

IN THE SUPREME COURT  
STATE OF FLORIDA

DELTA PROPERTY MANAGEMENT,  
INC.

Petitioner,

Case No. SC02-2721  
1DCA Case No. 01-3181

vs.

PROFILE INVESTMENTS, INC.,

Respondent.

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ANSWER BRIEF OF THE RESPONDENT  
PROFILE INVESTMENTS, INC.

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## STATEMENT OF THE CASE AND FACTS

The statement of the case and facts contained in the Initial Brief of the Petitioner Delta Property Management, Inc. (“Delta”) is based in part upon alleged statements of “fact” which have no record support, coupled with a gross mischaracterization of the basis for the decision of the district court below and the state of Florida law on this issue, particularly this Court’s controlling decision in Dawson v. Saada, 608 So. 2d 806 (Fla. 1992) and the decision of the United States Supreme Court in Mennonite v. Board of Missions v. Adams, 462 U.S. 791 (1983).

This case involves simply the legal result mandated when a property owner fails to pay their ad valorem property taxes under well-settled Florida law. As was recognized by the district court below (Opinion at 2),<sup>1</sup> the Duval County tax collector and the Clerk of the Circuit Court for the Fourth Judicial Circuit strictly followed their statutory duties in issuing a tax deed to this Respondent, Profile Investments, Inc. (“Profile”). Profile thereafter filed suit to quiet title, and the circuit court recognized that the governing law had been strictly complied with and quieted title to the subject property in Profile based upon this deed. On appeal, the district court affirmed and held that the entire process was conducted in complete conformity with the

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<sup>1</sup> A copy of the district court’s decision is appended to this brief.

statutory requirements, implicitly recognizing that Delta was afforded all the process it was due.

As admitted by Delta (Initial Brief at 1) it is a corporation owning multiple commercial properties and utterly failed to pay the taxes due on the property which is the subject of this suit for 1997. As the district court's opinion implicitly recognizes, and is clear from a review of the record, Delta never made any inquiry as to the status of the missed payment, and never undertook any steps whatsoever to cure the delinquency. In fact, this record shows that Delta failed for over eight months after it supposedly changed addresses, to notify the Duval County tax collector of its change of address. (R. 98-104; 107-109) While this fact ultimately proved of no legal consequence (see Opinion at 5), it does highlight the fact that Delta's complaint herein is, as a matter of law, attributable solely to its own malfeasance and not to any failure of the tax collector, clerk of the circuit court, the circuit court or the First District Court of Appeals to correctly follow and apply the law.

This record, and the decision of the first district below, demonstrates that Delta failed to pay its 1997 ad valorem taxes and a tax certificate was therefore issued. Delta failed to redeem the tax certificate within two years and Profile applied for a tax deed in April of 2000. Pursuant to its statutory

obligations under Section 197.502(4), Florida Statutes, the tax collector prepared a statement listing Delta as a property owner entitled to notice and specified Delta's address as it appeared on the 1999 tax assessment roll, the most recent assessment roll. The tax collector forwarded this statement to the clerk of the circuit court on May 30, 2000, who then prepared a Notice of Tax Sale in accordance with this information and mailed it to Delta on September 4, 2000. The notice was returned to the clerk as undeliverable and Profile placed the winning bid at the tax sale. (Opinion at 2).

As recognized by the district court (id. at 5), the dispositive legal issue at trial was not whether the clerk may have had Delta's "new" address somehow available to it from some other source prior to mailing the Notice of Sale. Rather the controlling legal issue was whether the clerk complied with the statutory notice requirements of Section 197.522(1), Florida Statutes, when it relied upon the tax collector's statement in preparing the notice of the tax sale. The trial court granted summary judgment in favor of Profile, concluding that the clerk was not required to look beyond the tax collector's statement to determine whether the names and addresses of the parties were correctly listed on the tax collector's statement (id. at 3).

The district court affirmed, holding that the statutory mandate governing the providing of notice of a tax sale, provides that the clerk of the

court may rely only on the information provided by the tax collector. The controlling legal question below as the district court recognized is “whether the clerk followed the proper procedures, not whether notice was actually received. Dawson v. Saada, 608 So. 2d 806 (Fla. 1992).” (Id.) Dispositively, and supporting the district court’s ultimate conclusion is the statutory mandate contained in Section 197.522(1): “the failure of anyone to receive notice as provided herein shall not effect the validity of the tax deed issued pursuant to the notice.” (emphasis supplied)

While counsel for the Respondent appreciates zealous advocacy, the entire premise for Delta’s statement of the “facts” is based upon an assertion which is false and without any record support whatsoever. Delta’s assertion, which it makes repeatedly throughout its brief, is that the tax collector had prepared the year 2000 tax roll and it had been certified and was therefore, “available” to the clerk prior to mailing the notices of sale, is without any support in this record. While the reasons for making this assertion are clear (as failure to comply with the statutory requirements is the only basis on which to have the tax deed set aside other than payment of the taxes which Delta acknowledges it failed to do), Delta’s claim was recognized by the district court to “lack evidentiary foundation in the record.” (Opinion at 5). In other words, the record presented to the trial court, to the district court,

and now to this Court, completely belies any factual basis that when issuing the notice of tax sale the clerk of the fourth circuit did, in fact, have available to it Delta's allegedly current address. Most importantly, the district court recognized that this question was legally irrelevant (id.).

Judge Ervin's dissent below, on which Delta's entire argument is based, totally turns on his assumption that because the tax roll is required to be certified by July 1 of each year, the clerk may not rely upon the tax collector's statement, as specifically required by Section 197.522(1)(a), but before mailing out the notices of tax sale the clerk must make some further, independent and statutorily unauthorized inquiry as to whether the information provided by the clerk pursuant to Section 197.522(1)(a), is accurate.

Dispositively, the district court below explicitly noted that the argument advanced here by Delta and articulated by Judge Ervin in its dissent would, in fact, effectively rescind the 1985 statutory enactments, which fundamentally change the duties of the tax collector and clerk in holding tax sales and issuing tax deeds thereon. The district court's ultimate holding herein, that the clerk must rely exclusively only upon the information contained in the tax collector's statement, is precisely what

occurred, and therefore, the clerk fully satisfied its responsibilities and the tax deed issued pursuant to the tax sale in favor of Profile was valid.

## SUMMARY OF ARGUMENT

Florida law is settled that when the statutory procedures mandated by the legislature have been followed, due process has been afforded and a tax deed issued under Chapter 197 will not be set aside.

The argument of last resort made here by Delta is in part based upon a completely false assertion, that the 2000 tax roll had been certified and, therefore, the clerk had available to it (via some other, statutorily unauthorized search of other public records) Delta's "correct" address and had a duty to make such a search and provide Delta notice at an address different than that contained in the tax collector's statement. As the district court below recognized, Delta's contention is without any evidentiary support (Opinion at 5) and more importantly, is legally irrelevant.

The decision of the district court below is in complete accord with this Court's decisions and previous decisions of all other district courts, all of which recognize that when the clerk follows the statutory procedure, the tax deed issued pursuant to the sale is valid and that the notice provisions having been complied with satisfy all of the due process requirements established by the legislature or mandated by the Constitution.

## ARGUMENT

- I. THE DECISION OF THE DISTRICT COURT BELOW IN DELTA PROPERTY MANAGEMENT, INV. V. PROFILE INVESTMENTS, INC., 830 SO. 2D 867 (FLA. 1<sup>ST</sup> DCA 2002) IS CORRECT AND SHOULD BE APPROVED.

This decision of the first district below in Delta Property Management, Inv. v. Profile Investments, Inc., 830 So. 2d 867 (Fla. 1<sup>st</sup> DCA 2002), is in complete accord with the provisions of Chapter 197, with this Court's decision in Dawson v. Saada, 608 So. 2d 804 (Fla. 1992), all other previous decisions of the other district courts<sup>2</sup>, and is in no way impacted by the decision in Mennonite Board of Missions v. Adams, 462 U.S. 791 (1983), conspicuously virtually the only "authority" relied upon by Delta herein for its claim that the statute had not been complied with and its due process rights violated.\_\_\_\_

What Delta advocates here is for this Court to rewrite the governing statutes and reverse numerous decisions of this Court and the district courts in order to provide Delta a remedy for its own misfeasance in the handling of its business affairs. Delta's entire argument inverts the proper analysis, as

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<sup>2</sup> The sole exception is a decision by the fourth district rendered after the decision *sub judice*, Baron v. Rhett, 847 So. 2d 1032 (Fla. 4<sup>th</sup> DCA 2003) in which the fourth district certified conflict with this case and which is pending in this Court, case no. 1377. With the sole exception of Baron, all other district courts have held that only the statute governs the clerk's duties. As noted by the district court here, the dissent of Judge Ervin, relied upon by the fourth district in Baron, would effectively rescind the legislature's 1985 revisions to the governing statutes.

conspicuously absent from Delta's arguments is any recognition of its own legal obligations which forms the underpinning for this entire case. The law in this state is clear that the burden of paying taxes, being aware of the absolute obligation to pay taxes and ensuring that any delinquent taxes are paid, directly and unconditionally falls on the land owner, even if the land owner is incompetent, see Stubbs v. Cummings, 336 So. 2d 412 (Fla. 1<sup>st</sup> DCA 1976), or is a foreign national living overseas, see Alwani v. Slocum, 540 So. 2d 908 (Fla. 2<sup>nd</sup> DCA 1989), much less a sophisticated corporation owning commercial real estate. As will be demonstrated herein, the procedures followed below by the tax collector and clerk of the circuit court were in strict compliance with the governing statutes and the tax deed issued to Profile is valid.

As admitted by Delta in its Initial Brief, it failed to pay the taxes on the subject property for 1997 and took no steps whatsoever to correct this omission. Accordingly, it has no one to blame but itself for the current predicament in which it finds itself, in which the loss of its property is not only legally authorized, but under the facts of this case, was absolutely mandated.

Delta's claims that its due process rights were violated is without any basis whatsoever. The statutory scheme followed by the tax collector and clerk afforded Delta all the process it was due and is fundamentally a legislative determination.

The legal context for Delta's arguments and the decision of the district court will be addressed serially.

**A. THE CONTROLLING STATUTORY PROCEDURES WERE FOLLOWED BY THE CLERK OF THE COURT.**

Delta engages in a disingenuous argument with its claim that the statutory notice procedures under Section 197.522(1)(a), Florida Statutes, were not followed below. This is demonstrably false and has been advanced by Delta here because this is the sole basis (other than proof of payment) on which a tax deed will be set aside.

Section 197.432, Florida Statutes, establishes the procedures for the sale of tax certificates for any year in which the real estate taxes are not paid. The record below demonstrates (R. 12-35) that the 1997 taxes for the property at issue in this case were unpaid by Delta and that in 1998 a tax certificate was issued pursuant to this statutory authorization.

When a two year period has passed and the taxes have still not been paid, an application for issuance of a tax deed may be made. In that case, the statute mandates that the tax collector prepare and deliver a "statement"

to the clerk of the circuit court, listing the parties to be notified of the impending tax sale pursuant to Section 197.502(4), which in pertinent part provides:

(4) The tax collector shall deliver to the clerk of the circuit court a statement...stating that the following persons are to be notified prior to the sale of the property:

(a) Any legal titleholder of record if the address of the owner appears on the record of conveyance of the lands to the owner. However, if the legal titleholder of record is the same as the person to whom the property was assessed on the tax roll for the year in which the property was last assessed, then the notice may only be mailed to the address of the legal title holder as it appears on the latest assessment roll.

Section 197.522 provides that:

(1)(a) The clerk of the circuit court shall notify by certified mail . . . the persons listed in the tax collector's statement pursuant to § 197.502(4) that an application for a tax deed has been made.

The record below conclusively demonstrates that the "latest assessment roll" as that term is used in Section 197.502(4)(a), available to the tax collector at the time it prepared and provided the information to the circuit court clerk, was the tax roll certified by the tax collector for 1999 and that the information provided to the clerk by the tax collector accurately reflected Delta's correct address at the time (R. 12-35). This Record shows that although Delta states that it moved from its Jacksonville location in March 1999 (R. 98-104) it did not notify the tax collector of its "correct" address until eight months later (R. 107-109). Query whether reasonable notice to the tax collector would have resulted in Delta's "correct" address being included in the 1999 assessment roll, which was provided by the tax collector to the clerk, and which the clerk was required to use, and which was in fact used by the clerk (Opinion at 3). Regardless, Delta's claim that the tax deed should be voided because it provided a change of address form to the tax collector after it provided the clerk with the statement required by Section 197.502(4) is legerdemain and is a straw man argument.

First, Delta's claim that the year 2000 tax roll containing the "new address" for Delta had been contained in the year 2000 tax roll which had been certified by the tax collector prior to the clerk mailing the Notice of Sale (and was required to be used by the clerk) is without any record support

whatsoever: as the district court below noted “Delta’s argument lacks evidentiary foundation in the record.” (Opinion at 5). The Record (R. 12-35) shows unequivocally that the “latest assessment roll,” prepared by the tax collector and provided to the clerk as required by §197.502(4)(a) was for 1999, and was used by the clerk in compiling the notices of the tax sale; it showed that the legal title holder of the property at issue was Delta Property Management, Inc. with an address of 8701 Phillips Highway, No. 104, Jacksonville, Florida 32256. Dispositively, the clerk served the notices of sale in accordance with that information.

Second, as recognized by the district court below, this latter fact is dispositive of this entire appeal, as whether the tax roll for 2000 containing a “correct address” for Delta is irrelevant. The statute is unequivocal that once the information is supplied to the clerk by the tax collector, the clerk must as a matter of law rely solely upon this information regardless of its accuracy in sending the notices of sale and that a tax deed subsequently issued as a result of that sale is unconditionally valid.

What Delta really advocates here is that the clerk of court had a duty to look behind the information provided by the tax collector to “discover” Delta’s current address. This contention has been rejected by this Court and virtually all the district courts, each of whom recognize that the question of what procedures are required in the issuance of tax deeds is a question for the legislature. As recognized by the district court below (Opinion at 6, n \*), Judge Ervin’s dissent, upon which Delta’s entire argument is based, would “effectively rescind the 1985 statutory enactments.” As will be demonstrated next, all other courts have rejected this approach, with the sole exception of the recent fourth district in Baron v. Rhett, which essentially adopted the dissent below.

## **B. THE DECISIONAL LAW**

A review of the applicable case law demonstrates that Delta’s arguments are contrary to the plain statutory language and have been rejected by this Court and virtually all other district court’s who have addressed the principles governing the issuance of a tax deed.

In Eurofund Forty-Six Ltd. v. Terry, 755 So. 2d 835 (Fla. 5<sup>th</sup> DCA 2000), the fifth district rejected the identical claim as that made by Delta here, that a tax deed issued to the appellee was invalid because the appellant did not receive notice of the sale even though he had filed an address change with the tax collector. The district court’s opinion recites that the clerk sent notice of the sale required by Section 197.502(4)(a) in reliance on the tax collector’s statement and in so doing, had strictly complied with the

statutory requirements. Crucial for disposing of the issue raised by Delta here is the district court's holding:

The fact that sometime in 1997 a change of address form had been filed with the property appraiser did not require the collector or the clerk to deviate from the statutory mandate.

Id. at 835.

The district court below reached the same conclusion: the clerk was entitled to rely upon the information provided by the tax collected, and whether an “intervening” change of address for the property owner showed up in some public record was irrelevant. (Opinion at 5)

The district court in Eurofund relied upon Dawson v. Saada, 608 So. 2d 806 (Fla. 1991), wherein this Court answered a certified question concerning the notice requirements of Section 197.522. Factually, the Dawsons sought to quiet title to real property based on a tax deed issued to them by the Broward County circuit court. The Saadas, title owners of the property, sought to set aside the tax deed on essentially the same grounds alleged here by Delta, that they did not receive “proper notice” under the statutory notice procedures. Specifically, the Saadas alleged that in addition to the certified mail notice of sale sent by the clerk of the circuit court, as required by §197.522(1)(a), (which this record unequivocally shows was sent *sub judice*), they were also entitled to receive personal service of the notice by the sheriff of the county pursuant to subsection (2) of the statute. Id. 807.

This Court held, id. at 808,n.1, that whether the owners received actual notice was irrelevant, because of the provisions of Section 197.522(1)(d): an interested person's failure to receive notice does not effect the validity of the tax deed and “thus, the relevant issue is whether the clerk complied with the notice provisions, not whether the owner actually received notice.”

This Court held, id. at 808, that the “plain language” of Section 197.522 specifies the mandatory duties of the clerk upon an application for a tax deed, “namely that the clerk must notify by mail the persons listed in the tax collector's statement.” (emphasis supplied) This Court rejected the Saadas' claim that the additional notice requirements of subsection 2 (personal service by the sheriff) were mandatory. Critically, this Court refused to impose any additional duties on the clerk, such as those advocated by Delta here. This Court's ultimate holding on the notice issue was that because the clerk had followed the mandatory statutory notice provisions by

mailing a copy of the notice to those persons at the addresses contained on the tax collector's statement, the statutory notice requirements had been met and the tax deed was thus valid, regardless of whether the tax collector's statement contained accurate information. Id. at 809.

This Court's holding in Dawson was reaffirmed and applied by the first district in Crane v. Martin, 741 So. 2d 1251 (Fla. 1<sup>st</sup> DCA 1999), wherein the Cranes appealed an adverse trial court ruling refusing to set aside a tax deed. The Cranes argued that because the notice of sale that was published failed to include the name of Barbara Crane, and because the notice of sale was not mailed to the Cranes' correct address (the notice was returned as undeliverable) the tax deed was invalid. The district court rejected those arguments and, relying on this Court's decision in Dawson, recognized that the clerk of the court had complied with the requirements of Section 197.522(1), for serving notice even though the Cranes claimed not to have actually received the notice. The district court held, id. at 1253, that because the clerk had mailed by certified mail the notice of the tax sale to the Cranes at the address obtained from the tax collector, regardless of whether that information was accurate, the clerk had complied with the statutory provisions and the tax deed was, therefore, valid.

Further, and more factually apposite to the claim made by Delta herein, the district court utterly rejected the Cranes' argument that because a quit-claim deed to the subject property by a predecessor in title contained their "correct" home address, the clerk was required to use that address when providing notice of the tax sale. The court refused to impose such a duty on the clerk and pointed out, as did this Court in Dawson, that the relevant issue is whether the clerk complied with the notice provisions by using the information supplied by the tax collector, not whether the owner actually received notice and not whether the tax collector's information supplied to the clerk was accurate. Id. at 1254.

In Alwani v. Slocum, 540 So. 2d 908 (Fla. 2<sup>nd</sup> DCA 1989), the Alwanis claimed that the tax deed was invalid because they did not receive notice of the pending sale, as the notice had been sent to a former address instead of their current address. Specifically, the Alwanis argued that the clerk of the circuit court and the tax collector had in fact been notified of their correct address, but had erroneously failed to send the notice of sale to the correct address. The second district rejected this argument and, relying upon Section 197.522(1)(a), found that the clerk sending notice to the address contained on the tax collector's statement constituted strict compliance with the statute and provided no grounds for invalidating the tax

deed, regardless of whether the information supplied by the tax collector was accurate.

The second district court in Alwani relied upon the first district's decision in Stubbs v. Cummings, 336 So. 2d 412 (Fla. 1<sup>st</sup> DCA 1976), and this Court's decision in Mullen v. Polk County, 76 So. 2d 282 (Fla. 1954). This Court's holding in Mullen is dispositive of the claim made by Delta herein, that somehow the clerk's failure to ascertain the "correct" address for Delta renders a tax deed void:

It would place an intolerable burden on the clerk to make an independent examination in every case to determine if the names and addresses recorded in the collector's office were accurate, and if he determined that some name or other was misspelled or some address or other inaccurate and he used what he thought were the true ones, he would be acting wholly without authority, and his actions might well be challenged because of disregard of the law.

Id. at 284.

The district court in Alwani also pointed out what Delta wants this Court to ignore: Section 197.332 clearly specifies the duty of property owners, who "shall be held to know that taxes are due and payable annually and are charged with the duty of ascertaining the amount of current or delinquent taxes and paying taxes before the date of delinquency."

This controlling principle was also explicitly addressed by the fifth district in D.R.L., Inc. v. Murphy, 508 So. 2d 413, 416 (Fla. 5<sup>th</sup> DCA 1987): "most citizens understand that if you don't pay your taxes the government will take your land!" To this most fundamental and self-evident of legal principles, Profile can only add, "particularly corporate citizens whose business is the ownership of commercial real property."

In Volusia County v. Passantino, 364 So. 2d 730 (Fla. 1<sup>st</sup> DCA 1978), the first district held that a landowner who had in fact paid a portion of his taxes was still responsible for paying the properly assessed taxes on the entire parcel, and could not be relieved of the consequences of an error of the taxing authorities resulting in his not receiving actual notice of an impending tax sale. Relying upon this Court's holding in Mullen, 76 So. 2d at 284, the district court held that a landowner who does not receive a tax statement or a proper receipt is on notice that further inquiry is necessary.

The most crucial and dispositive fact presented *sub judice* is also an undisputed one: Delta should have known it had not paid its 1997 taxes and had two years to discover and cure this delinquency. It is charged by law

with this knowledge and the duty to pay its taxes and this record is clear and unequivocal that Delta absolutely ignored this duty.

Saggese v. Department of Revenue, 770 So. 2d 1244 (Fla. 4<sup>th</sup> DCA 2000), also addresses and rejects another of Delta's arguments. There the landowner claimed that the clerk could have accessed other public records and perhaps obtained a more current address for the property owner for use in providing notice of the tax sale. The district court held that the clerk's failure to search other public records does not constitute noncompliance with the statutory mandate that the clerk send notice in accordance with the information contained on the tax collector's statement, and that the clerk had no other duties. The position advocated by Delta herein is completely contrary to this holding. Accord Kerr v. Broward County, 718 So. 2d 197, 199 (Fla. 4<sup>th</sup> DCA 1998) (the statute imposes upon the clerk a minimal notice obligation to utilize the information supplied by the tax collector, but does not "burden the clerk with tracking down all potential distributees or requiring the clerk to undertake some other search of the public records.")

These cases dispose entirely of Delta's claims here that the tax deed issued by the clerk of court is void because the clerk failed to follow the statutory notice requirements. Delta's alleged providing a change of address to the tax collector after the tax collector provided the clerk with the information statutorily required but before the notice of sale was mailed by the clerk is of no legal relevance under the statutory scheme. Each of these cases cited above rejects any suggestion that the clerk has any duty to go behind the information supplied by the tax collector or to undertake any other search.

After the decision of the district court *sub judice*, the fourth district issued its decision in Baron v. Rhett, which adopted the dissenting opinion of Judge Ervin and certified conflict with this case.<sup>3</sup> Factually, Baron dealt with the purchase of the subject property by Rhett after the tax collector had provided the clerk with the statutorily required information concerning who was entitled to notice of the tax deed sale (which contained only the name and address of the person from whom Rhett purchased the property), but before the clerk mailed the notices of the tax deed sale five month's later which did not include notice to Rhett; Rhett's name and address appeared in the tax roll which was prepared during this period of delay. Under the circumstances, the fourth district held that the clerk had waited too long after

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<sup>3</sup> As of the date of this writing, this Court has not accepted jurisdiction of the fourth district's decision, which has been assigned case number SC03-1377 by this Court (Opinion at 5).

receiving the information from the tax collector to send out the notices of the sale, that Rhett was entitled to notice of the sale, and that when there has been such a delay by the clerk in mailing notices of the sale, the clerk had the duty to obtain “an updated statement from the tax collector.”

The obvious and what Profile submits is a crucial distinction between the decision *sub judice* and that of the fourth district in Baron v. Rhett, is that in this case, Delta had been the owner of the subject property prior to the 1997 assessment, had failed to pay its taxes for 1997, and had utterly failed to take any steps whatsoever after that time to cure this deficiency.

Profile submits that the fourth district’s rationale is erroneous and should be disproved by this Court for the identical reasons set forth herein. However, even if this Court ultimately determines that the fourth district’s decision in Baron v. Rhett can be justified on the grounds that a person who purchases property during the period between the time the tax collector provides the clerk with the statutorily required information and when the clerk mails the notices of tax sale, is a person entitled to notice, this is inapplicable here. Again, Delta as the property owner to whom the 1997 taxes were assessed and who failed to pay the taxes or ever take a single step to remedy this delinquency, and who waited right months after it claims it moved to so notify the tax collector, is charged as a matter of law with the duty to pay its taxes, know the status of its taxes and make further inquiry if it does not receive a tax bill.

It is undisputed in this record that the clerk strictly followed its statutory mandate by mailing notice to the address contained in the information supplied by the tax collector, and that the tax collector used the information contained in the latest assessment roll when compiling that information. There is no infirmity in the tax deed as notice of the sale was provided by the clerk in strict compliance with its statutory mandate. This Court should hold, in accordance with Dawson v. Saada and the district court’s decisions that the clerk below had no duty to determine the accuracy of the tax collector’s information even if a subsequent change of address form had been filed with the tax collector.<sup>4</sup> **Accordingly, the decision of the district court below so holding should be approved.**

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<sup>4</sup> Again, there is no evidentiary basis for Delta’s contention that there was, in fact, any such “intervening” updated address available.

**B. DELTA RECEIVED ALL THE PROCESS IT WAS DUE.**

Predictably, Delta argues that somehow its constitutional “due process” rights were violated because it failed to pay its 1997 real estate taxes and did nothing to correct its error for over two years thereafter.

At the outset, Profile has no argument with the legal truism that a property right cannot simply be extinguished legally without providing the owner due process. However, the question of how much process is due, particularly the type of notice required in order to authorize the forfeiture of a property interest which the issuance of a tax deed accomplishes, is a decision for the legislature. This issue has been addressed by numerous Florida courts, all of whom reject the position urged by Delta.

Noticeably, Delta relies virtually exclusively on the United States Supreme Court decision in Mennonite Board of Missions v. Adams, 462 U.S. 791 (1983) for its due process claim. Mennonite stands for the non-controverted proposition, irrelevant here, that in order to pass constitutional muster, notice must be “reasonably calculated, under all the circumstances” to apprise interested parties of the action. Profile has no argument with this holding, and submits that the statutory scheme at issue here, approved by this Court against a similar misplaced due process argument in Dawson v. Saada, is reasonably calculated under all the circumstances to provide notice. Again, it was Delta’s obligation to pay its taxes and know the status of its tax payments, and the argument it makes here is antithetical to the legal ramifications of this fundamental duty.

Critically, Mennonite Board of Missions v. Adams dealt with a mortgagee of property sold at a tax sale who only received constructive notice by publication. In finding this constitutionally infirm, the Supreme Court held that a simple mailing of notice to the mortgagee’s address contained in the publicly recorded mortgage was all that was required to cure the due process deprivation.

This holding is in no way impacted by the decision of the first district below, by this Court’s decision in Dawson v. Saada and the numerous other decisions cited herein. The statutory scheme at issue is different, as service by certified mail based upon the addressed provided by the tax collector is what is required and is what, in fact, occurred here. There is nothing contained in Mennonite Board of Missions v. Adams which even remotely suggests that the process followed in this case and is mandated by Florida law is constitutionally infirm, when that process is in fact what the Supreme

Court in Mennonite Board of Missions v. Adams identified as being constitutionally required. In short, Delta received all the process it was due both as a matter of statutory law and constitutional entitlement when the clerk mailed notice of the sale to it at the address provided by the tax collector.

The crucial issue to be addressed in disposing of Delta's due process argument is the sufficiency of the notice procedures contained in Section 197.522. Profile agrees that an abridgment of property rights in order to satisfy due process requirements must provide notice to the property owner, see, e. g., Cochran v. Jones, 707 So. 2d 791 (Fla. 4<sup>th</sup> DCA 1998), and points out that it was Delta's failure to pay its taxes and cure the delinquency within a reasonable time, which has led to the current situation, and not a deficiency in the statutory notice procedures.

Fundamentally, Delta's entire due process argument is based upon the same false premise which, as demonstrated above, is without a legal basis, as the clerk had no obligation to search the public records to determine Delta's "correct" address or to look behind the tax collector's information.<sup>5</sup> Again, there is no basis in this record that the clerk had Delta's "current" address when the tax notice was mailed and the fact that the statute does provide a notice procedure "reasonably calculated under the circumstances" satisfies due process.

This Court in Dawson v. Saada, *supra*, 608 So. 2d at 809, recognized that so long as the clerk relies upon the tax collector's information and mails notice to those persons and at the addresses contained therein, due process is satisfied. This Court's analysis was premised upon the fundamental requirement that it is the property owner who is absolutely obligated to know that he or she must pay taxes and to inquire when they do not receive a bill for the taxes owed. As this Court noted, the common law presumption against the validity of tax deeds is no longer the case and state legislatures have passed various laws relaxing these common law requirements: there is no due process violation "as long as the clerk complies with the notice requirements of subsection (1)", id. at 808.

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<sup>5</sup> Delta argued at the district court that the clerk's failure to utilize the full name of Delta's mortgagee was legally deficient. As demonstrated, the clerk has the absolute right to rely upon the tax collector's statement, but the affidavit filed in support of Profile's Motion for Summary Judgment shows that even if the full name of the Mortgagee had been used, the notice of the tax sale sent by the clerk would have been returned.

The first district in Stubbs v. Cummings, *supra*, had occasion to deal with a due process argument in the tax deed context when the property owner, who forfeited her property because a tax deed was issued, was recognized to be mentally incompetent. While acknowledging that in order to pass due process requirements, notice must be “reasonably calculated under all the circumstances” to apprise interested parties and afford them an opportunity to protect their interest, the question presented was whether under all the circumstances the notice required by Chapter 197 had been complied with, of which there was no dispute; the plaintiff’s mental incompetence, which the district court recognized would have, in fact, prevented the property owner from protecting her interest in the property, was held to not be material to the due process analysis. The claim was raised that the clerk was on notice of the property owner’s mental incompetence because an order of incompetence had been entered in the Escambia County court, where the property was located. The district court rejected the assertion that the clerk had some independent duty to search other public records, and this its failure to do so violated the incompetent property owner’s due process rights:

The legislature has not seen fit to impose upon the county officials involved in tax deed procedures a duty to ascertain the status of owners of property by a search of all public records which might reveal same, but rather rely upon the tax rolls or tax collector receipt book or other information that is directly furnished them by interested parties.

The district court, therefore, held that there was no due process violation so long as the statutory mandate as to providing notice of the tax sale was followed by the clerk.

As the district court held, actual receipt of notice is not required and that notice which is required for due process is that which is deemed by the legislature to be acceptable; even though the property owner was incompetent and, therefore, could not understand the nature of the notice,

due process was not offended provided that compliance with the process the legislature deemed due had been followed.

The district court in Alwani v. Slocum, *supra*, 540 So. 2d 908 (Fla. 2<sup>nd</sup> DCA 1989), also rejected the identical due process argument raised by Delta herein. As the second district recognized, so long as the clerk sends notices of the tax sale based upon the information provided by the tax collector (who, of course, obtains this information from the parties) all the process that is due the land owner has been afforded. As the district court recognized, the amount of process which is due is for the legislature to decide. Id. at 909.

The case law is clear that the due process issue is primarily a legislative question. Delta's due process argument has been specifically rejected by this Court's holding in Dawson v. Saada and finds no support whatsoever in the Supreme Court's decision in Mennonite etc. v. Adams. The "easy matter" advocated by Delta herein requiring the clerk to look places other than the information supplied by the tax collector and to "verify" the accuracy of this information could have been an option chosen by the legislature in addressing this subject, but the legislature did not do so. As recognized by the district court below (Opinion at 5-6), prior to 1985, the clerk did have additional duties, which were significantly changed in 1985.

As the district court clearly understood, the approach urged in the dissent by Judge Ervin and advocated by Delta here (and apparently favored by the panel of the fourth district in Baron v. Rhett) would “effectively rescind the 1985 requirements.” (Id. at 6, n. \*).

Importantly, the legislature established a scheme which not only passes constitutional due process muster, but provides an alternative remedy to those like Delta, who feel aggrieved by the tax collector. Section 197.502(4)(f) provides that the tax collector “may procure a reasonable bond for errors and omissions of his or her office in making such certificate.” Crucially, while this provision grants a remedy to an aggrieved property owner, it does not alter the clerk’s obligation to rely solely on the tax collector’s information or in any way affect the validity of a tax deed.

Most importantly, Delta’s entire due process claims inverts the fundamental question as to whose obligation it is to know the status of the taxes on property. Accordingly, Delta’s claim that the judgment entered below violates its due process rights is completely without merit, is directly contrary to this Court’s holding in Dawson v. Saada and the decision of the district court should be approved.

**II. IF THIS COURT ANNOUNCES A NEW RULE OF LAW, REMAND FOR AN EVIDENTIARY HEARING IS REQUIRED.**

At bottom, the argument advanced by Delta here is seeks to invoke sympathy and this Court's assistance in remedying Delta's failure to maintain proper records, ensure that it had either paid its taxes in full or make proper inquiry when it failed to receive a tax bill. As demonstrated, the question of what process is due in this context is for the legislature to decide and there is nothing about the statutory scheme at issue which even remotely suggests that the clerk of the circuit court could not constitutionally rely upon the information actually contained in the tax roll for Delta and mail notice of the tax sale to that address accordingly. Again, Delta waited for eight months after it moved to give notice to the tax collector of its change of address and did absolutely nothing to ensure that it paid its taxes for 1997. This record is unequivocal that the clerk relied upon the information supplied by the tax collector, which is dispositive, and the district court's decision so holding should be approved.

If, however, this Court determines that a new rule of law is to apply and announces a new interpretation of Section 197.522, that the clerk of the circuit has some other duty to determine if the information provided it by the tax collector is accurate, then remand for an evidentiary hearing by the trial court is warranted.

This is so because as the district court below recognized, Delta's claim that somehow the year 2000 tax roll had been certified, that it contained Delta's correct address, and that if the clerk had utilized that information instead of the information provided by the tax collector, it would have received actual notice of the tax sale "lack evidentiary foundation in the record." (Opinion at 5). Accordingly, if this Court announces a new rule of law and finds this question relevant, it constitutes a disputed issue of fact which cannot be resolved as a matter of law on this appeal.<sup>6</sup>

The Respondent Profile submits that the year 2000 tax roll was not certified and that Delta's alleged new address was not, therefore, available to the circuit court clerk at the time the notices of sale were sent. Accordingly, in the event this Court changes the law and finds that question irrelevant, remand for an evidentiary hearing on that question, which would apparently be dispositive under a newly announced rule of law, would be required.

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<sup>6</sup> This specifically includes Delta's absolutely unsupportable assertion (Initial Brief at 13, n. 9) that it "offered the July 2000 assessment" in opposition to Profile's Motion for Summary Judgment.

## CONCLUSION

Other than proof of actual payment of the taxes, a tax deed may be set aside only upon a showing that the clerk did not strictly follow the requirements of §197.522 in providing notice of a tax sale. The facts are undisputed here that the clerk provided notice to the parties at the addresses contained in the tax collector's information it provided to the clerk. The district court below correctly recognized that the clerk has no duty to "look behind" the information supplied by the tax collector or to search other public records. The law on this issue (with the exception of the dissent below and its adoption by the fourth district in Baron v. Rhett), totally disposes of Delta's claim herein as to the invalidity of the tax deed.

Delta's due process argument is based upon a false premise, was specifically rejected by this Court in Dawson v. Saada, and is not supported at all by the U.S. Supreme Court's decision in Menonite Board of Missions v. Adams. Delta received all the process it was due. The district court below reached the correct decision and this decision should be approved by this Court.

However, in the event this Court announces a new rule of law, remand for an evidentiary hearing is required.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by facsimile and U.S. mail, postage prepaid, to John R. Beranek, Esquire, Ausley & McMullen, 227 S. Calhoun Street, Tallahassee, Florida 32302-0391; and John R. Hargrove, Esquire, Heinrich Gordon Hargrove Weihe & James, P.A., Broward Financial Center, 500 E. Broward Blvd., Suite 1000, Fort Lauderdale, Florida, 33394 this 9<sup>th</sup> day of September, 2003.

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Attorney

**CERTIFICATE OF TYPE FACE**

I hereby certify that I have complied with Rule 9.210(a), Fla.R.App.P., and the font size of this brief is Times New Roman 14-point.

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Attorney