IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-783

LEWIS Y. and
BETTY WARD, et al.,

Petitioners,

v.

GREGORY BROWN,
Property Appraiser of Santa
Rosa County, et al.,

Respondents.
_____/

BRIEF OF AMICI CURIAE, THE CITY OF GAINESVILLE, THE CITY OF TALLAHASSEE, AND THE FLORIDA MUNICIPAL ELECTRIC ASSOCIATION

Marion J. Radson, City Attorney
Florida Bar No. 175570
Elizabeth A. Waratuke,
Litigation Attorney
Florida Bar No. 0458007
City of Gainesville
Office of the City Attorney
P.O. Box 1110
Gainesville, Florida 32602
(352) 334-5011
FAX (352) 334-2229

Steven L. Brannock, Esquire
Florida Bar No. 319651
HOLLAND & KNIGHT LLP
P.O. Box 1288
Tampa, Florida 33601-1288
(813) 227-8500
FAX (813) 229-0134

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF THE AMICI AND STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 3

ARGUMENT 5

CONCLUSION 23

CERTIFICATE OF SERVICE 24

CERTIFICATE OF COMPLIANCE 25

TABLE OF AUTHORITIES

Cases

Bankunited Financial Corp. v. Markham,
763 So. 2d 1072 (Fla. 4th DCA 1999) 11, 15

Davis v. Macedonia Housing Authority,
641 So. 2d 131 (Fla. 1st DCA 1994) 14, 19, 20

Dept. of Revenue v. Pepperidge Farm, Inc.,
847 So. 2d 575 (Fla. 2d DCA 2003) 6, 7, 9, 18

Florida Governmental Utility Authority v. Day,
784 So. 2d 494 (Fla. 5th DCA 2001) . . . . . passim

Hall v. Leesburg Regional Medical Center,
651 So. 2d 231 (Fla. 5th DCA 1995) 20

Markham v. Moriarty,
575 So. 2d 1307 (Fla. 4th DCA 1991) 20

Markham v. Neptune Hollywood Beach Club,
527 So. 2d 814 (Fla. 1988) 21

Nikolits v. Ballinger,
736 So. 2d 1253 (Fla. 4th DCA 1999) 8, 13, 20

Palmer Trinity Private School, Inc. v. Robbins,
681 So. 2d 809 (Fla. 3rd DCA 1996) 20

Sartori v. Dept. of Revenue,
714 So. 2d 1136 (Fla. 5th DCA 1998) . . . . . passim

Sebring Airport Authority v. McIntyre,
783 So. 2d 238 (Fla. 2001) 1

State, Dept. of Revenue v. Sohn, P.A.,
654 So. 2d at 249 (Fla. 1st DCA 1995) . . . . . passim

State, Dept. of Revenue v. Stafford,
646 So. 2d 803 (Fla. 4th DCA 1994) 8, 19

Ward v. Brown,
2003 WL 1088219 (Fla. 1st DCA 2003) 5, 6

Statutes

Section 163.01 17

Section 191.171 10

Section 193.011 15

Section 194.171 . . . . . passim

Section 194.171(2) . . . . . passim

Section 194.301 11

Section 196.011 20

Section 197.121(2) Fla. Stat. 5

Section 197.122 . . . . . 5, 8, 9

Section 197.122(1) 8, 9

Section 197.182 . . . . . passim

Section 197.182(b)(1) 9

Section 95.11(3)(m) 9

Rules

Rule 12D-8.021 (2)(a)(b) and (d) 15

Rule 12D-8.021(2)(a) 12, 15, 16

Rule 12D-8.021(d) . . . . . passim

INTEREST OF THE AMICI AND STATEMENT OF THE CASE AND FACTS

This brief is filed on behalf of the Cities of Gainesville and Tallahassee and the Florida Municipal Electric Association (FMEA). Gainesville and Tallahassee own significant amounts of real property used for a wide variety of municipal or public purposes. These purposes range from the provision of affordable housing to low income families, community redevelopment, stormwater management, and utility service, to include electric, gas, water and wastewater, and telecommunications. FMEA is the trade association for Florida's thirty-two public electric power communities located across the State. Individual members of FMEA also own significant amounts of real property used for the provision of electrical power.

In the past several years, property appraisers have been involved in frequent litigation over a municipality's use of its property and when it is exempt from taxation.[1] Because Amici frequently find themselves the subject of such litigation,

[1]For example, property owned by a municipality and used by it for municipal or public purposes is exempt from taxation, such exemption being constitutionally and statutorily based. There has been much recent litigation over the scope of these exemptions. See e.g., Sebring Airport Authority v. McIntyre, 783 So. 2d 238 (Fla. 2001).

they have a keen interest in settling the confusion and controversy over the limitations period that applies to such litigation.

These Amici have no interest in the specific facts of this case, and accept the statements of the parties within respect thereto.

SUMMARY OF THE ARGUMENT

The 60-day filing requirement of section 194.171(2) Fla. Stat. is applicable only when the taxpayer's action is a challenge to a tax assessment. Otherwise, the statute of limitations applicable to the action brought is the only time requirement that must be complied with by the taxpayer.

The issue then becomes what is an "assessment" for purposes of section 194.171(2). From a review of the statutes, Department of Revenue interpreting rules, and case law, Amici would suggest that an assessment occurs when a property appraiser uses his or her expertise to weigh the facts and exercise judgment concerning the value of a piece of property. An assessment also occurs when a property appraiser uses his or her expertise to apply the facts relating to a piece of property to determine whether it qualifies for a particular exemption. These types of decisions by the property appraiser, which involve his or her exercise of judgment over a matter within his or her particular expertise, are assessments subject to the 60-day filing requirement.

Other decisions, however, are not assessments. Decisions concerning the misinterpretation of a statute, the legal effect of certain facts and the failure to consider certain facts are errors of omission or commission, not assessment errors, and fall outside the 60-day period. These decisions have nothing to do with the exercise of the property appraiser's judgment concerning matters within his or her sound discretion.

Exemption decisions, depending on the nature of the property appraiser's error, may either be an error of omission or commission or an error in judgment. Whether a homeowner is entitled to a homestead exemption or whether an organization is entitled to charitable status may be a matter of weighing the facts. Such exemption decisions

are commonly seen as "assessments" subject to the 60-day period. By contrast, an exemption decision resulting from an error, such as misinterpretation of the applicable statutes, a misunderstanding of the facts or the failure to consider a relevant fact is not an "assessment" but an error of omission or commission.

Thus, Amici respectfully suggest that this court rest its decision not on the property appraiser's labeling of his decision as an exemption or classification decision, but rather on the underlying nature of the property appraiser's decision.

ARGUMENT

The issue before the Court is when an action by a property appraiser constitutes an "assessment" subject to the 60-day filing requirement of section 197.121(2) Fla. Stat. The intersection between 194.171(2) Fla. Stat., which sets a 60-day time limit for a challenge to the "assessment" of property, and other Florida Statutes which impose a four-year statute of limitations for errors of omission or commission, has been the subject of much litigation and conflict. See Sections 197.122 and 197.182. See also cases collected in Ward v. Brown, 2003 WL 1088219 (Fla. 1st DCA 2003) and in Florida Governmental Utility Authority v. Day, 784 So. 2d 494 (Fla. 5th DCA 2001).

The problem is how to define "assessment" for the purposes of section 194.171(2) and how to distinguish an assessment error from an error of omission or commission. For example, there is no question that the property appraiser's exercise of judgment concerning the value of a piece of property constitutes an "assessment". But Florida courts have differed over whether a property appraiser's exemption determination is an assessment or an error of omission or commission. Compare Ward, 2003 WL 1088219 at *4 (exemption determination is subject to the 60-day period) with Day, 784 So. 2d at 497 (exemption determination is subject to the four-year statute of limitation). Other courts have determined that decisions concerning the classification of property are not assessments under section 194.171 and are subject to the four-year statute of limitation. See, e.g., Dept. of Revenue v. Pepperidge Farm, Inc., 847 So. 2d 575 (Fla. 2d DCA 2003). But, as demonstrated by this case, there are sharp differences over what constitutes a "classification" of property as opposed to

an assessment of property. See e.g., Ward, 2003 WL 1088219 at *2 - *3.

The decision below demonstrates just how much conflict and confusion has developed in the case law over the definition of an assessment and how an assessment should be distinguished from errors of omission or commission. Indeed, the more recent decisions, including the decision below, have strayed entirely from the underlying statutory framework and instead have tried to make decisions based entirely on whether the property appraiser made an exemption decision versus a classification decision. This analytical framework has proven unsatisfactory because the parties, like the parties to this case, focus on labels instead of the underlying statutory framework.

Amici believe that the analysis must start with the statutes and Department of Revenue rules interpreting the statutes. The focus should not be on whether to label the decision as a classification or exemption decision, but rather the nature of the property appraiser's decision-making process. In other words, the real issue is whether the property appraiser exercised factual judgment concerning matters within the property appraiser's expertise or made an error such as the misinterpretation of a statute or a misunderstanding of the facts.

An "Assessment" Involves the Exercise of the Property Appraiser's Judgment Concerning Matters within his or her Expertise.

Section 194.171(2) states that no action to contest a tax "assessment" shall be brought after 60 days from the date of the assessment being contested. In defining an "assessment" for the purposes of this statute, courts have uniformly held that an assessment involves the exercise in judgment by the property appraiser. See Dept. of Revenue v. Pepperidge Farm, Inc., 847 So. 2d 575, 577 (Fla. 2d DCA 2003) (finding a classification decision not to be an "assessment" within the meaning of section

194.171 because it did not involve the exercise of judgment by the property appraiser); Sartori v. Dept. of Revenue, 714 So. 2d 1136, 1140 (Fla. 5th DCA 1998) (finding a classification decision not to be an "assessment" within the meaning of section 194.171 because it did not involve the exercise of judgment by the property appraiser); State, Dept. of Revenue v. Sohn, P.A., 654 So. 2d at 249, 250-51 (Fla. 1st DCA 1995) (finding a classification decision not to be an "assessment" within the meaning of section 194.171 because it did not involve the exercise of judgment by the property appraiser); Florida Governmental Utility Authority v. Day, 784 So. 2d 494, 497 (Fla. 5th DCA 2001) (holding that exemption decision was not an assessment because it did not relate to the "valuation of the property").

Thus, when the property appraiser uses his or her expertise to weigh the facts and exercise judgment concerning the value of a piece of property, the property appraiser has engaged in an assessment subject to the 60-day limitation of section 194.171(2). See, e.g., State, Dept. of Revenue v. Stafford, 646 So. 2d 803 (Fla. 4th DCA 1994) (claim that assessment was too high was subject to the 60-day limitation). Similarly, when the property appraiser uses his or her expertise to apply the facts relating to a particular piece of property to determine whether it qualifies for a homestead exemption, the 60-day period has been held to apply. See e.g., Nikolits v. Ballinger, 736 So. 2d 1253 (Fla. 4th DCA 1999).

But not every decision of the property appraiser is an assessment. Often times, a challenge to the property appraiser's decision has nothing to do with the property appraiser's exercise of judgment over a matter within the peculiar expertise of the property appraiser, but instead is based on a clear mistake made by the property

appraiser, such as the failure to consider a key fact or the misinterpretation of a statute. Such errors of omission or commission are not assessments and fall outside of the 60-day period. See Sohn, 654 So. 2d at 250-51; Sections 197.122 and 197.182, Fla. Stat.

As noted by Sohn, this distinction between an assessment error and an error of omission or commission is found in sections 197.122(1) and 197.182, Fla. Stat. Each provides for the correction of certain errors of the property appraiser without imposing any deadline. For example, section 197.122(1) provides that "any acts of omission or commission may be corrected at any time by the officer or party responsible for them . . ." (emphasis added). Similarly, section 197.182 directs the Department of Revenue to order refunds when an overpayment has been made or when a payment has been made when no tax is due and sets a four-year limitation period for seeking such a refund. Section 197.182(b)(1), Fla. Stat. See also, section 95.11(3)(m), Fla. Stat. (providing a four-year statute of limitations to an "action for money paid to any governmental authority by mistake or inadvertence".)

Applying these statutes, the First DCA held that a property appraiser's error in the classification of a piece of property was an error of omission or commission that could be corrected "at any time." See Sohn, 654 So. 2d at 250-51. The classification decision had nothing to do with any exercise of the property appraiser's judgment but instead was an error of omission or commission within the meaning of sections 197.122 and 197.182. Following Sohn, numerous other courts recognized the distinction between assessment errors and errors of commission or omission. Pepperidge Farm, 847 So. 2d at 577; Day, 784 So. 2d at 497; Sartori, 714 So. 2d at 1136-39.

The Department of Revenue rules recognize this distinction and provide guidance

as to what sort of decision is an assessment subject to the much more restrictive section 191.171 and which decisions constitute errors of omission or commission subject to review "at any time". Rule 12D-8.021(d) confirms that the exercise of the property appraiser's judgment concerning matters within his or her expertise is not an error of omission or commission. According to that rule, decisions concerning the value of the property or factual determinations regarding the existence of an exemption are not subject to correction outside of the 60-day period set forth in section 191.171. Rule 12D-8.021 provides as follows:

> (d) The following is a list of circumstances which involve changes in the judgment of the property appraiser and which therefore, shall not be subject to correction or revision, except for corrections made within the one-year period described in paragraph (2)(a)24 of this rule section. The term "judgment" as used in this rule section, shall mean the opinion of value . . . or the conclusion arrived at with regard to exemptions and determination that property either factually qualifies or factually does not qualify for the exemption. It includes exercise of sound discretion, for which another agency or court may not legally substitute its judgment, within the bounds of that discretion, and not void, and other than a ministerial act. The following is not an all inclusive list.
>
> . . .
>
> 3. Incorrect determination of zoning, land use or environmental regulations or restrictions.
>
> 4. Incorrect determination of type of construction or materials.
>
> 5. Any error of judgment in land or improvement valuation.
>
> . . .
>
> 7. Granting or removing an exemption, or the amount of an exemption. (emphasis added).

Thus, a property appraiser's decision as to whether the property is valued at $100,000 or $80,000, or whether the property factually qualifies for a homestead, a not for profit, or other exemption is an "assessment" decision by the property appraiser which is subject to the 60-day challenge requirement of section 194.171(2) Fla. Stat.

This restriction on the review of "assessment" decisions is not surprising. The statutory framework provides considerable deference to the property appraiser. For example, a property appraiser's valuation decisions are afforded a presumption of correctness and are subject to attack only under limited circumstances. Section 194.301, Fla. Stat. Thus, courts are extremely hesitant to substitute their judgment for matters within the property appraiser's expertise.

However, this deference does not extend to legal errors. Thus, for example, if the property appraiser has failed to consider an important statutory criteria in determining value, the presumption of correctness is lost. Section 194.301. The courts have not hesitated to overrule property appraisers when they have failed to consider key facts or have made an error of law in interpreting the applicable statutes. See Bankunited Financial Corp. v. Markham, 763 So. 2d 1072 (Fla. 4th DCA 1999) (error in listing ownership of the property); Sartori, 714 So. 2d at 1137 (error in assessing pollution control devices).

This critical distinction between the exercise of judgment and a factual or legal error is once again recognized in the rules. Rule 12D-8.021(2)(a) recognizes those categories of error that are not "judgment calls" and are therefore subject to correction at any time. This section defines an error of omission or commission to include the following types of errors:

(2) . . .

(a) The following errors shall be subject to correction:

1. The failure to allow an exemption for which an application has been filed and timely granted pursuant to the Florida Statutes.

2. Exemptions granted in error.

. . .

7. Errors in classification of property.

. . .

20. Government owned exempt or immune property.

21. Government obtained property after January 1, for which proration is entitled under subsections 196.295(1) and (2), Florida Statutes, and partial refund due.

. . .

26. Granting a religious exemption where the applicant has applied for, and is entitled to, the exemption but did not timely file the application and, due to a misidentification of property ownership on the tax roll, the property appraiser and tax collector had not notified the applicant of the tax obligation. This subparagraph shall apply to tax years 1992 and later.

(b) The correction of errors shall not be limited to the preceding examples, but shall apply to any errors of omission or commission that may be subsequently found. (emphasis added)

Significantly, subsection (a) includes "errors of classification of property" and errors relating to "Government owned exempt or immune property." Thus, the Department of Revenue recognizes that classification and governmental exemption decisions often have nothing to do with the exercise of the property appraiser's

judgment but instead rest on the interpretation of the applicable statutes, a matter that is within the expertise of the court, not the property appraiser.

Interestingly, both subsections (a) and (d) contain reference to exemption decisions. This is because an exemption decision, depending on the nature of the property appraiser's error, may either be an error of omission or commission, or an error in judgment. For example, the determination whether a homeowner is entitled to a homestead exemption or whether an organization is entitled to charitable status may be a matter of weighing the facts. Such exemption decisions are commonly seen as "assessments" subject to the 60-day period. See Nikolits, 736 So. 2d at 1254-55 (application of facts in reaching a decision on homestead is an "assessment"); Davis v. Macedonia Housing Authority, 641 So. 2d 131, 132-33 (Fla. 1st DCA 1994) (property appraiser's examination of the fiscal details of an organization's operation for exemption purposes is part of the "assessment"). By contrast, an exemption decision based on the application of the wrong statute has nothing to do with any exercise in judgment and is an error of omission or commission, not an assessment. See Day, 784 So. 2d at 495-96.

Florida Courts Distinguish Errors of Judgment from Errors of Omission or Commission.

This distinction between errors of judgment and errors of omission or commission runs throughout the cases. Perhaps the most thorough analysis is contained in State, Dept. of Revenue v. Sohn, P.A., 654 So. 2d 249 (Fla. 1st DCA 1995). In that case, after purchasing tax certificates on four parcels of property, the taxpayer applied for reclassification of the properties from commercial vacant and lumber yard/wasteland to wetlands and a toxic waste site. The Department of Revenue

denied the request and the taxpayer filed a declaratory judgment action in circuit court. The Department of Revenue moved to dismiss, arguing that the taxpayer's action was an assessment subject to the 60-day filing requirement because it was a challenge to the exercise of judgment on the part of the property appraiser, not on an error of omission or commission. The trial court refused to dismiss the complaint and eventually entered judgment for the taxpayer.

The First District agreed with the trial court and found that the action was not a challenge to the assessment of the property, but a challenge to the property appraiser's "classification" of the property, therefore requiring only that the action be filed within the applicable four-year statute of limitations. In reaching this conclusion, the court analyzed the Department's Rule 12D-8.021 (2)(a)(b) and (d) Fla. Admin. Code which, as noted above, distinguish errors of omission or commission from changes in the judgment of the property appraiser.

The court in Sohn found that those categories in 12D-8.021(2)(a) were errors that "shall be subject to correction" thus, errors of omission or commission, which include the category of "errors in classification of property". Id. at 251. The court distinguished these types of errors from those under 12D-8.021(d)- decision were relied upon by the 4th District Court of Appeal in Bankunited Financial Corp. v. Markham, 763 So. 2d 1072 (Fla. 4th DCA 1999). The court found that an action to challenge an error in listing ownership of property, (an error which shall be subject to correction under 12D-8.021(2)(a)), was a claim that could be brought at any time and was not subject to the 60 day filing requirement. The court viewed the complaint "as making a claim that the property appraiser committed an error in determining ownership of the

property, which necessarily affected the property's value in this case". Id. at 1074. Citing to subsection (4) of 12D-8.021 which provides that the error may be corrected at any time, the court found that the correction of the type of errors under 12D-8.021(2)(a) was not limited by the 60-day filing requirement. Id.

This rationale was also followed by the 5th DCA in two cases. In Sartori v. Department of Revenue, 714 So. 2d 1136 (Fla. 5th DCA 1998), the taxpayer filed a declaratory judgment action challenging the property appraiser's failure to classify certain equipment on his farm as pollution control, which would have resulted in its taxation as salvage value rather than fair market value. The Department of Revenue moved to dismiss his complaint arguing that the taxpayer's challenge was a challenge to a tax assessment and since it had not been filed within 60 days of the certification, the lawsuit was untimely. The trial court agreed and dismissed the lawsuit.

The appellate court reversed the dismissal, finding that the taxpayer's challenge was a challenge to the classification and therefore subject only to the four-year statute of limitations. Relying on DOR rules and Sohn, the court found that the taxpayer was not challenging the property appraiser's valuation of the property for taxation purposes, but the classification into which it was placed. This error, which had nothing to do with the property appraiser's exercise of judgment, was not an "assessment" within the meaning of section 194.171(2). Specifically, the court stated

> Upon review, we conclude that Sartori is correct that his declaratory judgment action is not time barred by the sixty-day time limit in Section 194.171, Florida Statutes (1993) because the lawsuit does not challenge the County's valuation of his property (i.e. contest a tax assessment). Sartori's lawsuit clearly challenges the County's classification of his property for valuation purposes; therefore Sartori had four years within which to file suit. Id. at 1139 (emphasis added).

Similarly, a property appraiser's legal error concerning whether to exempt certain government property was held to be subject to a four-year limitation period in Florida Governmental Utility Authority v. Day, 784 So. 2d 494 (Fla. 5th DCA 2001). The Florida Governmental Utility Authority (the Utility) is a government entity created pursuant to section 163.01 Fla. Stat. The Osceola County property appraiser denied the Utility a tax exemption because it was created pursuant to Chapter 163 and not Chapter 196. The court held that it made no difference as to what chapter it was created under as "[g]overnmental entities are exempt from taxes and assessments under both of these chapters". Id. at 495. As to the claim of the property appraiser and tax collector that the court lacked jurisdiction because the 60-day filing requirement in 194.171(2) was not met, the court found that the Utility's claim "did not challenge the tax assessment – the valuation of the property – but rather challenged the classification of the property for valuation purposes, i.e. its classification or status as a non-exempt governmental entity", therefore it was not subject to the 60-day period, citing to Sartori and Sohn. Id. (emphasis added). The Fifth District recognized, as should the Court in this case, that this type of erroneous legal decision ignoring the government exemption, an error of omission or commission, was subject only to the four-year statute of limitations.

The property appraiser's brief attempts to distinguish cases like Sohn, Sartori, and Day, by suggesting that "only those errors that are acknowledged by the property appraiser to be mistakes of commission or omission are eligible to be corrected under Chapter 197". Property Appraiser's Brief at 17. To the contrary, there is no authority for the proposition that the property appraiser can limit challenges by a self-serving

declaration that his or her decision was based on an error of judgment, not an error of omission or commission. For example, in Pepperidge Farm, both the property appraiser and the Department of Revenue attempted to invoke the 60-day limitation period by characterizing the property appraiser's decision as an assessment. The Second District disagreed, however, determining that the property appraiser's legally erroneous classification decision was not an assessment but instead was an error subject to challenge under section 197.182.

Moreover, there is nothing in Sohn, Sartori, and Day that would suggest that these decisions rested on the property appraiser's agreement that an error has occurred. Instead, the focus of the court's analysis was on the type of error committed by the property appraiser. Because the errors at issue in those cases were not errors of judgment concerning matters within the property appraiser's expertise, the 60-day limitation period did not apply.

On the other hand, cases cited by the property appraiser for the proposition that the 60-day period does apply are cases that challenge the exercise of factual judgment of the property appraiser. For example, State, Dept. of Revenue v. Stafford, 646 So. 2d 803 (Fla. 4th DCA 1994) is a clear attack on the property appraiser's judgment call concerning the value of the property - - a classic "assessment" challenge. Other cases that find the 60-day filing requirement applicable to certain types of exemption decisions are also those that would fall under 12D-8.021(d)- v. Macedonia Housing Authority, 641 So. 2d 131 (Fla. 1st DCA 1994), a non-profit corporation challenged the denial of a "charitable purpose" exemption. Non-profit corporations must file each year for an exemption under section 196.011 Fla. Stat. and the property appraiser must

make a factual determination as to whether the non-profit meets the criteria. In that case, the court specifically found that there were "disputed issues of material fact relating to the reasonableness of the charges and expenditures" associated with the corporation that precluded a summary judgment finding that it was a non-profit corporation. Id. at 132. Thus, under the analysis of the subsequent First District case of Sohn, the challenge in Davis was to a tax assessment, subject to the 60-day filing requirement. Other cases involving exemptions found to be assessment decisions, Hall v. Leesburg Regional Medical Center, 651 So. 2d 231 (Fla. 5th DCA 1995) (a not for profit exemption); and Nikolits v. Ballinger, 736 So. 2d 1253 (Fla. 4th DCA 1999) (homestead exemption); Palmer Trinity Private School, Inc. v. Robbins, 681 So. 2d 809 (Fla. 3rd DCA 1996) (educational exemption); and Markham v. Moriarty, 575 So. 2d 1307 (Fla. 4th DCA 1991), are also challenges to a factual judgment decision by the property appraiser - - a "conclusion arrived at with regard to exemptions and determinations that property either factually qualifies or factually does not qualify for the exemption" (12D-8021(d)) - - and

thus fall under the 60-day filing requirement.[2]

The decisions of the District Courts of Appeal appear contradictory and confusing only because so much attention has been placed by the courts and by the parties on the characterization of the error as a classification or an exemption decision. Attempting to divide the cases along these simplistic lines fails because not every exemption decision or classification decision is alike. Some rest on the exercise of judgment. Others result from clear errors of fact or law. The proper focus instead must be on the underlying statutory framework which requires an analysis on the nature of the property appraiser's decision-making process in the case and the type of error made by the property appraiser.

Viewing the cases through the underlying statutory framework resolves much of the apparent conflict and confusion in the cases. Although the analysis differs markedly from case to case, Florida courts very consistently apply the four-year limitation when the plaintiff is attacking an error made by the property appraiser that has nothing to do with the exercise of the property appraiser's judgment. Implicit in these decisions is the recognition that mistakes of law or law made by the property appraiser are the sort of errors of omission or commission that can be raised at any time, regardless whether the property appraiser's decision is characterized as a classification or exemption decision. Amici respectfully request that this Court restore order to these cases by shifting the focus away from semantics and back to the underlying statutory

---

[2] The only decision of this Court relating to section 194.171(2) is not on point. Markham v. Neptune Hollywood Beach Club, 527 So. 2d 814 (Fla. 1988), addressed whether section 194.171(2) was a statute of non-claim or a statute of limitations. It did not define what an assessment was for purposes of that section nor did it address the distinction between errors of omission or commission or assessments.

framework.

CONCLUSION

For all the foregoing reasons, Amici respectfully suggest that this Court make clear that the limitation period depends on the nature of the property appraiser's error – not whether the property appraiser's decision is labeled as an exemption or classification decision. Errors in judgment; that is, errors resulting from the property appraiser's weighing of the facts, are "assessments" subject to the 60-day limitation period provided by Section 194.171(2). Other errors such as those based on a misinterpretation of the statutory authority, the misunderstanding of the relevant facts, or the refusal to consider relevant facts are errors of omission or commission which can be raised at any time, subject to the four-year statute of limitations.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via regular U.S. Mail delivery to Donald H. Partington, Esquire, Clark, Partington, Hart, Larry, Bond & Stackhouse, P.O. Box 13010, Pensacola, FL 32591-3010, Joseph Mellichamp, III, Esquire, Carlton Fields, P.A., P.O. Drawer 190, Tallahassee, FL 32302, Benjamin K. Phipps, Esquire, The Phipps Firm, P.O. Box 1351, Tallahassee, FL 32302, Elliott Messer, Esquire, Thomas Findley, Esquire, Messer, Caparello & Self, P.A., 215 S. Monroe Street, Suite 701, Tallahassee, FL 32301 and Roy Andrews, Esquire, Linsay, Andrews & Leonard, P.O. Box 586, Milton, FL 32572 on this _____ day of September, 2003.

_____

Steven L. Brannock, Esquire
Florida Bar No. 319651
HOLLAND & KNIGHT LLP
P.O. Box 1288
Tampa, FL 33601-1288
(813) 227-8500
(813) 229-0134 (fax)

and

Marion J. Radson, City Attorney
Florida Bar No. 175570
Elizabeth A. Waratuke
Florida Bar No. 458007
Litigation Attorney
City of Gainesville
P.O. Box 490, Station 46
Gainesville, Florida 32602-0490
(352) 334-5011
Attorneys for Amici

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief complies with the font requirements of Fla. R. App. P. 9.210(a).

_____
Attorney

453149_v1