue certificates are validated on or before January 1,1973~~, for transmission or distribution expansion.

The amendment of the exemption to eliminate the language concerning bond or revenue certificates did not, in the Department's view, create a new exemption for repairs or maintenance. A fair reading of the amendment suggests it eliminated superfluous language which functioned as a limiting expression to an exemption when enacted in 1971.

In its holding the First District states that the Department's interpretation of the effect of the amendment to

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[2] Section 212.02, Fla. Stat., defines the term "person" to include municipalities within the scope of the Chapter.

[3] Ch. 96-397, Section 26, at 2488, Laws of Fla.

Section 212.06(8), Fla. Stat., is clearly erroneous and contrary to its plain meaning. Power, at D1933. The First District in its opinion stated that the legislative intent must primarily come from the language of the statutes themselves. Power, at D1934.

However, this Court has repeatedly recognized that it is inappropriate to give a statute a literal interpretation that would produce unreasonable or ridiculous results. In contrast to the First District's holding, a more correct reading of the statute suggests that the 1996 amendment does not create a new tax exemption but merely eliminates language which resulted in a further limitation of an exemption created in 1971. Where a statute enumerates the things on which it is to operate, it is ordinarily to be construed as excluding from its operation all things not expressly mentioned therein. Ideal Farms Drainage District v. Certain Lands, 19 So. 2d 234 (Fla. 1934); Dobbs v. Sea Isle Hotel, 56 So. 2d 341 (Fla. 1952); Thayer v. State, 335 So. 2d 815 (Fla. 1976)..

The appropriate strict construction of this exemption results in a further limiting of the scope of the exemption, rather than an expansion. This is supported by the fact that the amendment was included in a bill replete with revisionary enactments to remove obsolete language and the fact that the Declaratory Statement indicated that Legislative Staff Analysis

concluded that there would be no fiscal impact as a result of the amendment (Vol. I, R-32). Thus, the language removed created no new exemption.

ARGUMENT

I. EXEMPTIONS TO TAXING STATUTES ARE SPECIAL PRIVILEGES GRANTED BY THE LEGISLATURE WHICH REQUIRE STRICT CONSTRUCTION; THE DEPARTMENT'S RULE ADDRESSING THIS EXEMPTION, BY VIRTUE OF ITS LONG STANDING INTERPRETATION, HAS RECEIVED THE APPROVAL OF THE FLORIDA LEGISLATURE.

The Appellees take issue with the Department's interpretation based upon their reading of an amendment made to s. 212.08(6), Fla. Stat., by Ch. 96-397, Section 26, at 2488, Laws of Fla. It should be noted that this amendment affected an exemption provision, not the taxing statute.[4]

A tax exemption must be strictly construed against the party claiming the exemption. State Department of Revenue v. Anderson, 403 So. 2d 397 (Fla. 1981). The amendment resulting in the present statutory language, with stricken words included, is as follows:

> 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 therefore 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 sales,~~

[4] Appellees' argument in their Initial Brief below is fatally flawed because they misconstrue s. 212.08(6), Fla. Stat., to be a taxing statute when, in fact, it is an exemption statute.

> ~~rental use, consumption, or storage for bonds or revenue certificates are validated on or before January 1,1973~~, for transmission or distribution expansion.

Ch. 96-397, § 26 at 2488, Laws of Fla.

The Department's current Fla. Admin. Code R. 12A-1.001(9)(b), interpreted the governmental exemption as it applied to electrical energy systems owned and operated by a political subdivision or municipality in this state prior to the amendment of the statute by Ch. 96-397, Section 26, at 2488, Laws of Fla. Florida Administrative Code Rule 12A-1.001(9)(b) provided:

> (b) Sales of machines and equipment and parts and accessories therefor for generation, transmission, or distribution of electric energy by systems owned and operated by a political subdivision or municipality in this state shall be subject to the tax 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 only. See, s. 212.08(5)(c), Fla. Stat.

The above-referenced rule reflected the view that the sales of machines and equipment used for generation, transmission, or distribution of electric energy by systems owned and operated by a political subdivision or municipality in this state shall be subject to the tax.

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.[5] Appellees arguments below focused on the grounds of exemption. The general statement that members of the association are subject to tax is limited, as acknowledged in the rule, by the provisions of statutory exemption then found in Section 212.08(5)(c), Fla. Stat. The statute contained an exemption for "... sales, rental, use, consumption, or storage *for use in any political subdivision ... for which bonds or revenue certificates are validated on or before January 1, 1973, for transmission or distribution expansion*."

The exemption language prior to the 1996 amendment sheltered from tax certain purchases which met the dual criteria of both time and specific use. Prior to the amendment of the statute by Ch. 96-397, s. 26, at 2488, Laws of Fla., an exemption required meeting two conditions: 1) equipment was purchased for *expansion* of transmission or distribution ; and, 2) the purchase related to *bonds or revenue certificates validated on or before January 1, 1973*. Only the second criteria was eliminated, not the first. See Ch. 96-397, Section 26 at 2488, Laws of Fla.

Thus, prior to the 1996 amendment, this statute contained an exemption for a narrowly drafted target. The First District

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[5] See: Page 4 of the Appellees' Initial Brief before the First District Court of Appeal. Appellees acknowledge the statutory obligation to pay sales tax on machines and equipment for transmission and distribution.

agreed with this view, but stated that the amendment broadened the general governmental entity sales tax exemption. Power, D1933. The Department, however, believes that the 1996 amendment, as the plain language indicated, did not broaden the scope of the exemption but, instead, it followed the long-standing interpretation of the statute that the exemption pertained solely to the purchase of equipment for the transmission or distribution for *expansion* of an electrical energy system owned by a political subdivision. The amendment, in effect, by its deletion of language actually *limited* once again, as previous amendments to the statute by the legislature did, the scope of the exemption.

In its analysis of the effect of the 1996 amendment on the scope of the exemption the First District observed at D1933 that the

> statute, as currently written, accomplishes this broadening of the general sales tax exemption by limiting the scope of the exclusion to the exemption only to those materials purchased by these entities for use in the expansion of existing transmission or distribution systems.

The question before this Court that whether the 1996 amendment purports to exempt from sales taxation materials purchased by municipally owned utilities for use in the repair, replacement, or refurbishing of existing electric energy transmission or distribution systems is of great public importance precisely because of the First District's ruling in this case. The

Department agrees with the First District that it is of great public importance because the First District's ruling will have a substantial economic impact to the state through the creation of a tax exemption in a major Florida industry where none previously existed and where no fiscal impact was anticipated.

Simply on its face, the amendment removes language from the statute. This removal of language could only further limit the scope, not broaden it, of the exemption that the municipalities enjoyed. This court has held on numerous occasions for over three quarters of a century that where a statute enumerates the things on which it is to operate, it is ordinarily to be construed as excluding from its operation all things not expressly mentioned therein. Ideal Farms Drainage District v. Certain Lands, 19 So. 2d 234 (Fla. 1934); Dobbs v. Sea Isle Hotel, 56 So. 2d 341 (Fla. 1952); Thayer v. State, 335 So. 2d 815 (Fla. 1976). It is simply contrary to tenets of statutory construction to presume an exemption has now been created by the deletion of statutory language. It would seem that only the addition of language to a statute would broaden the scope of a statute. Therefore, the deletion by the legislature of the second criteria as explained above did not as the First District held broaden the scope of the exemption to include sales made for the repair, replacement and refurbishment of existing transmission or distribution systems.

The subject of the exemption was, and remains, *expansion* of electrical energy by systems owned by municipalities.

II. THE CONTEXT OF THE 1996 AMENDMENT FURTHER SUPPORTS THE DEPARTMENT'S INTERPRETATION; CH.96-397 GENERALLY FUNCTIONED AS A REVISOR'S BILL ELIMINATING SURPLUS OR OBSOLETE LANGUAGE.

The issue in this case is whether purchases made by municipal electric utilities of electric transmission and distribution equipment for other than transmission or distribution expansion - e.g., for repair or maintenance - are exempt from sales taxation pursuant to Section 212.08(6), Fla. Stat.

The 1996 amendment of the exemption to eliminate the language concerning bond or revenue certificates did not, in the Department's view, create a new exemption for repairs or maintenance. Put in another light, it is fair to say that the exemption never addressed repairs. The statutory amendment addressed *expansion* only. See Ch. 96-397, Section 26 at 2488, Laws of Fla. The correct reading of the amendment suggests it eliminated superfluous language which functioned as a limiting expression to an exemption when enacted in 1971.[6] This bill in

[6] The limiting language "on or before January 1, 1973" was added in 1971 through Ch. 71-360, Section 7, at 1874-1875, Laws of Fla. For years preceding 1973, the language logically limited the scope of exemption after the date of enactment up to the year 1973. Thereafter, it limited the scope of exemption to 1973 for subsequent years.

fact contained numerous actions taken by the legislature to delete surplus or obsolete language.[7] An important circumstance shedding light on the legislative intent is the title to Chapter 96-397 because the title may be considered as an aid to statutory interpretation. See State ex rel. Szabo Food Services, Inc. v. Dickinson, 286 So. 2d 529, 531 (Fla. 1973). The title to Chapter

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[7] A *partial* list of these revisions is provided for purpose of viewing this amendment in the context of the overall enactment. Note the repeated focus on elimination of obsolete material. The Summary of Senate Bill 584 (Chapter 96-397) stated in part:

> An act relating to taxation;... deleting **obsolete** rates for the tax on gross receipts for utility services, amending s. 203.04,F.S.; deleting **obsolete** provisions which repealed laws granting exemptions from gross receipts taxes; repealing s. 206.445, F.S., which provides authority for the settlement or compromise of penalties or interest which is duplicated in chapter 213; amending ss.206.9915, 336.021, and 326.025, F.S., to conform, amending s. 212.031, F.S., deleting an **obsolete** exemption from the tax on the lease or rental of or license in real property; amending s. 212.04, F.S., deleting an **obsolete** exemption to the tax on admissions; amending s. 212.05, F.S., deleting obsolete provisions relating to occasional sales of vehicles and tax on interstate telecommunications services; deleting an **obsolete** rate of tax on charges for use of coin-operated amusement machines, repealing s. 212.20(6)(c), F.S., which provides for distribution of the proceeds of a tax on the unlawful sale of drugs, cannabis, and controlled substances, which has been held unconstitutional; amending s. 212.054, F.S., deleting **obsolete** provisions relating to distribution of discretionary sales surtax proceeds; amending s. 212.0599, F.S., deleting **obsolete** provisions relating to implementing rules; amending s. 212.08, F.S.; deleting **obsolete** provisions relating to exemptions for political subdivisions.... (e.s)

96-397 states: “An act relating to taxation;... amending s. 212.08, F.S.; deleting obsolete provisions relating to exemptions for political subdivisions;...” (e.s.) The deletion of the obsolete language does not expand or broaden the exemption.

III. THE FIRST DISTRICT’S OPINION MISCONSTRUES A TAX EXEMPTION PROVISION AS A TAXING STATUTE AND MISINTERPRETS THE LAW AS A RESULT OF THIS ERROR.

The Florida Legislature has created a number of sales tax exemptions, most of which are contained in Section 212.08, Fla. Stat. The Department, in construing such exemptions, must adhere to, and be guided by the longstanding and fundamental precept of statutory construction, established by this Court, which mandates exemptions from, or exceptions to, taxing statutes are special privileges granted by the Legislature and must be strictly construed. State Department of Revenue v. Anderson, 403 So. 2d 397 (Fla. 1981); William v. Jones, 326 So. 2d 425 (Fla. 1975); Straughn v. Camp, 293 So. 2d 689 (Fla. 1974); United States Gypsum Company v. Green, 110 So. 2d 409 (Fla. 1959); Asphalt Pavers v. Department of Revenue, 584 So. 2d 57 (Fla. 1st DCA 1991). The Department has no power to confer exemptions that the Legislature has not chosen to grant. Section 212.08(13), Fla. Stat., states in pertinent part that:

> No transactions shall be exempt from the tax imposed by this chapter except those expressly exempted herein....

Thus, if an entity is to escape tax, it must clearly show that it

falls within the claimed exemption, with any doubt being resolved in favor of the state. State ex rel. Szabo Food Service, Inc. v. Dickinson, 286 So. 2d 529 (Fla. 1973).

For the reasons stated above, the question posed by the First District of whether Section 212.08(6), Fla. Stat., exempts from sales tax materials purchased by municipally owned utilities for use in the repair, replacement, or refurbishing of existing electric energy transmission or distribution systems is of great public importance because it has created a new exemption in the statute that the Department of Revenue submits was not created when the legislature deleted language from the statute in 1996. Whether the 1996 amendment created a new exemption is answered in the negative simply by reference to the plain language of the exemption found in Section 212.08(6), Fla. Stat. Beyond this plain language, a review of the actual taxing provision (Section 212.05, Fla. Stat.), as contrasted with the exemption provision, and the history of amendment to s. 212.08(6), Fla. Stat., leading up to the 1996 amendment points toward an overall legislative intent to limit the scope of the exemption, between public and private utility exemption status, as observed by both the Department in the Declaratory Statement and the First District also in its opinion.

Section 212.05, Fla. Stat., imposes a sales or use tax on the privilege of engaging in the business of selling tangible

personal property at retail in this state. Section 212.05(1)(f), Fla. Stat., provides in part that the tax is also imposed:

> At the rate of 6 percent on the sale, rental, use, consumption, or storage for use in this state of machines and equipment, and parts and accessories therefore, ... to be used in furnishing ... public utility services.[8]

The above quoted provision specifically subjects to taxation the purchase of machines, equipment, parts, and accessories used in furnishing public utility services. Governmental units are granted a specific exemption from the payment of sales or use tax to the extent provided in Section 212.08(6), Fla. Stat. But for an exception to this exemption, a municipal electric utility would be subject to tax on **all** its purchases under the authority noted above and because it is a political subdivision.[9] As noted earlier in this brief, the deletion of language by the 1996 amendment further limited the scope of the exemption rather than broadened as the First District held.

Chapter 69-222, Section 15, at 889, Laws of Fla., added the relevant exception to the general governmental exemption. After that amendment, Section 212.08(6), Fla. Stat., read in part:

> [T]his exemption shall not include sales, rental, use, consumption, or storage for use in any political subdivision or municipality in this state

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[8] The term "utility service" is defined in s. 203.012(9), Fla. Stat., to mean "electricity for light, heat, or power;..."

[9] The term "person" is defined in s. 212.02(12), Fla. Stat., to include political subdivisions of the State of Florida.

> of machines and equipment and parts and accessories therefor used in the generation of electrical energy by systems owned and operated by a political subdivision in this state. (e.s.)

Section 212.08(6), Fla. Stat., was subsequently amended by Ch. 71-360, Section 7, at 1875, Laws of Fla., to additionally exclude from the governmental exemption equipment used in the transmission or distribution of electrical energy.[10] In this context, the legislative history of the amendments to the exemption provision suggests, as the First District also observed, Power, at D1933, a trend towards the elimination of exemption for political subdivisions and municipalities.

As a result of these changes, and at the time of passage of the 1996 amendment expressed in Ch. 96-397, Section 26, at 2488, Laws of Fla., tax was imposed equally on purchases of equipment used by public and private electrical utilities alike. The Department's current Rule reflects this state of the law.

Finally, the First District opinion does not contend that

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[10] This amendment added the words "transmission and distribution" to the items *not* exempted stating:

> ... and further provided this exemption shall 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, 1993, for transmission or distribution expansion....

there is any evidence from the statutory language itself, that the Legislature intended to alter the status quo in 1996. The opinion offers no support for its reading by way of committee discussion or analyses. The court's argument is that a literal reading of the statute compels a result supporting the re-creation of an exemption. Even if, arguendo, the courts' reading is literally correct, a strictly literal interpretation should not be followed if doing so contravenes the obvious legislative intent. State v. Sullivan, 116 So. 255, 261 (Fla. 1928).

The First District supported its holding with a misapplication of a line of cases recognizing strict construction of statutes according to their plain meaning. Power, at D1934. This construction does not apply in construing an exemption statute which must be construed *against* the taxpayer. State Department of Revenue v. Anderson, 403 So. 2d 397 (Fla. 1981). In its holding the First District states that the Department's interpretation of the effect of the amendment to Section 212.06(8), Fla. Stat., is clearly erroneous and contrary to its plain meaning. Power, at D1933. The First District below stated that the legislative intent must come primarily from the language of the statutes themselves. Power, at D1934.

However, this court has recently reiterated longstanding case law when it stated that it would not give a statute a literal interpretation that would produce an unreasonable or

ridiculous result. Florida Dept. of Business and Professional Regulation, Div. of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach,747 So. 2d 374, 382 (Fla. 1999). This concept was cogently explained in the case of Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984) which stated that

> a literal interpretation of the language of a statute need not be given when to do so would lead to an unreasonable or ridiculous conclusion. Johnson v. Presbyterian Homes of Synod of Florida, Inc., 239 So.2d 256 (Fla. 1970). Such 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." State ex rel. Hanbury v. Tunnicliffe, 98 Fla. 731, 735, 124 So. 279, 281 (1929).

Therefore, a more correct reading of the statute suggests that the 1996 amendment does not create a new tax exemption but merely eliminates language which resulted in a further limitation of an exemption created in 1971. Where a statute enumerates the things on which it is to operate, it is ordinarily to be construed as excluding from its operation all things not expressly mentioned therein. Ideal Farms Drainage District v. Certain Lands, 19 So. 2d 234 (Fla. 1934); Dobbs v. Sea Isle Hotel, 56 So. 2d 341 (Fla. 1952); Thayer v. State, 335 So. 2d 815 (Fla. 1976)..

The appropriate strict construction of the statute results in a further limiting of the scope of the exemption, rather than an expansion of it. This is supported by the fact that the

amendment was included in a bill replete with revisionary enactments to remove obsolete language and the fact that the Declaratory Statement indicated that Legislative Staff Analysis concluded that there would be no fiscal impact as a result of the amendment (Vol. I, R-32). Thus, the language removed created no new exemption.

Further, this new unanticipated tax exemption will affect only one portion of the entire electric industry within this state. Private electric companies in this state will not enjoy the benefits of this tax exemption. The adoption of the FMPA view of a revisor's bill, which by its plain language was intended only to delete obsolete statutory language, produces a substantial unanticipated windfall to the public electric industry. The First District's interpretation of this statute is contrary to this Court's counsel against statutory interpretation that creates unreasonable results.

It is precisely because the First District's construction of the statute creates an unreasonable result that this case is a case of great public importance. The ruling by will have a substantial economic impact to the state through the creation of a tax exemption in a major Florida industry where none previously existed and where no economic impact was anticipated.

The Legislature's decision to impose an equal tax burden on public and private utilities was accomplished in stages and is a

policy of longstanding. It stands to reason that a purposeful expansion of exemption for municipalities and governmental units without a commensurate exemption for private utilities would have engendered some discussion by the Legislature. Given the accepted rules of construction for interpretation of exemption provisions, the legislature could have, had it desired to create a new exemption, explicitly identified the subject matter of exemption. Instead, the Legislature simply eliminated existing statutory language in a bill which clearly was otherwise focused upon elimination of *obsolete* language. Such was the case here. This Court should uphold the Department's longstanding interpretation of the exemption statute as reflected in the agency statement and reverse the First District's decision which requires a *reading into* the exemption statute an exemption for repairs and maintenance.

CONCLUSION

Based upon the above arguments and authorities, this Court should reverse the decision of the First District and uphold the decision of the Department of Revenue as reflected in its Declaratory Statement in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this _____ day of October, 2000, to FREDERICK M. BRYANT, Esq., 2010 Delta Blvd., P.O. Box 3209, Tallahassee, FL 32325-3209.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JAMES MC AULEY
Fla. Bar No. 381233
JARRELL L. MURCHISON
Fla. Bar No. 182894
Assistant Attorneys General
Office of the Attorney General
The Capitol-Tax Section
Tallahassee, FL 32399-1050
PH. (850)414-3300
FAX: (850)488-5865

Counsel for Appellee
Department of Revenue

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