IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-783

LEWIS Y. and BETTY T. WARD, et al,

Petitioners,

v.

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

Respondents.
_____/

Lower Tribunals:
First District Court of Appeal,
Case No.: 1D02-3265

Santa Rosa County 1st Judicial Circuit,
Case: 2001 CA 892

PETITIONERS' INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

This is a declaratory action involving a challenge to the misclassification of Petitioners' intangible leasehold interests and is not an assessment challenge nor is it an action seeking an exemption.

The Petitioners brought a class action to challenge an error of omission or commission on the part of the property appraiser that resulted in the misclassification of the Petitioners' intangible leasehold interests as being real property. The misclassification resulted in the Petitioners' intangible leasehold interests being subject to county ad valorem taxes, as opposed to state intangible taxes. The Petitioners' leaseholds had been classified as intangible personal property for the preceding 20 years, in compliance with the legislative mandate set out in Section 196.199(2)(b) and 199.023(1)(d), Florida Statutes. The trial court determined that the members of the proposed class were time barred from bringing this challenge pursuant to Section 194.171(2), Florida Statutes, and struck the allegations relating to the class action. The District Court affirmed. A conformed copy of that decision is attached as Appendix "A."

A Notice to Invoke the Discretionary Jurisdiction of this Court was filed and a jurisdictional brief was submitted arguing that a challenge to the classification of property is not subject to the 60-day period for filing required by Section 194.171(2). The First District Court of Appeal had dismissed the distinction between classification and assessment as mere "semantic arguments," stating the Petitioners were actually seeking an exemption and that exemption determinations were assessments. App.

"A," p. 2.

The decision of the First District Court expressly and directly conflicts with decisions form the Second, Fourth, and Fifth District Courts of Appeal on the same issue of law — whether the 60-day rule of Section 194.171(2) applies to cases involving the misclassification of property. The decision of the First District Court is even at odds with one of its earlier decisions. This Court accepted jurisdiction, setting the case for oral argument and fixing the briefing schedule.

STANDARD OF REVIEW

The trial court held (and the district court affirmed), without addressing any issues of class certification, that the court "did not have jurisdiction to entertain a lawsuit on behalf of the putative class members" and struck the class action lawsuit. The trial court's and district court's decisions both turn on the lack of jurisdiction due to untimeliness, a purely legal determination. *See Execu-Tech Business Systems, Inc. v. New Oji Paper Co., Ltd*, 752 So.2d 582, 583-84 (Fla. 2000) (dismissal of class action based on lack of jurisdiction subject to *do novo* standard of review). Therefore, this appeal presents a pure question of law, which must be resolved under the *de novo* of standard review. *See Whigum v. Heilig-Meyers Furniture, Inc.*, 682 So.2d 643, 645-46 (1 DCA 1996).

Moreover, because the trial court exercised no discretion in determining the actual merits of whether the class met the class action requirements of Florida Rule of Civil Procedure 1.220, the abuse of discretion standard does not apply.

SUMMARY OF THE ARGUMENT

The imposition of taxes is a sovereign function to be exercised with restraint, permitted only when there has been an express and explicit legislative authorization. Hence, when tax impositions are challenged, the burden is on the taxing authorities to prove that the tax and its manner of imposition are strictly in compliance with a clearly enunciated legislative intent. The appellate decisions recognizing the distinctness of classification challenges have adhered to this principle while reconciling statutes with arguable conflicting time limits. In applying these guidelines of statutory interpretation they have avoided the constitutional infirmities inherent in the First District decision in this case.

Challenges to the misclassification of property are not subject to the 60-day time limit of Section 194.171(2). Numerous appellate decisions have adopted the rule of law and have held that classification cases are subject to the time limits imposed by the statutes under which they are brought or under the general statutes of limitations of Chapter 95, Florida Statutes. They are not subject to the 60-day rule of Section 194.171(2) which is controlling only in contests to individual tax assessments based on overvaluation or exemption denial. Those decisions should be upheld by this Court.

The property which is the subject of this action, governmental leaseholds on Santa Rosa Island, has been the subject of several classification permutations by the Florida Legislature. The 2001 reclassification of approximately 800 such leaseholds

by the Santa Rosa Property Appraiser is a classic case of impermissible reclassification. This misclassification was not merely the denial of an exemption as the First District characterized it, App. "A," p. 3; the legislature classification does not exempt those leaseholds, it subjects them to a different form of tax — the state intangible tax.

The First District attempted to distinguish the decisions of its sister courts, and its own earlier decision, by characterizing classification challenges not subject to Section 194.171(2) as occurring only where a property appraiser had made, and admitted, an inadvertent mistake of fact. This is not the test, nor is it the holding of any of the cases. The test is to show an act of omission or commission on the part of the property appraiser or the tax collector. The distinction between mistakes of fact and errors in judgment which control statutory "back-assessments" plays no part in distinguishing classification challenges and assessment contests.

When a misclassification occurs, or when a massive reclassification has been made after the class was undisturbed for 20 years, as occurred here, due process and access to the courts may be denied, from a practical standpoint, because all on whom the taxes are to be imposed will not be able to initiate individual challenges within the narrow 60-day period.

ARGUMENT

I. Misclassification Challenges Are Not Subject To The 60-Day Limitation of Section 194.171; They Are Subject To The Time Limitation Of The Statute Under Which They Are Brought.

Challenges to the misclassification of property are not subject to the 60-day rule, but are governed by the time limits imposed under Sections 197.122 and 197.182. One of these two statutes is the usual basis for misclassification challenges. Over the last several years, a significant body of case law has developed recognizing that the harsh time bar of 194.171(2) does not apply in misclassification challenges. Cases involving a contest to a tax assessment are governed by Section 194.171, Florida Statute, including the 60-day statute of nonclaim in subsection (2) of that statute.

The latest decision recognizing that the 60-day rule of Section 194.171(2), does not apply in cases of misclassification, is the recent decision of the Second District is *Department of Revenue and Tedder v. Pepperidge Farms, Inc.*, 847 So.2d 575 (2 DCA 2003). Like this case, *Pepperidge Farms* involved the misclassification of intangible personal property. Also like this case, it was a class action for all taxpayers in the county whose property had been so misclassified. The Department and the Tax Collector (Tedder) moved to dismiss the complaint on the basis that it should have been brought within 60 days as required under 194.171(2). Pepperidge Farm, the class representative, was not challenging the assessment of its property, but instead was challenging the classification by the property appraiser of its property as tangible personal property, rather than as intangible personal property as it had been defined by the legislature. Its action sought a refund within the four-year period allowed under Section 197.182.

The Second District agreed that Pepperidge Farm's lawsuit did not challenge the property appraiser's assessment of the value of the subject property, but

challenged the misclassification of the property as tangible personal property rather than intangible personal property. The Second District relied (primarily) on *Sartori v. Department of Revenue*, 714 So. 2d 1136 (5 DCA 1998).

The Fifth District was confronted with this same issue of law in *Florida Governmental Utility Authority v. Day*, 784 So.2d 494 (5 DCA 2001). In that case, the court recognized the difference between a challenge to a classification and a challenge to a tax assessment, holding:

> However, Florida courts recognize the difference between a claim involving a classification of property, and a claim challenging a tax assessment on property. [citing *Sartori*] A classification claim is not governed under section 194.171; a claim challenging a tax assessment is subject to the statute. [again citing *Sartori*]

784 So.2d 494, at 497.

The off-cited *Sartori* case involved the misclassification of pollution control equipment. The property owner had paid his taxes, under protest, and then had sought a refund through the county tax collector. The Department denied permission to the tax collector to grant the refund, claiming the case had not been filed within the 60 days required under Section 194.171(2). Sartori then filed a declaratory judgment action. The Fifth District held that the action challenged the classification of property, not the tax assessment, and therefore the action was not subject to the 60-day limitation of 194.171(2), citing *Department of Revenue v. Gerald Sohn*, 654 So. 2d 249 (1 DCA 1995). The District Court determined that Sartori had four years to institute his lawsuit seeking a refund as provided under Section 197.182.

In 1999, the Fourth District joined the other districts, on the same issue of law, in recognizing the difference between classification actions and assessment contests.

That case involved a refund on a tax certificate, issued on property which was misclassified condominium common element property. That district court, also citing *Sohn*, held that actions involving the classification of property are not subject to the 60-day rule of 194.171(2). *Bankunited Financial Corp. et al v. Markham, et al,* 763 So.2d 1072 (4 DCA 1999).

The *Sohn* case also involved an investor in tax certificates who brought the action under Section 197.122(1). The Department had denied his claim stating he was barred under the 60-day rule of Section 194.171(2). The First District held that actions brought to reclassify property, misclassified by the property appraiser, are not subject to that 60-day limitation.

The instant case, like *Sartori, BankUnited, Florida Government Utility,* and *Pepperidge Farms*, is a declaratory judgment action brought pursuant to Chapter 86, Florida Statutes, challenging the property appraiser's misclassification of the Petitioners' intangible leasehold interest and is not a challenge to an assessment. Further, this action involves a challenge to the misclassification of the property authorized under Section 197.122(1), Florida Statutes. The Department of Revenue's Rule 12D-8.021, Florida Administrative Code,[1] specifies areas that "shall be subject to correction" and includes in subparagraph 7, "errors in classification of property". This rule is applicable to the instant case as it was in the *Sartori, BankUnited, Florida Government Utility,* and *Pepperidge Farms* cases.

II. The Legislature Has Classified Government Leaseholds, They Are A Separate Class Of Property.

[1] The rule cites Section 197.122, Florida Statutes, as "specific authority."

The classification of leaseholds held by private parties on lands owned by various governmental entities has been a subject of considerable legislative and judicial interest for nearly 50 years. While leaseholds in private property have always been merged into the leased fee interest for Florida ad valorem tax purposes, "government leaseholds" have been severed and the subject of several legislative classifications over the years.

When the Supreme Court decided *Park-N-Shop v. Sparkman* in 1957[2], a leasehold of a parcel of real property owned by an immune governmental entity was no different than a leasehold in any other type of property. In Florida, under common law, leaseholds of all types of property were called chattels real, or sometimes, incorporeal chattels. *Park-N-Shop* involved the site of the former Hillsborough County courthouse which had been leased out to a private parking lot operator. Local governments had attempted to impose ad valorem tax on the leasehold, treating it as tangible personal property. This Court ruled that the property, which still belonged to the county, was immune. Because the legislature had not classified government leaseholds as either tangible personal property or as intangible personal property under the then existing statutes, the leasehold could not be separated and taxed. The Supreme Court suggested that government leaseholds could be severed and classified so as to make them taxable, by the legislature, if it chose to do so.

In response to that suggestion, the Legislature, in 1961, classified leases of government owned personal property as personal property, and leaseholds in

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[2] 99 So.2d 571.

governmental real property as real property, for ad valorem tax purposes. Ch. 61-266, Laws of Florida, creating §192.62, Fla. Stats. (1961). This reclassification of government leaseholds did not apply when the property was being used for various governmental, public, municipal, or charitable purposes, nor did the reclassification apply to any of the leaseholds of county owned property on Santa Rosa Island. §192.62(1)(i), Fla. Stats. (1961).[3] Thus, the sovereign immunity from taxation had been waived for certain governmental leases by classifying them as real property. Other governmental leases (including those on Santa Rosa Island) continued to be treated as common law leases and retained their immunity. That law remained in effect until 1971 when it was rewritten in its entirety.

The 1971 Legislation extended the waiver of sovereign immunity, and included the Santa Rosa Island leases in the classification of taxable real property for the first time. The holders of those leases challenged the constitutionality of this legislative reclassification of their leaseholds, on the basis that it impaired their existing contractual rights. *Williams v. Jones*, 326 So.2d 425 (Fla. 1975), *appeal dismissed*, 429 U.S. 803, 97 S. Ct. 34, 50 L.Ed.2d 63 (1976). In that case, this Court upheld the right of the legislature to reclassify government leaseholds as taxable real estate. As a result of that legislation and the decision in *Williams v. Jones*, the leasehold interests

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[3] At that time, Santa Rosa Island has such leaseholds in Escambia, Santa Rosa, and Okaloosa Counties, according to this statute. All property on Santa Rosa Island in Escambia and Santa Rosa Island are still held through government leaseholds from those counties today. At some point, the leaseholders in Okaloosa County were afforded the opportunity to purchase the leased fee in their property and today the property on Santa Rosa Island in Okaloosa County is held in fee simple. The leaseholders in Escambia and Santa Rosa County have not been allowed the same opportunity.

on Santa Rosa Island, in Escambia, Santa Rosa, and Okaloosa Counties, became taxable for the first time, and remained so classified for the next ten years.

In 1980, the legislature again reclassified taxable leasehold interests by including them in the definition of "intangible personal property." This 1980 reclassification was recognized by this Court in *Capital City Country Club v. Tucker*, 613 So.2d 448, 452 (Fla. 1993), "[t]he intangible tax is being imposed on the rights afforded to the club under the lease." The classification of the Santa Rosa Island property in Escambia County, as intangibles, was also specifically recognized in the case of *Bell v. Bryan*, 505 So.2d 690 (1 DCA 1997).

Tax classification passes constitutional muster so long as there is any reasonable basis for that classification. *Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326, 120 L.Ed.2d 1. That the classification of taxable leaseholds as intangible personal property was suggested by this Court in *Park-N-Shop* pretty well closes out any argument about the reasonable basis of the legislative action in 1980.

General law requires the Department of Revenue to classify real property into ten specific classes, one of which is [government] leasehold interests. §195.073(1)(i), Fla. Stats. The Department has implemented this requirement under Rule 12D-8.008(2)(b), Florida Administrative Code:

> (b) Real property shall be classified in ten major groups. The classification "residential" shall be subclassified into two categories — homestead and non-homestead property. The major groups are:
>
> 1. Residential
> a. Homestead
> b. Non-Homestead
> 2. Commercial and Industrial
> 3. Agricultural

4. Exempt, wholly or partially
5. Leasehold Interest (Government owned)
6. Other
7. Centrally Assessed
8. Non-Agriculture Acreage
9. Time-share Property
10. High-water recharge

(Emphasis added)

III. Classification Challenges Are Actions To Correct Errors Of Omission Or Commission.

The cases which have dealt with classification issues have generally been declaratory judgment actions authorized under Section 197.122(1), Florida Statues. The language of that statute (first enacted in the 19th Century) is, "acts of omission or commission on the part of any property appraiser, tax collector, • • • may be corrected at anytime • • • ." The cases have determined that classification errors, admitted or not, are such "acts of omission or commission" and that they are mistakes of fact.

In *Sartori*, the court held that the declaratory judgment action was not time barred (under §194.171(2)) because the lawsuit did not contest a tax assessment but challenged the classification of the property which would affect value. 714 So.2d 1136, at 1139. The First District Court, in this case, stated that denials of exemptions are always "assessments." App. "A," p. 3. We agree, but this case does not involve an exemption denied.

In *Sohn*, the First District Court ruled that errors of classification are acts of omission or commission and are mistakes of fact. 654 So.2d 249, at 251. *BankUnited* discussed the errors subject to correction under Rule 12D-8.021, which like the statute (§197.122), uses the term, "errors of omission or commission." 763 So.2d 1072, 1074. *Florida Government Utilities* was also based on "errors of omission and commission" under Rule 12D-8.021, because of the property appraiser's failure to timely classify property of a government when it was acquired. 784 So.2d 494, at 497 fn 4.

The *Pepperidge Farm* court based its decision on *Sartori* and stated:

> We agree with Pepperidge Farms that its lawsuit does not challenge the property appraiser's exercise of judgment in assessing the value of its computer software, but rather, that it challenges the classification of its computer software as tangible personal property.

847 So.2d 575 (2 DCA 2003), at 576. Pepperidge Farm was relying on the statutory definition of intangible personal property. §192.001(19), Fla. Stats. There is no challenge to the exercise of the property appraiser's judgment of value of the subject leaseholds as real property in this case. This declaratory judgment action is to correct his misclassification of these leaseholds as real property. Rule 12D-8.021 of the Florida Administrative Code and the case law all characterize misclassification of property as errors of omission or commission, correctable "at anytime" under Section 197.122(1). Misclassification cases are not actions to overturn a property appraiser's exercise of judgment.

The decision by the First District Court, insisting that the plaintiffs in this case were merely contesting the denial of an exemption under chapter 196 (App. "A," p. 3), is a total rejection of its own *Sohn* case and its progeny, Rule 12D-8.021, Section 197.122, and all other authorities recognizing the classification errors are "errors of omission or commission," correctable in declaratory judgment cases at any time permitted under chapter 95, Florida Statutes.

The First District Court erred in confusing classification cases with the rule governing statutory "back-assessments" of tax. There is a statutory provision which allows back-assessments (for a period of up to three years) of property which has "escaped" taxation. §193.092, Fla. Stats. Case law has permitted back-assessments

in only those situations where the property appraiser has attempted to correct mistakes of fact (errors of omission or commission) and prohibits back-assessments where the property appraiser has changed his or her mind. In the latter case, the mistake is considered a mistake in judgment and no retroactive change is permitted. For example, a property appraiser cannot change his or her mind and back-assess a property which he or she has granted an exemption in error. *Underhill v. Edwards*, 400 So.2d 129 (5 DCA 1981), *rev. den.* 411 So.2d 381 (Fla. 1981).

IV. Taxable Government Leaseholds Are Not Exempt, They Are Subject To The State Intangible Tax.

The Petitioners do not seek an exemption from taxation. The First District Court overlooked the plain meaning of the statute when the Court reached its conclusion that the issue to be resolved was "whether the trial court correctly determined that certain members of the proposed class were time barred from bringing an action pursuant to Section 194.171(2), Florida Statutes, challenging a property tax assessment on the basis that the property was exempt governmental property pursuant to Section 196.199, Florida Statutes." App. "A," p. 2. Section 196.199(2)(b), does not create an exemption from taxation for the Petitioners' intangible leasehold interest. Paragraphs (a) and (c) of Section 196.199(2) provide an "exemption" for property owned and used by the listed governmental units. Paragraph (b) specifically provides that the exemption contained in subsection (2), for property owned by the listed governmental units, does not apply to those portions of a leasehold defined by Section 199.023(1)(d). These leasehold interests are classified as intangibles and are ***taxable***

as such.[4]

Section 196.199(2)(b), Fla. Stats. then provides that such leasehold interests shall be taxed only as intangible personal property pursuant to Chapter 199, Fla. Stats. To be taxed as an intangible, rental payments are due in consideration of such leasehold interest. The Appellants intangible leasehold interests, in this case, are subject to rental payments.

The First District Court, in *Miller v. Higgs*, 468 So.2d 371 (1 DCA 1985), *rev. denied* 479 So.2d 117 (Fla. 1985)[5] has previously addressed whether Section 196.199(2)(b) provides an exemption from taxation or provides a classification for certain leasehold interests in governmentally owned property to be taxed, at just value, as intangible personal property. In that case, the court held that Section 196.199(2)(b) does not create an exemption from taxation, but instead recognizes the classification of particular leasehold interests as intangible personal property. The court stated:

> "Intangible personal property" is the classification of the property. This classification predates the constitution and is specifically recognized and taxed under the constitution. The only application of Article VII, section 4 is the requirement of "just valuation". Chapter 80-368 provides for the assessment and taxation of leasehold interest at their full fair market value, so that it does not conflict with section 4.

468 So.2d 371, 377.

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[4] Section 196.199, Fla. Stats., implements Art. VII, Section 1(a), Fla. Const. and is part of the legislature specific and unambiguous ad vaorem taxation scheme. *Collier County v. State*, 733 So.2d 1012 (Fla. 1999).

[5] *Miller v. Higgs* was disapproved to the extent it conflicted with the opinion in *Capital City Country Club, Inc. v. Tucker*, 613 So.2d 448 (Fla. 1993). Such disapproval does not implicate the issues in this case but dealt with a decision concerning any attempt to exempt real property owned by municipalities.

The determination as to whether a leasehold is intangible personal property or real property is, in the first instance, a classification issue, not an issue of exemption.[6] The class action allegations, which the trial court declined to hear, sought the correct classification of all 800 (plus) lessees whose properties had been reclassified by the property appraiser in 2001.

Property appraisers do not have the authority to reclassify property. Only the legislature may do this. As explained above, the legislature has focused a lot of attention on the classification of government leaseholds. The leasehold interests on Santa Rosa Island have been shielded by the immunity of counties until those interests were reclassified as taxable real property, effective for 1972. From 1972 through 1980, that classification remained in effect. Beginning in 1981, those leasehold interests were reclassified as intangible personal property. All the taxing officials of Santa Rosa County fully accepted and complied with this legislature classification until the assumption in office, in 2002, of Gregory Brown, the new Santa Rosa County Property Appraiser. His impermissible reclassification of those intangible leaseholds as real estate, shortly after his assumption of office resulted in the imposition of county taxes on 800 (plus) lessees. He did not systematically deny 800 (plus) exemptions applications, he simply refused to follow the classification set by the legislature and imposed taxes on this entire class.

V. Access To The Courts And Due Process Require

[6] Whether these lessees "own" the improvements is an issue still before the trial court and is not on appeal.

That Members Of A Class Of Misclassified Taxpayers Be Heard On Their Class Allegations Without The Restriction Of A 60-Day Time Bar.

At present, some 800 persons are foreclosed from challenging the reclassification of their intangible leasehold interests because the class certification hearing occurred after the 60 day bar of Section 194.171(2), Florida Statutes. The trial court, in striking the class allegations, relied upon the decision of *Hirsch v. Crews*, 494 So.2d 260 (1 DCA 1986). The *Hirsch* case involved a traditional assessment contest to the value of single family residences reassessed in 1984. The complaint stemmed from an allegation that some properties were reassessed in the county and some were not. The ruling of that case simply required individual contests, timely filed, for each taxpayer. It did not forbid class certification to long as the certification occurred within the 60-days.

In this situation, the properties were uniformly and correctly classified as leaseholds from the enactment of the 1980 legislature until the assumption in office (20 years later) of a new property appraiser. If this had been a matter of a denial of exemption, each of the 800 would have been required to have filed an exemption application under Section 196.011. Such application would have to have been submitted to the property appraiser no later than 1 March 2001. §196.011(1)(a), Fla. Stats. Because this property was then classified as governmental leaseholds, no such application was required, permitted, nor filed.

Had the exemption of the property been involved in this case, the property appraiser would have been required to notify each of these leaseholders that he was

denying their application of on or before 1 July 2001. §196.193(5), Fla. Stats. Because this case involved a reclassification by the property appraiser, he made no such denials. Had this been an exemption matter, each of the leaseholders would then have been entitled to contest that denial under the provisions of Section 196.194, Florida Statutes. This did not occur; no such opportunity was afforded any of the 800 leaseholders. There is nothing on record to indicate that there was any realistic opportunity for all 800 of the leaseholders to file separate and individual actions within the 60-day limit of Section 194.171(2).

Classification actions are authorized under Section 197.122(1). There is a four year statutes of limitation on such actions under Section 95.11(3)(m), Florida Statutes. *See, Florida Governmental Utility Authority v. Day*, 784 So.2d 494, 497 fn. 4 (5 DCA 2001). Where the legality of a reclassification or a misclassification by a property appraiser is challenged, in many instances it cannot practically occur until later in the tax calendar than the 60-day bar of Section 194.171(2) would allow. In many situations, the discovery of the misclassification may not occur until tax certificates have been issued. This does not take place until many months after the 60-day period has run, generally sometime during late June (or early July) of the following year. §197.402(3), Fla. Stats. *Sohn* and *Bankunited Financial* were both tax certificate cases, in one of which the property appraiser had later acknowledged a misclassification, and in one of which the property appraiser never admitted his misclassification. *Sartori* and *Pepperidge Farm* were both refund cases brought long after the 60-day period of Section 194.171(2) had run. In *Sartori* the property appraiser acknowledged his error of omission or commission but the Department

refused to approve the refund claiming it was time barred under Section 194.171(2). In *Pepperidge Farms* both the local Tax Collector and the Department attempted to rely on the 60-day time bar of that statute.

No doubt the hardship which would be imposed by applying the 60-day rule of Section 194.171(2) in every instance, including those instances where misclassification makes compliance with that statute practically impossible, has led the Second, Fourth, Fifth, and even the First in *Sohn*, Districts, to draw the distinction in classification challenges. Perhaps, the profound due process implications of denying any relief, much less access to the courts, to whole classes of persons on whom taxes are being imposed had some impact on those courts in these cases. By granting access, and relief where the taxes had been improperly imposed, these due process issues did not need to be addressed. In this appeal, the Petitioners are not seeking relief from this new imposition of taxes on the class – that is still before the trial court. What they ask for is the opportunity for those 800 members of the class, or whom these taxes have been imposed, to have access to challenge that imposition.

VI. Impositions Of Taxes Must Be Strictly Construed Against The Taxing Authority.

One of the most important tenets of tax law and policy is, "the imposition of taxes is to be strictly construed against the taxing authority." *Florida Hi-Lift v. Department of Revenue*, 571 So.2d 1364, 1368 (1 DCA 1990). This principle was neither briefed nor argued before the First District Court, probably because the case was an interlocutory appeal on a procedural matter. If it had been, that court might

have been reminded that it had set out this guiding concept of interpreting tax law and procedure quite elegantly in *Department of Revenue v. Brookwood Associates, Ltd.*, 324 So.2d 184, 187 (1 DCA 1975), *cert. denied*, 336 So.2d 600 (Fla. 1976):

> Taxing statutes and statutes conferring authority to impose taxes are to be strictly construed. When such statues are so drawn that the legislative intent is in doubt or where such statutes are so ambiguous as to render the legislative intent questionable or unclear then it is the duty of the taxing authority, and the duty of the courts when litigation arises, to construe such statutes or ambiguities liberally in favor of the taxpayer or citizen and strictly against the taxing authority. If a taxing statute does not reveal with certainty the intent of the legislature and is susceptible of two meanings, the meaning most favorable to the taxpayer should be adopted. This is particularly true in instances wherein one meaning results in imposing the tax and the other relieves imposition of the tax.

This Court has long recognized that:

> It is a fundamental rule of construction that tax laws are to be construed strongly in favor of the taxpayer and against the government and that all ambiguities or doubts are to be resolved in favor of the taxpayer. This salutary principle is found in the reason that the duty to pay taxes, while necessary to the business of the sovereign, is still a duty of pure statutory creation and taxes may be collected only within the clear definite boundaries recited by statute. [citations omitted]

Maas Bros., Inc. v. Dickinson, 195 So.2d 193 (Fla. 1967), at 198.

The 60-day statute of nonclaim which is part of Section 194.171 is designed to insure that the tax collection process can move forward on a relatively certain basis. It is designed to alert a country's taxing authorities, at the beginning of the tax collection process, of those individual assessments which will be contested and from which the contested revenues will not be forthcoming. Under the tax calendar, the 60-days starts to run (generally) in mid-October (§193.122(2) and §194.171(2)) and expires in mid-December. As pointed out above, the tax certificates are not sold until

the following year is half done. The purpose of the 60-day bar is not early collection, but early notice. Ad valorem litigation, of either kind, proceeds at a stately pace with final resolution seldom not being reached until years have passed.

Except in cases initiated to contest individual assessments under Section 194.171, there is no legislative policy designed to foster early notice. The statutory bases for classification actions, Sections 197.122(1) and 197.182, each have four year limitations. Contesting an overassessment or an inappropriate denial of an exemption is a matter which can easily, and should be, initiated by the end of the tax year (within the 60-day period). Working with, and ultimately, perhaps, against a property appraiser to correct a perceived misclassification cannot occur that quickly.[7]

Returning to the tenet that the imposition of taxes is to be strictly construed against the taxing authority, drawing the distinction between contests to individual assessments (under §194.171) and classification cases (under §197.122 or 197.182 (among others)) meets that tenet. Add to that the need to reconcile statutes so that, considered *in pari materia*, they meet constitution muster. *See* 48A Fla. Jur. 2d, Statutes §§108-116 Here there is Section 194.171 with a 60-day nonclaim limitation, Section 197.121(1) subject to the four year statute of limitation prescribed under Section 95.11(3)(m), and an internal four year limit on refund claims under Section 197.182. The numerous decisions of Florida's appellate courts recognizing the distinction have reconciled these statutes by holding the four year statutes are intended

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[7] *Sartori* and *Florida Municipal Utilities* are both examples of the long delays even successful efforts to resolve misclassification can cause, and of the shocking due process problems which can result from an overzealous insistence on §194.171 as the sole statutory remedy.

for classification cases while the 60-day statute applies to assessment contests.

CONCLUSION

This case is a challenge to the Property Appraiser's impermissable reclassification of the putative class members' intangible personal property interests. Classification cases are not subject to the 60-day nonclaim provision of Section 194.171 and the trial court was not time barred from hearing the class action allegations. The decision of the First District Court should be reversed and the conflict between its opinion and the decisions of the other district should be resolved by adopting the holding of those courts recognizing the difference between claims involving a classification of property, and claims challenging a tax assessment on property. A classification challenge is not governed under section 194.171; a claim contesting a tax assessment is subject to it. The order of the trial court striking the class action allegations should be reversed and the matter should be remanded with direction to proceed with a determination of those allegations.

Respectfully submitted this 20th day of May 2003.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this brief was provided by Hand Delivery to J. Elliott Messer and Thomas M. Findley, Messer, Capparello & Self, P.A., Post Office Box 1876, Tallahassee, Florida 32302-1876, and by U.S. Mail to Roy V. Andrews, Lindsay, Andrews & Leonard, Post Office Box 586, Milton, Florida 32572, on this 8th day of August, 2003, to:

_____
Benjamin K. Phipps

CERTIFICATE OF COMPLIANCE

I further certify that this brief is presented in 14-point Times New Roman and complies with the font requirements of Rule 9.210.

_____
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