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State and Local Taxation in Florida: The Appellate maze

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STATE AND LOCAL TAXATION IN FLORIDA: THE APPELLATE MAZE

INTRODUCTION

Despite efforts to insure uniform and just initial assessment of state and local taxes,[1] numerous taxpayer complaints of inaccurate assessments remain.[2]

1. *See, e.g.*, FLA. STAT. §§195.0011-.207 (1975), *as amended by* 1976 Fla. Laws, ch. 76-133, -235 (prescribing uniform procedures and methods for valuation of real property and tangible personal property for ad valorem taxation).

2. The following statistics compiled by the Florida Department of Revenue (DOR) are indicative of the volume of taxpayer complaints:

	Fiscal Year		
	1974-75	1975-76	1976-77 (as of Nov. 24, 1976)
PETITIONS FOR ADMINISTRATIVE HEARINGS			
Corporate Income Tax	1	21	22
Excise Tax on Documents	3	49	20
Intangible Property Tax	0	8	5
Motor and Other Fuels Tax	1	4	1
Sales Tax	0	13	11
	5	95	59
LAWSUITS			
Corporate Income Tax, Estate Tax and Intangible Property Tax	9	5	2
Excise Tax on Documents	21	21	2
Sales Tax — General	23	31	16
Sales Tax — Garnishments	16	15	5
	69	72	25
Mortgage Foreclosure Cases	134	200	89

In addition to the formal proceedings outlined above, informal conferences between taxpayers and representatives of the DOR are more frequent, although no statistics are maintained for informal conferences. Letter from John D. Moriarty, Attorney, Division of Administration, DOR, to David S. Boyce (Jan. 28, 1977) (on file at University of Florida Law Review).

The DOR does not compile statewide statistics for each county's local property tax appeals. The volume of appeals varies greatly from county to county. In 1976, Alachua County had 51 appeals filed. Of these 16 were actually heard, all by the Board of Tax Adjustment. Telephone conversation with Sarah Sowell, secretary to Curtis Powers, Clerk of the Alachua County Court (Apr. 4, 1977). Although use of special masters to aid the board in the appeals process is authorized, see text accompanying notes 103-104 *infra*, Alachua County has never appointed special masters. Telephone conversation with Pearce Smith, Alachua County Property Appraiser (Apr. 8, 1977). In Dade County, on the other hand, 5,288 appeals were filed of which 3,212 were actually heard, all by special masters whose

As complaints arise it is essential to afford the taxpayer an impartial tribunal to hear his complaint and to provide appropriate relief. Taxpayer satisfaction that the assessment and review of taxes are just is vital to preserving the integrity of the public fisc.[3] The observation that " '[i]mportant as it is that people should get justice, . . . it is even more important that they be made to feel and see that they are getting it' " is apropos in all tax matters, especially in procedural remedies where deficiencies "are even more apparent."[4] This observation becomes particularly pertinent with public exposure of executive abuse through federal tax investigation and assessment still fresh in memory.[5]

Commentators have identified five goals which a system of appeals should ideally reach to maintain taxpayer confidence:[6] (1) The taxpayer must be provided with review by a fair, impartial, and competent tribunal;[7] (2) Procedures should provide for speedy and uniform resolution;[8] (3) The taxpayer should have access to the information essential to preparing and appealing his case;[9] (4) Appeals procedures should be publicized to inform the public of available remedies;[10] (5) It must be economically feasible to pursue the small as well as the large claim.[11] These goals represent a standard against which current Florida appeals procedures may be measured.

Basic to the appearance of impartiality is recognition of the importance of the separation of judicial and administrative functions. Close scrutiny of the extent to which the executive branch is performing tax appeals of an essentially judicial nature is warranted in an era when decisions by the executive branch are increasingly determining substantial rights of individuals. First, with respect to procedures for appealing ad valorem real property and tangible personal property taxes, despite extensive recent legislative revision,[12] the primary link in the appeals process remains a

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decisions were in most instances certified by the county Board of Tax Adjustment. Letter from Edward D. Phelan, Clerk of the Board of County Commissioners to David S. Boyce (Apr. 11, 1977) (on file at University of Florida Law Review).

3. *See* Ehrman, *Administrative Appeal and Judicial Review of Property Tax Assessments in California — The New Look*, 22 HASTINGS L.J. 1 (1970).

4. *Id.* at 1-2.

5. The federal abuse most notorious was the "enemies list" provided by President Nixon's staff to the Internal Revenue Service for special audit.

6. *See generally* Ehrman, *supra* note 3; Gore & Emmerman, *Real Estate Assessments — A Study of Illinois Taxpayers' Judicial Remedies*, 24 DE PAUL L. REV. 465 (1975); Hellerstein, *Judicial Review of Property Tax Assessments*, 14 TAX L. REV. 327 (1959); Kray, *California Tax Court: An Approach to Progressive Tax Administration*, 37 S. CAL. L. REV. 485 (1964); Note, *The Michigan Property Tax: Assessment, Equalization and Taxpayer Appeals*, 17 WAYNE L. REV. 1397 (1971).

7. Ehrman, *supra* note 3, at 4; Hellerstein, *supra* note 6, at 351-52; Kray, *supra* note 6, at 485.

8. Ehrman, *supra* note 3, at 4; Kray, *supra* note 6, at 485.

9. Ehrman, *supra* note 3, at 2, 7-11. *See also* Kray, *supra* note 6, at 485, 527 (suggesting publication of opinions to provide a guide of tax law for practitioners).

10. Carr, *Property Assessments: Protest, Appeal and Judicial Review*, 17 ABA. ADMIN. L. REV. 187, 199 (1965).

11. Hellerstein, *supra* note 6, at 351-52. *See also* Kray, *supra* note 6, at 485.

12. 1976 Fla. Laws. ch. 76-133, -234.

board composed of three county commissioners and two school board members. Because these officials also are responsible for devising and administering public budgets based on tax revenues, their awareness of the competing need to preserve revenue is not conducive to granting a taxpayer an impartial hearing. The scope of judicial review assumes heightened importance in these circumstances, but historically the courts have been an impractical and fruitless route for most taxpayers seeking review of property appraisals.

A similar problem of identifying and limiting the proper role of those administering tax assessments has recently been addressed for the appeal of taxes levied by the state. Recent enactments[13] by the Florida legislature attempting to make general administrative appeals uniform and just were interpreted by the executive branch as overriding previous statutory provisions and as imposing mandatory administrative review of tax assessments with a newly restricted level of judicial review. The First and Second District Courts of Appeal have resisted this incursion on judicial function,[14] but the Supreme Court of Florida has yet to decipher the conflicting statutory provisions or to rule on the validity of the executive position.

In light of these recent statutory enactments and court decisions, a comprehensive examination of steps taken in Florida to provide uniform and just procedures to contest tax assessments is appropriate. This note analyzes the institutional structure for Florida tax appeals, the specific provisions for appeals procedures, the adequacy of each in attaining the previously enumerated ideals for an appeals system, and possible avenues for reform. The proper role of the executive and judicial branches in the appeals process is particularly emphasized.

FLORIDA TAXATION — AN OVERVIEW

Revenue in Florida is raised by a wide variety of taxes.[15] Ad valorem real and tangible personal property taxes produce most of the direct revenue for county and city governments.[16] State revenues are raised by a greater

13. FLA. STAT. §§120.50-.73 (1975).

14. Department of Revenue v. Crisp, 337 So. 2d 404 (2d D.C.A. Fla. 1976); Department of Revenue v. University Square, Inc., 336 So. 2d 371 (1st D.C.A.), *cert. denied*, 342 So. 2d 1101 (Fla. 1976); Department of Revenue v. Young Am. Builders, 330 So. 2d 864 (1st D.C.A. Fla. 1976).

15. For a thorough review of the sources of Florida revenue, see Note, *An Individual Income Tax for Florida — The Next Step in Tax Reform?*, 29 U. FLA. L. REV. 149, 151-56 (1976) [hereinafter cited as *Individual Income Tax*]. *See generally* INSTITUTE FOR SOCIAL POLICY STUDIES, FLORIDA'S TAX POLICY (L. Sandon, ed. 1976); Donovan, *Florida's State and Local Tax Structure*, 13 U. FLA. L. REV. 518 (1960); Clark, *A State's Tax Jurisdiction as Limited by the United States Constitution*, 13 U. FLA. L. REV. 401 (1960); Note, *Special District Taxation*, 13 U. FLA. L. REV. 531 (1960).

16. The Florida constitution has explicitly delineated taxes that may be levied by the state and those that may be levied by local government: "No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law." FLA. CONST. art. VII, §1(a). Other taxes granted to local government by general law include utility service tax and occupational license fees. The aggregate revenues from these other taxes, however, is a small percentage of the amounts raised by property taxes. *See Individual Income Tax, supra* note 15, at 152.

variety of taxes,[17] such as estate taxes,[18] intangible personal property taxes,[19] excise tax on documents,[20] gross receipts tax,[21] motor and other fuels tax,[22] cigarette tax,[23] tax on production of oil and gas and severance of solid minerals,[24] sales and use tax,[25] and corporate income tax.[26] Florida law provides distinct procedures for appeal of local ad valorem taxes and state taxes. Analysis of such procedures is facilitated by considering each in turn.

APPEALS PROCEDURES FOR LOCAL PROPERTY TAXATION

Although ad valorem real and tangible personal property taxes raise revenue for local governments rather than for the State of Florida, the Florida legislature has outlined extensive procedural requirements for the assessment, collection, and appeal of local ad valorem taxes[27] and has established

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17. For a compilation of the amounts raised by these and other state taxes, see *Individual Income Tax, supra* note 15, at 152.

18. FLA. STAT. §§198.01-.44 (1975). The state estate tax is assessed in a manner dependent on federal estate tax principles. For state citizens the amount of the state estate tax is constitutionally limited to the amount allowed as a credit or deduction in computing federal estate tax and similar taxes in other states. FLA. CONST. art. VII, §5(a).

19. FLA. STAT. §§199.012-.072 (1975). The state intangible personal property tax is an annual levy of one tenth of one percent on the value of specified intangible personal property not including money or obligations secured by real property in Florida and a nonrecurring levy of two tenths of one percent on obligations secured by real property in Florida. *Id.* §199.032.

20. *Id.* §§201.01-.22. The excise tax on documents is levied on the exchange or creation of legal documents such as bonds, stocks, mortgages, deeds, etc., at rates dependent on the type of document involved ranging from 15 cents per $100 value for most taxable documents to 30 cents per $100 of consideration paid plus a surtax of 55 cents per $500 value (excluding the value of existing mortgages) for deeds and other instruments relating to realty. *Id.* §§201.01-.08.

21. *Id.* §§203.01-.05. The gross receipts tax is a levy of $1.50 upon each $100 of gross receipts of utility, telephone, and telegraph services.

22. *Id.* §§206.01-.97. This tax is a levy of eight cents per gallon of motor fuel sold in Florida. *Id.* §§206.41, .60, .605. Aviation motor fuels and some bulk sales to the federal government are exempted. *Id.* §§206.42, .62.

23. *Id.* §§210.01-.22. The cigarette tax is an excise tax levied on the sale, receipt and such of all cigarettes in the state at rates dependent on the size and weight of the cigarette. *Id.* §210.02.

24. *Id.* §§311.01-.34. This excise tax is a levy of five percent of the gross value of oil, gas, and minerals extracted from the ground within the state. *Id.* §§211.02, .31. An additional levy is placed upon escaped oil and gas recovered from lakes, streams, ravines, and such. *Id.* §211.04.

25. *Id.* §§212.01-.22. The chapter imposes a levy of four percent on transient accommodation charges, on certain other real property rental charges, on admission charges, and on retail sales, storage, and use charges. *Id.* §§212.03-.04, .06.

26. *Id.* §§220.01-.69. The corporate income tax is a five percent levy on the taxpayer's net income. *Id.* §220.11.

27. *See* FLA. STAT. §§193.011-197.441 (1975). The legislature has made more than mere gestures toward insuring statewide uniformity. The DOR has been given broad powers to supervise assessment and valuation, *id.* §195.002; to provide all forms used by property appraisers, tax collectors, clerks of the circuit courts and property appraisal adjustment boards (PAAB) in administering and collecting ad valorem taxes, *id.* §195.022; to prescribe rules and regulations for the assessing and collecting of taxes, *id.* §195.027; to

the State Department of Revenue (DOR) as the overseer of local tax administration.[28] This statewide approach eliminates the vagaries of numerous distinct local procedures and is essential for orderly review by the DOR and the state court system.

Administrative Review

Generally, review proceedings have their origin in a taxpayer dispute arising from the initial determinations of assessed valuations,[29] property exemption,[30] or homestead exemption[31] made by the county property appraiser.[32] With respect to assessed valuation, a taxpayer's complaint may be related to an increase of the previous year's assessment[33] or to an assessment unchanged from that of previous years but which the taxpayer feels inaccurately reflects the value of his property.[34] A complaint related to denial of homestead or other property exemption may be related to a full or partial denial of exempt status.[35]

Under the 1976 amendments, a taxpayer wishing to dispute his assessment now has a statutory right to an informal conference with the county

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bring suit to enforce compliance with its rules and regulations, *id.* §195.092; to review all county assessment rolls, *id.* §195.097; and to order the withholding of state funds to any county assessing below standards. *Id.* §195.101. The DOR is in the continuing process of adopting rules to exercise fully these statutory powers. *See, e.g.*, 2-34 FLA. ADMIN. WEEKLY 20-35 (1976).

28. *See, e.g.*, FLA. STAT. §§195.002, .027 (1975), *as amended by* 1976 Fla. Laws, ch. 76-133, §11.

29. FLA. STAT. §194.011(1) (1975).

30. *Id.* §196.011(1). Property exempted from ad valorem taxation includes, for example, that used for charitable, religious, scientific, or literary nonprofit purposes. *Id.* §196.196.

31. *Id.* §196.141.

32. *See generally* Eriksen & Hodges, *Assessment and Collection of Ad Valorem Property Taxes*, 13 U. FLA. L. REV. 455 (1960); Wershow, *Ad Valorem Assessment in Florida—The Demand for a Viable Solution*, 25 U. FLA. L. REV. 49 (1972).

33. The taxpayer must be notified of any proposed increase in assessed valuation by the property appraiser "[o]n or before approval of the assessment roll by the Department of Revenue, or upon order of the [Assessment Administrative Review Commission] or court pursuant to s. 195.098" unless "such increased assessment is not greater than the value declared by the taxpayer on his return." FLA. STAT. §194.011(2) (1975), *as amended by* 1976 Fla. Laws, ch. 76-234, §1.

34. This dissatisfaction with continued assessment could arise from circumstances as numerous as there are taxpayers. The taxpayer may have been a recent purchaser of the property in question or a longstanding owner who has only recently shown an interest in investigating the fairness of his assessment. Similarly, conditions which have changed may make the taxpayer's property less valuable than previously. The legislature has taken note of one such condition in the case of governmentally imposed building moratoriums and has expressly directed the property appraiser to take such moratoriums into consideration. A taxpayer may petition the Property Appraisal Adjustment Board (PAAB) for relief under these circumstances. *Id.* §194.011(3)(e).

35. *Id.* §§196.193, .194. The procedure for determination and notification to the taxpayer by the property appraiser of any denial of claimed exemption parallels that for property assessment. Also the taxpayer must be notified of the right to appeal to the PAAB and the procedures to follow in obtaining such an appeal. *Id.* §196.193(5). These procedures effectively achieve the goals of notice and publication.

property appraiser,[36] who has the initial responsibility for assessing real and tangible personal property. During this informal conference the taxpayer and property appraiser exchange views and supportive facts concerning the correctness of the assessment. If they cannot agree, or if the taxpayer has decided not to elect his option for an informal conference, he may initiate administrative appeal by filing a petition for review by the Property Appraisal Adjustment Board (PAAB).[37] The board is composed of five members, three from the county governing body and two from the school board.[38] The petitioner's right to appear before the board cannot be abridged or conditioned by requiring an appearance before any county advisory board or agency.[39]

The PAAB operates as a civil proceeding with the taxpayer as petitioner arguing against the property appraiser before the five member board. Both the taxpayer and the property appraiser may be represented by attorneys and may present testimony and other evidence.[40] Procedures are to conform generally to requirements for state administrative hearings under the Administrative Procedure Act.[41] Although the 1974 revision of the Administrative Procedure Act (1974 APA) created an area of dispute as to whether it limits the scope of judicial review of state tax appeals,[42] this dispute was precluded in appeals for local ad valorem taxes by explicit statutory language[43] preventing any effect on judicial review of such taxes. The DOR, under

36. 1976 Fla. Laws, ch. 76-234, §1 (amending FLA. STAT. §194.011(3) (1975)).

37. Such a petition must be drafted on forms prescribed by the DOR and distributed by the property appraiser and must be filed prior to the latter of July 15, or the 17th day following the mailing to the taxpayer of a proposed increase in assessment. The petition must specify "the approximate time anticipated by the taxpayer to present and argue his petition before the board." FLA. STAT. §194.011(3)(c) (1975), *as amended by* 1976 Fla. Laws, ch. 76-234, §1. Subsequently he is notified no less than five days in advance of the scheduled time for his appearance. *Id.* §194.032(2).

The nomenclature "property appraisal adjustment board" replaced "board of tax adjustment" under the 1976 amendments. 1976 Fla. Laws, ch. 76-133, §6 (amending FLA. STAT. §194.015 (1975)). The immediate predecessor of the Board of Tax Adjustment was the county commissioners sitting as a board of equalization. *See* Hall, *Florida Property Tax Procedure*, 13 U. FLA. L. REV. 493, 502-04 (1960); Slomowitz, *Property Tax Administration in Florida and the Scope of Judicial Review*, 24 FLA. L.J. 223, 228-30 (1950).

38. FLA. STAT. §194.015 (1975), *as amended by* 1976 Fla. Laws, ch. 76-234, §2. The members are elected by their respective boards with chairmen elected by the county commissioners. Prior to the 1976 amendments the members were designated by the chairmen of their respective boards. A quorum consists of any three members so long as both the county commission and board of education each have a representative present. *Id.*

39. *Id.* §194.032(7).

40. *Id.* §194.032(3), *as amended by* 1976 Fla. Laws, ch. 76-234, §3. The statute specifies that all parties may be required to testify under oath as administered by the chairman of the board but fails to indicate who may require that testimony be sworn. *Id.*

41. *Id.* §§120.50-.73.

42. See text accompanying notes 197-244 *infra*.

43. "Such hearings shall generally conform to the procedures prescribed for hearings in chapter 120, except that nothing herein shall preclude an aggrieved taxpayer from contesting his assessment in the manner provided by s. 194.171." 1976 Fla. Laws, ch. 76-234, §3 (amending FLA. STAT. §194.032(3) (1975)).

statutory mandate,[44] has promulgated procedural rules in general conformance to the 1974 APA but adapted to the special needs of the PAAB.[45] The overall effect of these rules is to help insure orderly and uniform proceedings before the board with at least some assurances of recognition and preservation of petitioner's rights. The determinations by the board may also be facilitated by the appointment of special masters.[46] In addition, the board may employ "qualified property appraisers or evaluators" to testify as to the "just value" of property in question.[47]

In *Stiles v. Brown*,[48] the Florida supreme court explained the role of the board in reviewing actions of the property appraiser.[49] Essentially, the board may not make reevaluations or general increases or decreases applicable to the entire tax roll.[50] Rather, the board is limited to correcting errors in cases before it to the end that all tax valuations are uniform. In its consideration the board is required to apply the same statutory formulae[51] which govern the initial determination by the property appraiser.[52] Under rules promulgated by the DOR after *Stiles v. Brown*, the appraiser's determination is entitled to a presumption of correctness which the petitioner may rebut by evidence that excludes "every reasonable hypothesis of a legal assessment."[53]

Written decisions containing findings of fact and conclusions of law must be issued by the board unless the complaint is withdrawn by the petitioner or

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44. *Id.*

45. *See* 4 FLA. ADMIN. CODE 12D-10.

46. FLA. STAT. §194.032(4) (1975). The procedures to be followed in using special masters and the extent to which the PAAB may delegate power to special masters is elaborated in DOR rules. Essentially, all powers may be delegated to special masters except the power to render final decisions. 4 FLA. ADMIN. CODE 12D-10.02.

47. FLA. STAT. §194.032(8) (1975).

48. 182 So. 2d 612 (Fla. 1966).

49. The board at that time was called the board of tax equalization. *See* 182 So. 2d at 614.

50. 182 So. 2d at 615.

51. For example, with respect to valuation the legislature has specified factors which must be taken into account in arriving at just valuation as required by the Florida constitution: "(1) The present cash value of the property; (2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any . . . land use regulation . . . and [development] moratorium . . .; (3) The location of said property; (4) The quantity or size of said property; (5) The cost of said property and the present replacement value of any improvements thereon; (6) The condition of said property; (7) The income from said property; and (8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale . . . ." FLA. STAT. §193.011 (1975).

52. 182 So. 2d at 615.

53. 5 FLA. ADMIN. CODE 12D-10.03(3). This is an adoption of the standard specified in Homer v. Dadeland Shopping Center, Inc., 229 So. 2d 834, 837 (Fla. 1969). "Every reasonable hypothesis of legal assessment" has been explained as encompassing the three approaches to valuation: the cost or summation approach, the income or economic approach, and the market data or comparable sales approach. Aeronautical Communications Equip., Inc. v. Metropolitan Dade County, 219 So. 2d 101, 104 (3d D.C.A. Fla. 1969) (quoting McNayr v. Claughton, 198 So. 2d 366, 368 (3d D.C.A. Fla. 1967)).

acknowledged by the property appraiser.[54] Though there is no express statutory provision governing the use of decisions as precedent, in practice they have no precedential value.[55] This is in sharp contrast with the potential for stare decisis for state administrative hearings under the 1974 APA.[56] Currently, the primary importance of the written decisions arises in the event the property appraiser fails to concur in any changes made by the PAAB. The 1976 amendments substantially altered the procedure to be followed when the property appraiser disputes such changes. Prior to the 1976 amendments the board's disputed decision was forwarded only to the DOR, which could reinstate the property appraiser's determination if the evidence was insufficient to overcome his presumption of correctness.[57] DOR review of any case was not automatic. Such review occurred only when the property appraiser failed to concur in the PAAB's decision, not when the taxpayer received an unfavorable decision — in which case there remained no further administrative remedy. Thus the effect on the individual taxpayer could only be negative; even if he prevailed before the PAAB he faced the specter of a possible additional administrative hurdle.

This situation was altered under the 1976 amendments as part of a continuing effort to find a workable solution to the problem of timely completion of the tax roll in accordance with DOR efforts under legislative direction to achieve just valuation.[58] The property appraiser and taxpayer now have the same avenue for review of PAAB decisions — a de novo hearing in the circuit court with the burden of proof upon the party initiating the action.[59]

There remains no further practical administrative remedy for most taxpayers. However, for the rare taxpayer who feels that the assessed valuation is greater than the actual value of his property and is willing to risk sale of his property at the price he alleges to be the actual property value, another

54. FLA. STAT. §194.032(5) (1975), *as amended by* 1976 Fla. Laws, ch. 76-234, §3. *See also* 4 FLA. ADMIN. CODE 12D-10.05.

55. Interview with Larry DeFrances, Counsel for the Division of Ad Valorem Tax, DOR, in Tallahassee, Fla. (Apr. 12, 1976) [hereinafter cited as DeFrances Interview]. This is not to say the PAAB would be unswayed by referral to their previous holdings on similar facts, but with no published opinions or reporter system the finding of prior opinion on point is not a practical matter.

56. See text accompanying notes 193-196 *infra*.

57. *See* FLA. STAT. §193.122 (1975). Nonconcurrence has been frequent. There were 678 incidents of initial nonconcurrence with 1974 PAAB changes of which 146 were subsequently concurred in as of April 12, 1976. DeFrances Interview, *supra* note 55.

58. Prior to 1974 §193.122 required all PAAB changes to be reviewed by the DOR. In 1973 several thousand cases had to be reviewed. This flooded the DOR and delayed final roll approval. The holding in Hollywood Jaycees v. Department of Revenue, 306 So. 2d 109 (Fla. 1974), required due process protection for the taxpayer in these reviews. This requirement would have increased the burden on the DOR but for the 1974 amendments. DeFrances Interview, *supra* note 55. The 1976 amendments further limit the DOR's involvement. Now DOR review of the appraiser's desire to file suit in court is necessary only if the appraiser fails to qualify under other liberal criteria. *See* FLA. STAT. §194.032 (1975), *as amended by* 1976 Fla. Laws, ch. 76-234, §3.

59. FLA. STAT. §194.032 (1975), *as amended by* 1976 Fla. Laws, ch. 76-234, §3. For further discussion of judicial review see text accompanying notes 66-87 *infra*.

administrative procedure remains as an option that is not a prerequisite for judicial relief. Under the Pope Act, the taxpayer may arrange to have the property placed at public auction by the property appraiser.[60] If no one bids on the property at the price sought to be established by the taxpayer as the just value, the taxpayer prevails and retains the property; otherwise, the property is sold.[61] At present the procedure is unappealing in most cases because, despite the Florida constitutional requirement that all property not specifically excepted be valued at its just value,[62] most property is systematically appraised at a substantial percentage less than fair market value.[63] Thus to avail himself of this procedure,[64] the average taxpayer faces the prospect of losing his property at less than its fair market price. At times when market prices are severely depressed this procedure may offer a viable alternative, but even then the process is unattractive to one not wishing to risk sale of his property. Generally, therefore, the only rational administrative route of appeal for an aggrieved taxpayer is through the PAAB.[65]

Judicial Review

If a taxpayer is unable to find satisfactory relief via the administrative route, relief may be sought in the courts. Although statutory provisions for judicial review are sketchy they do provide some guidance. Circuit courts have original jurisdiction over all matters related to local property taxation.[66] However, there are several conditions precedent to maintaining a tax appeal in circuit court. Generally, the suit must be brought within sixty days

60. FLA. STAT. §194.042 (1975). This provision has also been called the "Russian Roulette Statute." Wershow, *Recent Developments in Ad Valorem Taxation*, 20 U. FLA. L. REV. 1, 5 (1967).

61. FLA. STAT. §194.042 (1975). A recent ruling by the attorney general holds that until this act is declared unconstitutional or repealed, the "property appraiser may not abstain from proceeding with his duties under §194.042." OP. ATT'Y GEN. FLA. 075-182 (1975). This suggests that §194.042 is occasionally used.

62. FLA. CONST. art. VII, §4; *see also* FLA. STAT. §193.011 (1975). Just value has been interpreted by the courts as best equated with fair market value. *See* Southern Bell Tel. & Tel. Co. v. County of Dade, 275 So. 2d 4, 9 (Fla. 1973).

63. 275 So. 2d at 9; Dade County v. Salter, 194 So. 2d 587 (Fla. 1966).

64. Specifics of the procedure may be found in the statute. Since for most taxpayers this is a radical and impractical step, detailed explanation of the procedure is of limited utility.

65. At times even the PAAB is not available to seek remedy. With respect to agricultural classification, the initial classification is generally made by the property appraiser with normal appeal to the PAAB. Reclassification of agricultural land, however, can be done by the county commissioners on their own collective volition. FLA. STAT. §193.461 (1975). Though the statutes are silent on the availability of administrative appeal, logically appeal to the PAAB would make little sense since the majority of the PAAB consists of county commissioners. Presumably, direct appeal to the courts should be available. *See generally* Boyer & Cooper, *Real Property*, 28 U. MIAMI L. REV. 1, 41-44 (1973); Wershow, *Ad Valorem Taxation and Its Relationship to Agricultural Land Tax Problems in Florida*, 16 U. FLA. L. REV. 521 (1964); Wershow, *Agricultural Zoning in Florida—Its Implications and Problems*, 13 U. FLA. L. REV. 479 (1960); Wershow & Juergensmeyer, *Agriculture and Changing Legal Concepts in an Urbanized Society*, 27 U. FLA. L. REV. 78 (1974).

66. FLA. STAT. §194.171 (1975).

of the date that the assessment is certified for collection.[67] Also, the taxpayer must pay all taxes that he in good faith admits to be owing.[68] Generally, the taxpayer must first exhaust his administrative remedies.[69] Only if the action by the tax assessor is illegal and void may judicial relief be sought without prior resort to administrative remedies.[70]

In fact, if the taxpayer's complaint is one of excessive valuation his only viable route is administrative appeal. Florida courts grant relief in such cases only if there is other improper conduct or in those rare cases where assessment is so excessive it amounts to constructive or actual fraud.[71]

The reluctance of the courts to disturb an assessment by the property appraiser appears to lie in their perception of the appraisal process. Property appraisal is seen as "an art, not a science," with the application of even mandatory guidelines requiring the exercise of individual judgment, essentially an "administrative act involving the exercise of administrative discretion"[72] for which the appraiser "is politically responsible to the people of the county."[73] Thus early cases held that if any judicial relief was to be afforded the excessive valuation must have resulted from intentional discrimination,[74] arbitrary official action,[75] or use of an improper method of calculation.[76] More recent cases still allow the property appraiser wide discretion,[77] but taxpayers prevail when they can show that the property appraiser has failed to consider all of the required factors for valuation.[78]

67. *Id.* §194.171(2); Askew v. MGIC Dev. Corp., 262 So. 2d 227 (4th D.C.A. Fla. 1972). Under prior law, this sixty day limit was interpreted as applying only to voidable and not void assessments. A one year statute of limitations for suits against a county, FLA. STAT. §95.08 (1973) (repealed 1974), was the time constraint on suits alleging an assessment to be void, *e.g.*, as an assessment upon exempt property as opposed to a voidable unintentional excessive assessment on nonexempt property. Lake Worth Towers, Inc. v. Gerstrung, 262 So. 2d 1, 4 (Fla. 1972); Walden v. University of Tampa, Inc., 304 So. 2d 134 (2d D.C.A. Fla. 1974). However §95.08 has been repealed, 1974 Fla. Laws, ch. 74-382, §26, so the void/voidable distinction apparently no longer has practical significance.

68. FLA. STAT. §194.171(3)-(6) (1975); FLA. CONST. art. VII, §13.

69. Strickland v. Sarabay Country Club, Inc., 301 So. 2d 129 (2d D.C.A. Fla. 1974); Dade County v. Transportes Aereos Nacionales, S.A., 298 So. 2d 570 (3d D.C.A. Fla. 1974); Monroe County v. Gustinger, 285 So. 2d 431 (3d D.C.A. Fla. 1973).

70. Lake Worth Towers, Inc. v. Gerstrung, 262 So. 2d 1, 4 (Fla. 1972); C. D. Util. Corp. v. Maxwell, 189 So. 2d 643 (4th D.C.A. Fla. 1966); Okeelanta Sugar Ref., Inc. v. Maxwell, 183 So. 2d 567 (4th D.C.A. Fla. 1966). See note 67 *supra*.

71. Slomowitz, *supra* note 37, at 227-28; Wershow, *Regional Valuation Boards—A British Answer to Ad Valorem Assessment Problems in Florida*, 21 U. FLA. L. REV. 324, 325 (1969). *See* Schleman v. Connecticut Gen. Life Ins. Co., 151 Fla. 196, 9 So. 2d 197 (1942) (relief granted because valuation was so excessive, three times actual cash value, as to amount to constructive fraud).

72. Powell v. Kelly, 223 So. 2d 305, 307 (Fla. 1969).

73. Exchange Realty Corp. v. Hillsborough County, 272 So. 2d 534, 535 (2d D.C.A. Fla. 1973) (quoting Tampa Coca-Cola Bottling Co. v. Walden, 230 So. 2d 52, 54 (2d D.C.A. Fla. 1969)).

74. Roberts v. American Nat'l Bank, 94 Fla. 427, 115 So. 261 (1927).

75. West Virginia Hotel Corp. v. Foster, 101 Fla. 1147, 132 So. 842 (1931).

76. City of Tampa v. Colgan, 121 Fla. 218, 163 So. 577 (1935); Slomowitz, *supra* note 37, at 226-27.

77. *See, e.g.*, Powell v. Kelly, 223 So. 2d 305 (Fla. 1969).

78. Palm Corp. v. Homer, 261 So. 2d 822 (Fla. 1972); Cassady v. McKinney, 296 So. 2d

Even if an appraiser's consideration of all factors is not at issue, relief may be available for the taxpayer with adequate resources to pursue his complaint. In *Southern Bell Telephone and Telegraph Co. v. County of Dade,*[79] the Supreme Court of Florida found for the taxpayer because the evidence showed that petitioner's property value was assessed at a percentage of value "substantially higher" than other property in the county.[80] Petitioner's property had been assessed at 100 percent of its just value while other property, on the average, had been assessed at eighty-two percent of its just value.[81] Petitioner established the unfair valuation by three sales-ratio studies: a random sampling of documentary stamp records, an analysis of a real estate company's records of sales, and a United States Bureau of Census Study.[82] The property appraiser conceded that the taxpayer's property had been assessed at 100 percent.[83] In this case the court felt that the eighteen percent differential was sufficiently substantial to amount to a constitutional infringement of the petitioner's rights.[84]

The court in *Southern Bell* did not address the issue of exactly how great a differential would be required to mandate corrective judicial action. There remains a gray area in which relief is uncertain. The ambiguity becomes particularly important in light of the wide statistical distribution of assessed value in relation to just value.

> Although the sales ratio studies in this case revealed the median assessment level of real property to be approximately 82% they also disclosed that the property of the other taxpayers had not been assessed at any particular uniform level. A graph of the ratios reveals a bell-shaped curve with a few assessments at very low levels, the largest in the five percentage point range between 80% and 85%, and a few

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94 (2d D.C.A. Fla. 1974); Escambia Chem. Corp. v. Fisher, 277 So. 2d 307 (1st D.C.A. Fla. 1973); Exchange Realty Corp. v. Hillsborough County, 272 So. 2d 534 (2d D.C.A. Fla. 1973). For the factors to be considered in assessing property see note 51 *supra.*

79. 275 So. 2d 4 (Fla. 1973). The relief granted in this case dealt with a tangible personal property assessment yet the analysis used by the plaintiff and accepted by the court concerned assessments of real property. Thus, *Southern Bell* is also important in that it established the acceptance of comparing assessments of one class of property (realty) with an assessment of property in another class (tangible personalty) as a basis for granting relief.

80. The court did not use the language of constructive fraud but the effect is the same.

81. 275 So. 2d at 9-10. The court noted that it had previously held, in Dade County v. Salter, 194 So. 2d 587 (Fla. 1966), that although the constitution required assessment at just value, "'the right of the taxpayer whose property alone is taxed at 100 percent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of the statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.'" 275 So. 2d at 8. This followed decisions by the United States Supreme Court. *See* Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923).

82. 275 So. 2d at 5-6.

83. *Id.* at 5.

84. *Id.* at 7, 10.

> assessments at very high levels . . . . [T]he percentage range from 80% to 85% contained less than 50% of the ratios. . . .[85]

Therefore, many taxpayers are taxed at above the median range with relief dependent on the meaning of "substantially higher than the average level."[86] Yet the expense of assembling the type of evidence used in *Southern Bell* and prosecuting the case precludes the small taxpayer who finds his property assessed above the median range from seeking relief in the circuit courts.[87] To the extent that these same proofs are required before the PAAB, that board may also be closed as an effective appeals route. In any event, since a proceeding before the PAAB is a prerequisite to judicial relief, satisfaction of complaints at this first level of appeal minimizes expense. Therefore, the quality of appeal provided by the PAAB requires close scrutiny.

Analysis

The structure of Florida's ad valorem tax appeals system is not uncommon. Many jurisdictions employ a similar method with an administrative appeals board as the primary arbiter of tax disputes. Commentators have identified many of the flaws inherent in this type of system and some of their critical comments are equally applicable to Florida's system.

First, the taxpayer generally does not have access to appraiser information and data essential to determine whether his property is treated differently from similar property.[88] In Florida this problem is only partially alleviated by the statutory requirement that upon request the DOR distribute at minimal cost its manual of instructions for property appraisers.[89] The taxpayer generally lacks the expertise and resources necessary to assemble the type of evidence necessary to show that his property has been appraised substantially higher than other taxpayers.[90] Until the constitutional mandate of just valuation can be reached, an appropriate change would be to require the property appraisers to compile and make public statistics showing the price/appraisal value ratios. The benefit of this change would be twofold. First,

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85. *Id.* at 9-10.

86. *Id.* at 10.

87. *See* Slomowitz, *supra* note 37, at 228-29. Legislative directive requires the assessment of costs in court suits. FLA. STAT. §194.192 (1975). Court decisions have allowed costs for preparation and testimony by an expert, but the taxpayer is also faced with paying the property appraiser's expenses should the appraiser prevail. *See* Conboy v. City of Naples, 230 So. 2d 476 (2d D.C.A.), *cert. denied*, 237 So. 2d 537 (Fla. 1970); Keith Inv., Inc. v. James, 220 So. 2d 695 (4th D.C.A. Fla. 1969). Moreover, even the incidental costs and attorney fees are too high for the economical pursuit of small claims.

88. Carr, *supra* note 10, at 192. *See also* Ehrman, *supra* note 3, at 2, 7-11.

89. FLA. STAT. §195.062 (1975). Accessibility of these materials has been further facilitated by a recent Attorney General ruling that the assessment procedure manual and related forms are rules in the Administrative Procedure Act and therefore must be filed, published, and indexed in the Florida Administrative Code. OP. ATT'Y GEN. FLA. 076-123 (1976).

90. See text accompanying notes 79-84 *supra*. For discussion of the difficulties attending variation from a standard appraisal ratio see Hellerstein, *supra* note 6, at 347-48; Kray, *supra* note 6, at 496-97.

the taxpayer's appeal would be facilitated by allowing him to concentrate on establishing the just valuation of his own property. Second, the data compiled could be used by the appraiser himself as a more objective gauge of accuracy of assessments.

Because board decisions in Florida[91] and other states usually are unpublished, there is no basis for knowing how decisions are arrived at or to predict how the board will act vis-à-vis any given complaint.[92] Legislative amendment to require the PAABs to publish their opinions and follow their own precedents or explain variances from them would be an improvement which could be accomplished within the existing institutional framework. Such a change would advance all of the previously enumerated goals for an appeals system.[93] While published opinions and stare decisis may be helpful to the attorney in preparing a tax case for appeal to the PAAB, these may be of slight preparatory advantage for the average taxpayer pursuing a small claim. Economics generally dictate that he appear pro se. To provide him a meaningful forum, an additional reform should be instituted to create a provision for small case appeals with relaxed procedural rules and unpublished written decisions following past precedent but forming no future precedent.[94] Thus inordinate cost to both the taxpayer and government could be avoided. Moreover, the small taxpayer would still benefit from a requirement of stare decisis and published opinions to the extent he utilized them and to the extent their implementation improved the overall quality of the opinions issued by the PAAB.[95]

The remaining general criticisms of this type of system address the composition, functioning, and qualifications of those sitting on the board. Accuracy of property assessment is a technical rather than a policy question that the board is ill-equipped to handle.[96] Often the board fails to make sufficient inquiry, preferring instead to rely on the appraiser's judgment and thus denying the taxpayer "the quality of a hearing to which [he] is entitled."[97] Furthermore, board members are elected officials and are therefore vulnerable to political influence.[98] Moreover, "[t]he immediate concern of the board members with the preparation and execution of the budget may tend to pre-

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91. See text accompanying notes 54-57 *supra*. Currently there is little basis for determining the reasoning of the boards. *See* Hall, *supra* note 37, at 504. The DOR rules are of slight help in this matter. See note 53 *supra*.

92. Carr, *supra* note 10, at 192. *See also* Ehrman, *supra* note 3, at 2, 7-11; Kray, *supra* note 6, at 485, 527.

93. See text accompanying notes 6-11 *supra*. *See also* Kray, *supra* note 6, at 485, 527.

94. *See* Hellerstein, *supra* note 6, at 351-52.

95. Although valuation is generally a factual question, comparison of the current situation with prior case decisions would be an immeasurable aid in producing well-reasoned opinions by the PAAB.

96. Carr, *supra* note 10, at 193.

97. *Id.* at 194. In California, a legislative committee found the most frequent response of board members to questions about their work to be, "We have confidence in our assessor." *Id.* (quoting JOINT INTERIM COMMITTEE ON ASSESSMENT PRACTICES TO THE CALIFORNIA LEGISLATURE, FINAL REPORT 38 (1959)).

98. *Id.* at 193.

dispose them to a certain reluctance to reduce individual assessments."[99] Finally, the board sits for a small portion of the year, which is reflected in the poor quality of hearings that are "usually quite brief, if not perfunctory."[100]

Although there has been no field study in Florida to consider the applicability of these criticisms to the state's appeals system,[101] many of these problems are inherent in the institutional framework. The composition of the board, three county commissioners and two school board members, provides a good example. There is no guarantee that the board's members will be attorneys, and they may have little or no training to equip them to handle the fact-finding and legal reasoning processes. Thus, despite the statutory provision allowing the petitioner to be represented by an attorney, the lack of legal expertise of board members precludes reaching the level of preserving the rights of the parties that is achieved in judicial proceedings.[102]

This lack of expertise in a fact-finding process that often deals with complex questions of valuation or qualification for exemption potentially could be corrected under a statutory provision authorizing the board "to appoint special masters for the purpose of taking testimony and making recommendations to the board."[103] Although this would appear to provide for an adequate and just means for resolution of taxpayers' complaints, there are countervailing factors. First, the masters must be requested by the board. Considering that the expense of masters must be borne by the board of education and county governing body,[104] there is a motivation to rely on the taxpayer and property appraiser to present their own expert opinions and select between them rather than to interject a third expert opinion. Second, there is no assurance that the board will have the insight to recognize when special masters may be appropriate. As long as the use of masters is discretionary, the taxpayer has no guarantee that the board will make use of the expertise potentially available to aid in their decision-making process. Moreover, even if masters are used, the board is free to select whomever they wish as a master and follow or dismiss any recommendation provided. Thus, the legislature has recognized that in certain instances special masters may be appropriate but has failed to assure the taxpayer that he will receive the expertise essential to an impartial fact-finding process.

Further, the overall structure of administrative appellate procedure does not project an appearance of disinterested impartiality. All the members of the board and the property appraiser are elected officials, making the suspicion

99. *Id.*

100. *Id.* at 193-94.

101. Although no field study was found, the problems of politicalization of the process and lack of expertise in the fact-finding process were mentioned by one with extensive familiarity with the appeals process. DeFrances Interview, *supra* note 55.

102. Those who feel that attorneys are not necessarily better equipped to handle this type of process may find merit in a proposal for a board composed of lay members in addition to an attorney. *See* Wershow, *supra* note 71, at 332.

103. FLA. STAT. §194.032(4) (1975). Use of special masters varies widely from county to county. See note 2 *supra.*

104. *Id.*

of favoritism toward political cronies difficult to dispel. Moreover, areas are often dominated by one political party, making it likely that the property appraiser and a majority of the board members are of the same political party. This creates the appearance that the hearings are far from the normal adversary contest and that the property appraiser's presumption of correctness may be insurmountable.

In summary, the PAAB fails to achieve the appearance of fairness, impartiality, and thoroughness considered to be ideal. These flaws go to the very heart of the administrative appeals system and for the most part can be corrected only by major alterations of the institutional framework. Two possible alternatives to the present structure in Florida have been suggested. The first option would be to eliminate the administrative appeals altogether and place review power solely with the circuit courts.[105] The wisdom of this approach is questionable. Although the poor quality and politics of the PAAB would be circumvented, the small taxpayer would be faced with no economically feasible appeals route if this approach were adopted.

The second possibility would be to eliminate the PAAB and designate the property appraiser as an agency governed by the Administrative Procedure Act.[106] Appeals would then be conducted by the State Department of Administrative Hearings by full time professional individuals trained in the fact-finding process. While this result may be preferable to the present PAAB, it is not without drawbacks. These deficiencies will receive intensive analysis in the subsequent discussion of state tax appeals.[107] In any event the answer should be reached with the needs of proper appeal for both state and local taxes in mind. The ultimate solution should encompass an integrated appeals system for both state and local taxes.[108] For this reason final discussion and recommendations will follow an exploration of state tax appeals.

PROCEDURES FOR APPEALING STATE ADMINISTERED TAXATION

In the wake of conflicting statutory provisions and recent case law, it is difficult to identify the precise procedures for appealing state tax assessments. Much of the confusion can be traced to the enactment of the 1974 APA[109] by the Florida legislature. This Act extensively outlines uniform procedures for both the rule making[110] and order issuing[111] processes of agencies. The

105. DeFrances Interview, *supra* note 55. DeFrances related both alternatives, suggesting that the total elimination of administrative appeals was the less desirable option. *Id.*

106. *Id.*

107. See text accompanying notes 175-196 *infra.*

108. For a proposal directed solely at property tax appeals see Wershow, *supra* note 71.

109. FLA. STAT. §§120.50-.73 (1975).

110. *E.g., id.* §120.54 (1975). "Rule" is defined as "each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes the amendment or repeal of a rule." *Id.* §120.52(14).

111. *E.g., id.* §120.59 (1975). "Order" is defined as "a final agency decision which does not have the effect of a rule and which is not excepted from the definition of a rule, whether affirmative, negative, injunctive, or declaratory in form. An agency decision shall be final when reduced to writing." *Id.* §120.52(9). The primary distinction between

pertinent provisions relating to taxpayer appeals of assessments[112] deal with the processes leading to the determination and issuance of orders by the DOR and appeal therefrom by the taxpayer. While the 1974 APA was hailed as a major step forward in the development of administrative law,[113] its interim effect on tax appeals procedures was to raise a cloud of uncertainty.

Prior to the 1974 APA the DOR was exempted from the Administrative Procedure Act.[114] At that time the statutory provisions for appeals procedures were sprinkled throughout the sections dealing with revenue. Except for a few general provisions applying to all taxes, each type of tax was either treated in an ad hoc manner with appeals procedures prescribed specifically for it, or it was ignored altogether. All of these statutory provisions are still on the books. Prior to examining the extent, if any, to which the 1974 APA supplanted these laws it will be helpful to review both representative revenue provisions and other overlapping provisions of the 1974 APA.

General Provisions for Tax Appeals

The Florida constitution specifies a source of jurisdiction for court review of all tax assessments:

> . . . After this article becomes effective, and until changed by general law consistent with sections 1 through 19 of this article:
> . . . .
> . . . *Circuit courts* shall have jurisdiction of appeals from county courts and municipal courts, except those appeals which may be taken directly to the supreme court; and they *shall have exclusive original jurisdiction in all actions at law not cognizable by the county courts; . . . in all cases involving legality of any tax assessment or toll . . . .*[115]

For taxes such as the excise tax on documents[116] and the gross receipts tax,[117] this constitutional provision and a statutory counterpart[118] are the only provisions directly addressing the availability of administrative or judicial review applicable to all taxpayers.[119]

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a rule and an order is that a rule is of general applicability and an order deals with the interest of specific individuals.

112. To the extent a rule was instrumental in the issuance of an order determining a taxpayer's tax assessment, the procedures of rule-making may be important. A taxpayer may collaterally attack an order by seeking to declare invalid a rule under which it was promulgated. *Id.* §120.56.

113. Kennedy, *A National Perspective of Administrative Law and the Florida Administrative Procedure Act*, 3 FLA. ST. U.L. REV. 65, 71 (1975); Levinson, *The Florida Administrative Procedure Act: 1974 Revision and 1975 Amendments*, 29 U. MIAMI L. REV. 617, 695 (1975).

114. FLA. STAT. §120.21(1) (1973).

115. FLA. CONST. art. V, §20(c)(3) (emphasis added). This provision is the complement of art. VII, §1(a): "No tax shall be levied except in pursuance of law."

116. FLA. STAT. §§201.01-.22 (1975).

117. *Id.* §§203.01-.05.

118. *Id.* §26.012(2)(e): Circuit courts shall have exclusive original jurisdiction "[i]n all cases involving legality of any tax assessment or toll."

119. This provision deals solely with judicial review; for the excise tax on documents and the gross receipts tax there is no separate statutory provision for administrative

Notwithstanding the absence of an outline of specific procedures, this constitutional provision, the basic constitutional guarantees of equal protection[120] and due process,[121] and augmenting case law existing prior to the 1974 APA required that both administrative and judicial review be available to contest state tax assessments. The Florida supreme court has subsequently recognized the right to judicial review of DOR determinations of taxes and penalties.[122] Further, even in the face of the former statutory provision exempting the DOR from the Administrative Procedure Act, the court has found that the constitutional right to due process requires that a taxpayer be afforded notice, a hearing, and a copy of appropriate findings supportive of the department's final decision regarding review of changes by the PAAB; in effect an administrative hearing is constitutionally mandated.[123] The court reached this conclusion even though there was statutory provision[124] for de novo judicial review of the department's determination.[125] In the words of the court:

> [S]uch review does not supply the initial lack of due process by the DOR. The taxpayer is constitutionally entitled originally to administrative due process by the DOR and should not be relegated to his own initiative to bring a collateral judicial proceeding. Moreover, even though Appellants are afforded a de novo judicial hearing, they have "one strike against them" by the DOR and whether legally recognized or not must proceed in the judicial forum burdened with the tacit presumption that the decision of the DOR is correct.[126]

These pronouncements were specifically limited[127] by the court to the facts of the case at bar. However, in light of the court's description of the due

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review. There is a statutory provision applicable only to corporations specifying that when an assessment alleged to be illegal is made against a corporation, circuit courts have jurisdiction. *Id.* §68.01. The Declaratory Judgment Act is applicable to all taxpayers, however, and has often been used to seek review of tax assessments. See note 204 *infra.*

120. U.S. CONST. amend. XIV, §1.

121. *Id.* amend. V; XIV, §1; FLA. CONST. art. I, §9.

122. *See, e.g.,* Dominion Land and Title Corp. v. Department of Revenue, 320 So. 2d 815, 818 (Fla. 1975). The language of this opinion suggests that the scope of judicial review is quite broad: "The question of procedural safeguards has been properly raised and considered. Obviously, the Appellee-Department of Revenue alone cannot determine the amount of the tax or penalty without judicial review; if after such review the court finds that under the law a modified penalty is due, by strict construction the Court has its equitable power to reduce it." *Id.* Although the court characterized the judicial power as broad, it chose not to exercise it, finding that the department's determination of 100% penalty was within the authorization of a statutory provision not unconstitutionally harsh. *Id.* at 819. *See also* Associated Dry Goods Corp. v. Department of Revenue, 335 So. 2d 832, 834 (1976).

123. Hollywood Jaycees v. Department of Revenue, 306 So. 2d 109, 112-13 (Fla. 1974). Under 1976 amendments the DOR no longer has the power to alter decisions by the PAAB. See note 57 *supra.*

124. FLA. STAT. §194.171 (1975).

125. Hollywood Jaycees v. Department of Revenue, 306 So. 2d 109, 112 (Fla. 1974).

126. *Id.*

127. *Id.* at 113.

process requirements as "elementary familiar law,"[128] it seems clear that the court would apply the requirement of providing an administrative hearing to a requesting taxpayer when the assessment of any state tax or penalty is at issue. Another Florida constitutional provision applies generally to all tax appeals but works to the disadvantage of the taxpayer. Under this provision a prerequisite to relief from illegal taxes is payment by the taxpayer "of all taxes which have been legally assessed upon the property of the same owner."[129]

Provisions for Review of Specific Taxes

Just as the legislature has enacted specific provisions governing the appeals of ad valorem real property taxes, it has occasionally enacted provisions for the review of other taxes. There is little symmetry in these numerous provisions. Each tax with specific statutory provision for review therefore must be examined separately. The diversity of these provisions may be illustrated by an examination of a representative number. For this reason, only the provisions for appeals procedures of the intangible personal property tax, motor and other fuels taxes, and corporate income tax will be examined. Review of the provisions for appeal of the estate tax,[130] cigarette tax,[131] oil

128. *Id.* at 112. Among the cases cited by the court in support of this principle are the following: Fuentes v. Shevin, 407 U.S. 67 (1971); Bell v. Burson, 402 U.S. 535 (1970); Goldberg v. Kelly, 397 U.S. 254 (1970); Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969).

129. FLA. CONST. art. VII, §13.

130. Provisions in chapter 198 require that if the DOR determines an estate tax deficiency, it must notify the executor by registered mail. FLA. STAT. §198.17(1) (1975). The executor then has thirty to sixty days to initiate an administrative review of the decisions by the DOR. *Id.* The statute provides that with ten days notice to the executor the DOR is to hear and determine all questions and notify the executor of the determination. *Id.* §198.17(2). This administrative decision is final unless, within fifty days of receipt of notice, the executor brings suit in equity in circuit court. *Id.* §198.17(3). The circuit court decision is appealable to the appropriate district court of appeal (this suggests that venue is not required to be in Leon County) in compliance with time limitations in the Florida Appellate Rules, or to the Supreme Court of Florida if prescribed by article V of the state constitution, *i.e.*, when the circuit court action was initially ruling on the constitutional validity of a statute or treaty. *Id. See, e.g.*, Department of Revenue v. Golden, 326 So. 2d 409 (Fla. 1976) (direct appeal from the circuit court passing upon the constitutionality of FLA. STAT. §198.02 (1975)).

131. The appeal procedures outlined in the chapter dealing with the cigarette tax deal specifically with forfeiture proceedings, FLA. STAT. §210.12 (1975); revocation of permits, *id.* §210.16; tax evasion, *id.* §210.13; and determination of the tax on failure to file a return, *id.* The last of these is most relevant for comparison with procedures for appealing other state taxes. In cases where a dealer fails to file the required return, the DOR may determine the tax and notify the dealer of the determination. *Id.* This determination is final unless the dealer applies for a hearing from the DOR within thirty days. *Id.* Within the time and manner requirements of the Florida Appellate Rules, the dealer may seek judicial review of the hearing decision by the circuit court of the county in which he is authorized to do business. *Id.* Prerequisite to maintaining suit is payment of the tax and penalties to the DOR and a bond to cover costs to the circuit court or a bond to cover tax, penalty, and costs to the court. *Id.*

and gas production tax,[132] and sales, rental, storage and use taxes,[133] is relegated to footnote treatment.

Intangible Personal Property Tax. Prior to July 1971, the duty of assessment of intangible personal property was delegated[134] to the county tax assessor with appeal therefrom to the board of equalization.[135] However, the Intangible Personal Property Tax Act[136] enacted in 1971 relieved local authorities of responsibility for the administration of the intangible personal property tax for years subsequent to 1971 and outlined procedures for administration by the DOR. The DOR makes its assessment on the basis of information in individual returns,[137] information reports[138] from companies, corporations, and brokers, required to be filed by law, and investigations[139] made within the three year statute of limitations.[140]

132. The statutory provisions dealing with the oil and gas production tax are devoid of any references to administrative appeal. Apparently because of the intimate relation between local ad valorem assessment of subsurface rights and the severance of oil and gas, the statute specifies court appeal of DOR orders to be in accordance with the statutory provisions for judicial review of local property taxes previously summarized. *Id.* §§194.171, .181, .211, 211.19. Despite the basic similarity of the solid mineral severance tax, *id.* §211.31, to the oil and gas production tax and inclusion of the two taxes in the same chapter, inexplicably there is no parallel provision for the judicial review of the solid mineral severance tax.

133. Administration of the sales, rental, storage, and use tax is largely dependent on the collection and record keeping required of dealers. *Id.* §§212.06, .12, .13. The DOR, however, has statutorily been granted broad powers to hold investigations and hearings to aid in the determination of tax assessments. *Id.* §212.14. Any taxpayer wishing to contest a DOR decision has thirty days to seek an administrative review. *Id.* §212.15(4). After appeal is filed and a date for rehearing is set, the taxpayer must file his objections to the DOR determination ten days prior to the hearing date. *Id.* If the hearing decision is adverse to the taxpayer, he may file, within thirty days from receipt of notice, for review by the circuit court of Leon County. *Id.* Compare this venue provision with the situation of seizure of property for collection of a tax or of DOR instituting suit for collection; in the latter cases the situs of the subject matter determines venue. *Id.* §212.151; Swinscoe v. Department of Revenue, 320 So. 2d 11 (4th D.C.A. Fla. 1975); Department of Revenue v. Arvida Corp., 315 So. 2d 235 (2d D.C.A. Fla. 1975). The tax prepayment and bond posting provisions for this tax are the same as those for the intangible personal property tax. See text accompanying notes 148-149 *infra.* The judicial review is de novo with "no presumption in favor of the department's findings." FLA. STAT. §212.15(4) (1975).

134. FLA. STAT. §199.071 (1971).

135. *Id.* §199.151. The official title of the tax assessor and board of equilization subsequently were changed to property appraiser and PAAB respectively. See note 37 *supra.*

136. FLA. STAT. §§199.012-.302 (1975).

137. Basically, individual returns are required of all persons who own or manage intangible personal property of sufficient aggregate value that the tax thereon amounts to five dollars or more, or more than five dollars for agents and fiduciaries. *Id.* §199.052. For special rules and exemptions see the statute.

138. *Id.* §199.062.

139. *Id.* §199.232. The DOR has broad powers of subpoena of witnesses and documents to complete its investigations. *Id.* Taxpayers are required by law to maintain records accessible to the DOR for the three year period during which refund would be allowed or assessment may be made by the DOR.

140. *Id.* §§199.232(4), (7), .252. The statute lists the period as "within 3 years from the date the right to such refund shall have accrued" without specifying when the right may accrue. *Id.*

If the DOR determines that a deficiency exists, the taxpayer must be notified in writing of the amount, the due date, and the place where remittance must be made.[141] The statute does not require the notice to explain the basis for the DOR's determination. If the taxpayer determines on his own initiative that he is due a refund he must apply to the department within the statutory limitation period.[142] The Intangible Personal Property Tax Act expressly provides for both administrative conferences and judicial review.[143] Within thirty days of the DOR's issuance of the notice of the action he wishes to contest, the taxpayer may request in writing a conference with the DOR.[144] All exceptions and objections to the DOR's determination must be filed in duplicate ten days prior to the conference,[145] which is to be at the place within the judicial circuit of Florida in which the taxpayer's residence, place of business, or books and records are located.[146] Apparently the conference mentioned in the statute is intended to be informal, as no details of the conference procedures are provided. If the conference result is adverse, the taxpayer receives written notice of the decision, which he may appeal to the Circuit Court of Leon County or the circuit court of the county in which his residence or place of business is located. The time and manner of appeal are governed by the Florida Appellate Rules.[147]

The Intangible Personal Property Tax Act increases the burden of the prerequisite to judicial review. Rather than being required to pay all legally assessed taxes in compliance with the Florida constitution,[148] the taxpayer must prepay the contested taxes and penalties to the DOR or the court or post a cash or security bond sufficient to cover the entire assessment, penalties, and court costs.[149]

Motor and Other Fuels Tax. Administration of this tax principally involves a specialized group — fuel distributors and retailers. Assessment is largely dependent on reports filed and collections made by members of this group.[150] The DOR is empowered to inspect the records of distributors, dealers, and common carriers, and hold hearings and investigations to determine assessments, penalties and interest. Its findings are prima facie correct.[151] Judicial review of this decision and all other orders of the DOR in connection with this chapter is by petition to the Circuit Court of Leon County in the manner prescribed by the Florida Appellate Rules.[152] In addition to outlining appeals procedures for other matters peripheral to the tax

141. *Id.* §199.232(8).
142. *Id.* §199.252.
143. *Id.* §199.242.
144. *Id.* §199.242(1).
145. *Id.*
146. *Id.* §199.242(2).
147. *Id.* §199.242(1).
148. See text accompanying note 129 *supra.*
149. FLA. STAT. §199.242(3) (1975).
150. *Id.* §§206.04, .10, .87.
151. *Id.* §206.14. "[T]he burden of proof shall be upon the person charged to show the assessment was incorrect." *Id.* §206.14(5).
152. *Id.* §206.26.

determination by the DOR,[153] Florida Statutes chapter 206 also specifies an administrative procedure for retail gasoline dealers to seek refund for evaporation[154] including a requirement of a written application[155] and a timely hearing in the event the application is disapproved.[156] Similar procedures are outlined for obtaining partial refunds and contesting denial of such refunds for fuels used for agricultural or commercial fishing purposes[157] or by city transit companies.[158]

Corporate Income Tax. The Tax Administration Act of 1971 outlines specific procedures for the administration of taxes, other than ad valorem property taxes, that are expressly made subject to its provisions.[159] Taxes governed by its procedures are not listed in the Act and a search of the other revenue statutes reveals that only the corporate income tax has been made subject to the Tax Administration Act of 1971 with minor modifications.[160] Indeed, both the Florida Income Tax Code and the Tax Administration Act were enacted in 1971[161] and the language and many of the provisions in the Act as well as the code parallel those in the federal income tax area, indicating that the Act was passed with the immediate goal of administering the state income tax on corporate income. Because the Tax Administration Act, chapter 214, is distinct from the corporate Income Tax Code, chapter 220, it may, with little or no modification, be made applicable to other taxes, particularly those dependent on federal tax determinations such as the estate tax now in existence or the individual income tax, should it be adopted in the future.

The Act deals primarily with technical aspects of administration but does not contain specific provisions for administrative appeal and judicial review of tax disputes. Disputes may arise in connection with an assessment proposed in a notice of deficiency issued by the DOR,[162] a jeopardy assessment obtained

153. *E.g., id.* §§206.205-.215 (outlining procedures for the seizure of vehicles illegally transporting fuel and the judicial review thereof).

154. *Id.* §§206.50-.51.

155. *Id.* §206.52.

156. *Id.* §206.53.

157. *Id.* §§206.64-.77.

158. *Id.* §§206.31-.39.

159. *Id.* §214.01.

160. *Id.* §220.53. The modifications are listed in §§220.15, .23(2)(c)-(d). The effect of these sections on tax appeal procedure arises primarily as an adjustment for the dependence of the state corporate income tax on the determination of federal taxable income. Briefly, in the event a taxpayer's federal income tax return for any year is amended, recomputed or redetermined, the taxpayer is required to notify the DOR of the adjustment. Within two years of such notification, or at any time if the taxpayer has failed to make such notification, the DOR may send a notice of deficiency to the taxpayer. *Id.* §220.23(2)(c). Also, the taxpayer must institute any claim for refund within two years of the date such notification is due. *Id.* §220.23(2)(d).

161. 1971 Fla. Laws, ch. 984 (codified at FLA. STAT. §220.01-.69 (1975) (Florida Income Tax Code)); 1971 Fla. Laws, ch. 359 (codified at FLA. STAT. §§214.01-.73 (1975) (Tax Administration Act of 1971)).

162. FLA. STAT. §214.11 (1975). Subject to the modifications outlined in note 160, the act specifies the statute of limitation. Issuance of notice of deficiencies must be within three years of the return filing date. *Id.* §§214.04, .09(1). This statutory period is increased

by the DOR,[163] or a refund for overpayment sought by a taxpayer.[164] To dispute a proposed assessment the taxpayer must file a written protest within sixty days (150 days if the taxpayer is outside the United States) of the issuance of the statutory notice of deficiency specifying the amount and the grounds of the protest.[165] The DOR then reconsiders the amounts in issue, grants a hearing if requested, and subsequently issues a notice of its decision including its findings of fact and rationale.[166] The decision becomes final unless within sixty days the taxpayer seeks a reconsideration which the department may grant or deny.[167]

If a jeopardy assessment is made, the taxpayer may request a hearing within twenty days to protest that the amount of the assessment is erroneous or that no jeopardy exists.[168] The procedure for administratively contesting the denial of a refund is essentially the same as that for contesting a proposed assessment. The only distinction is that the taxpayer initiates the request for refund and the subsequent actual or constructive[169] denial triggers the same sequence of events that is triggered by proposed assessment in a statutory notice of deficiency.[170]

The Act also empowers the DOR to hold hearings and investigations with subpoena power and proceedings similar to those of a judicial court except that greater informality and relaxation of evidentiary rules are authorized.[171] Venue for administrative hearings is specified as the DOR office nearest to the taxpayer's residence or principal place of business, or, at the option of the DOR, at the DOR's office in Leon County.[172]

The provision for judicial review is broad. The Act provides for de novo judicial review by the circuit court of the county of the taxpayer's residence or principal place of business.[173] If the taxpayer has no residence or place of business, or at its option, venue is the Circuit Court of Leon County.[174]

Appeals Procedures Under the 1974 APA: Administrative Adjudication

The previous review of selected revenue chapters provides a prelude for

to six years if the return understates gross income by more than 25% or to an unlimited period if fraud is involved. *Id.* §214.09(2)-(3). In the event of erroneous refund, a notice of deficiency must be issued within two years unless fraud or misrepresentation of material fact was involved, in which case the statutory period is five years. *Id.* §214.09(5). Prior to the expiration of any of these periods, the taxpayer and the DOR may agree in writing to extend the statutory period. *Id.* §214.09(4).

163. *Id.* §214.12.
164. *Id.* §214.15.
165. *Id.* §214.11(1).
166. *Id.* §214.11(2).
167. *Id.* §214.11(3)-(4).
168. *Id.* §214.12(4).
169. In the absence of any actual denial or granting of a refund within nine months of the request, the request is deemed denied. *Id.* §214.15.
170. *Id.* §§214.11, .15.
171. *Id.* §§214.18, .20.
172. *Id.* §214.23(2).
173. *Id.* §214.25(1).
174. *Id.*

discussing one of the primary goals of the 1974 APA: uniformity. The legislature explicitly stated that their intent in enacting the 1974 APA was "to make uniform the rulemaking and adjudicative procedures used by the administrative agencies of this state."[175] Because the 1974 APA brought the DOR within the definition of agency, that department was subject to the general administrative procedures statute for the first time.[176] The DOR has taken steps[177] to conform its appeals procedures to those specified in the 1974 APA so that the goal of uniformity has been reached to the extent conflicting statutory provisions and case law have been preempted.[178]

The 1974 APA provides for uniform proceedings whenever the "substantial interests of a party are determined by an agency."[179] If an issue of material fact is disputed a formal proceeding is required unless waived; otherwise, an informal proceeding suffices.[180] Provisions for informal proceedings are sparse but those that do exist codify due process requirements of notice, hearing, and written decision.[181] Formal proceedings are generally conducted by full time hearing officers from the Division of Administrative Hearings. The format is similar to a judicial trial and includes submission of evidence, testimony, cross examination, and an official transcript.[182] After the hearing, the hearing officer submits a recommended order consisting *inter alia* of his findings of fact, conclusions of law, interpretation of administrative rules, and suggested penalty, to which the parties have ten days to take written exception.[183] The DOR may accept the recommendation as its final order or it may reject or modify any part of it.[184] However, findings of fact

175. *Id.* §120.72(1).

176. *Id.* §§20.04(7), 120.52(1)(b).

177. *See, e.g.*, Form DOR-890: Protest and Appeals Opportunities (used by the DOR to notify corporations of appeals opportunities including a hearing under the 1974 APA).

178. See text accompanying notes 197-230 *infra.*

179. FLA. STAT. §120.57 (1975). Clearly, a DOR determination of a tax assessment, issuance of a notice of deficiency, denial of refund and such qualify as substantial interests of a party. For detailed outline of the procedures in the 1974 APA see Levinson, *supra* note 113, at 651-68.

180. FLA. STAT. §120.57 (1975).

181. *Id.* §120.57(2). The act as enacted provides only for written informal hearing, reflecting a deletion of the Law Revision Council proposal of requirement of oral testimony and argument if feasible. "Even though the Act does not mention oral proceedings, presumably it still permits them if the agency considers them appropriate. In some circumstances, indeed, oral proceedings are compelled by constitutional due process as in the so-called 'fair hearings' required by such cases as *Goldberg v. Kelly.*" Levinson, *A Comparison of Florida Administrative Practice Under the Old and the New Administrative Procedure Acts,* 3 FLA. ST. U.L. REV. 72, 78 (1975) (footnotes omitted). The DOR is amenable to oral proceedings. For example, even prior to the chapter 120 hearing, the corporate division of the DOR provides for informal conferences with the taxpayer. Form DOR-890.

182. FLA. STAT. §§120.57(1), .65 (1975). For rules of procedure supplementing the provisions in the statute see 6 FLA. ADMIN. CODE 28-5.

183. FLA. STAT. §120.57(1)(b)8 (1975).

184. *Id.* §120.57(1)(b)9. *See* Associated Dry Goods Corp. v. Department of Revenue, 335 So. 2d 832, 834 (1st D.C.A. Fla. 1976) (Boyer, C.J., dissenting). This decision upheld final agency decision of the governor and his cabinet, sitting as the head of the DOR, reversing the recommended order entered by the hearing officer.

cannot be altered unless the agency first reviews the entire record and "states with particularity in the order, that the findings of fact were not based upon competent substantial evidence" or that statutory procedural requirements were not met.[185] The final order must be rendered in writing within ninety days and must include findings of fact and conclusions of law separately stated.[186]

Insofar as they deal with administrative adjudication the 1974 APA and the revenue chapters present no inherent inconsistencies. The 1974 APA requires administrative review meeting due process standards already mandated by the courts.[187] The primary effect of the 1974 APA may thus be viewed as providing a uniform outline of procedures rather than interjecting any heightened level of due process protection for the taxpayer. Nonetheless, the benefit of these procedures to the taxpayer is real. They enable him to better understand the steps for administrative appeal of tax assessments. This is particularly important in respect to taxes for which the revenue chapter contains no appeal procedures.

These procedures of the 1974 APA generally may be read in harmony with the specific appeals procedures outlined in the revenue chapters. For example, the 1974 APA imposes no time constraint for requesting a hearing, specifying only that a request for a formal hearing shall be answered within fifteen days and that parties shall be afforded fourteen days notice prior to the actual hearing.[188] Similarly, for informal proceedings no time constraint applies until after the taxpayer has requested a hearing.[189] There is, therefore, no conflict with the varying time limits for appeal outlined in the revenue chapters. Although consistency is maintained, the detrimental effect remaining is the lack of uniformity in appeals procedures sought by the legislature. Nor does it seem that this uniformity is beyond the reach of rational legislative corrective action. Although some types of taxes are of a distinct nature with provisions for administration necessarily peculiar to them,[190] these peculiarities do not negate the benefits of uniform appeals procedures. The peculiarities require individualized procedures for administration, not individualized procedures for the timing and procedure for the review of tax assessments.

185. FLA. STAT. §120.57(1)(b)9 (1975). This same requirement applies to increasing any penalty. *Id.* This section codifies the rationale of Morgan v. United States, 298 U.S. 468 (1936), "that if a majority of those who are to render the final order have not heard the case or read the record, a decision adverse to a party other than the agency itself shall not be made until a proposed order is served upon the parties and they are given an opportunity to file exceptions and present briefs and arguments to those who are to render the final order." Kennedy, *supra* note 113, at 70.

186. FLA. STAT. §120.59 (1975). This is effectively a codification of the requirements of equal protection and due process. *See* Gentry v. Department of Prof. & Occupational Regs. State Bd. of Medical Examiners, 283 So. 2d 386 (1st D.C.A. Fla. 1973).

187. See text accompanying notes 123-129 *supra.*

188. FLA. STAT. §120.57(1)(b)1-2 (1975).

189. *Id.* §120.57(2).

190. For example, contrast the intangible property tax, imposed on all citizens with sufficient intangible property, with the taxation of motor fuels, the administration of which is concerned *inter alia* with the licensing of gasoline distributors, *id.* §206.03, and forfeiture of vehicles illegally transporting motor fuel, *id.* §206.205.

Although the goal of uniformity in appeals processes is not fully met, the 1974 APA has wrought other commendable changes in the administrative arena. There is now express provision for a taxpayer to obtain a declaratory statement from the DOR on the applicability to his situation of a statute, rule, or order.[191] A taxpayer substantially affected by a DOR rule also may seek an administrative determination of the validity of the rule or the validity of the exercise of the rule in a manner similar to a formal administrative hearing with the taxpayer and the DOR as adverse parties.[192] The three 1974 APA requirements that (1) the final order shall contain findings of fact and conclusions of law;[193] (2) the public shall have access to agency rules and orders;[194] and (3) unexplained departure from prior administrative practice shall be a basis for remand, are of even greater significance.[195] These requirements acting in combination provide the framework for a potential system of administrative stare decisis.[196]

Appeals Procedures After the 1974 APA and 1975 Amendments: Judicial Review

The confusion caused by the 1974 APA is primarily in the area of judicial review. That such confusion has existed is not at all surprising since even those responsible for the initial drafting and enactment of the 1974 APA did not agree on the meaning of its provisions for judicial review.[197] Initially the 1974 APA specifically provided for one type of judicial review:

> Except in matters for which judicial review by the supreme court is provided by law, all proceedings for review shall be instituted by filing a petition in the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides.[198]

191. *Id.* §120.56(1). *See* Levinson, *supra* note 113, at 648.

192. FLA. STAT. §120.56(2) (1975). *See* Levinson, *supra* note 113, at 648-49.

193. FLA. STAT. §120.59(1) (1975).

194. *Id.* §120.53(2).

195. *Id.* §120.68(12).

196. Levinson, *supra* note 113, at 650. Levinson points out that there is at least one barrier to administrative stare decisis — the tension between broad public access provisions and the individual need for confidentiality. "Arguably, some orders include information about trade secrets, financial, medical or other matters, where the interests of the parties in maintaining confidentiality may outweigh the interest of the general public in having complete access. It would seem preferable to provide that names and other identifying information be deleted from such orders before their inclusion in the public files. By requiring full disclosure, the new Florida Act apparently prohibits the deletion of names, but the Administration Commission could and arguably should exercise its power to consider granting selective permission to adopt a policy for the deletion of names, under its general power to grant partial exemptions from the Act, subject to legislative review." *Id.* at 646 (footnotes omitted). Such a method to preserve confidentiality in the case of revenue appeals is particularly supportable in light of express legislative requirement that at least for some types of taxes confidentiality of taxpayer records must be maintained. *See, e.g.*, FLA. STAT. §199.22 (1975).

197. See Levinson, *supra* note 181, at 79.

198. FLA. STAT. §120.68(2) (1975). This same section provides that "[r]eview proceedings shall be conducted in accordance with the Florida Appellate Rules," which provision parallels those in many of the revenue chapters.

Such review was to be subsequent to final agency action unless review of the final agency action would not provide an adequate remedy, in which case a "preliminary, procedural, or intermediate agency action or ruling is immediately reviewable."[199]

When these provisions for review were read in conjunction with the legislative intent that the 1974 APA provisions were to "replace all other provisions in the Florida Statutes, 1973, relating to rulemaking, agency orders, administrative adjudication, or judicial review . . . , except for marketing orders,"[200] some observers and some courts viewed the 1974 APA as clearly abrogating all other types of judicial review.[201] Apparently to preclude such a construction, the legislature attempted to clarify the law by a 1975 amendment providing that nothing in the 1974 APA should "be construed to repeal any provision of the Florida Statutes which grants the right to a proceeding in the circuit court in lieu of an administrative hearing or to divest the circuit courts of jurisdiction to render declaratory judgments."[202] The result of the 1975 amendment was the establishment of concurrent jurisdiction[203] of circuit courts and administrative tribunals over proceedings granted by statute in lieu of an administrative hearing or proceedings pursuant to the Declaratory Judgment Act.[204]

The effect of these provisions on tax appeals procedures has been a focus of recent litigation.[205] In light of the 1975 amendments, the central issue is the extent to which the constitutional grant[206] of original jurisdiction to circuit courts to decide all cases involving legality of any tax or toll effectively maintains concurrent jurisdiction of the courts and of the administrative hearings. Though the DOR has consistently maintained that pursuit of administrative appeal under the 1974 APA is a prerequisite to review by the courts, to date the DOR's position has been rejected by the courts.

In *Department of Revenue v. Young American Builders*,[207] the First District Court of Appeal addressed an interlocutory appeal by the DOR asserting

199. *Id.* §120.68(1).

200. *Id.* §120.72(1).

201. *See* Levinson, *supra* note 181, at 79; Levinson, *supra* note 113, at 678.

202. FLA. STAT. §120.73 (1975). For transitional rules see *id.* §120.72, *as amended by* 1976 Fla. Laws, ch. 207. *See also* Cerro Corp. v. Department of Revenue, 336 So. 2d 628 (1st D.C.A. Fla. 1976).

203. This result has been criticized as encouraging "forum shopping, which seems inconsistent with the general policy of the APA." Levinson, *supra* note 113, at 681.

204. FLA. STAT. §§86.011-.111 (1975). The purpose of the Declaratory Judgment Act "is to settle and to afford relief from insecurity and uncertainty with respect to rights, status and other equitable or legal relations." *Id.* §86.101. *See generally* Dickson, *Declaratory Judgments in Florida: Jurisdiction and Judicial Discretion*, 27 U. MIAMI L. REV. 47 (1972). The Declaratory Judgment Act has often been used to contest legality of tax assessments. *See, e.g.*, Department of Revenue v. University Square, Inc., 336 So. 2d 371 (1st D.C.A.), *cert. denied*, 342 So. 2d 1101 (Fla. 1976); Department of Revenue v. Arvida Corp., 315 So. 2d 235 (2d D.C.A. Fla. 1975).

205. *See, e.g.*, Department of Revenue v. University Square, Inc., 336 So. 2d 371 (1st D.C.A.), *cert. denied*, 342 So. 2d 1101 (Fla. 1976); Department of Revenue v. Young Am. Builders, 330 So. 2d 864 (1st D.C.A. Fla. 1976).

206. FLA. CONST. art. V, §20(c)(3).

207. 330 So. 2d 864 (1st D.C.A. Fla. 1976).

that the circuit court lacked jurisdiction because the taxpayer had an administrative remedy under the 1974 APA.[208] The substantive issue was whether a DOR rule on its face was a violation of the due process clauses of the Florida and United States Constitutions.[209] The court held that there was no remedy for this issue through administrative appeal and that the 1974 APA "could not and does not relegate Fourteenth Amendment questions to administrative determination, nor restrict the occasions for judicial consideration of them . . . nor otherwise impair the judicial function to determine constitutional disputes."[210] The DOR asserted that the effect of the court's holding would be to repeal by implication the 1974 APA as it relates to the DOR since the mere inclusion of an assertion of statutory unconstitutionality would be sufficient to invoke the jurisdiction of the circuit court.[211] The court, however, denied the DOR's petition for rehearing.[212]

In *Department of Revenue v. University Square, Inc.*,[213] the First District Court of Appeal again addressed the issue of jurisdiction to hear tax appeals. In *University Square* the taxpayer had sought declaratory relief in circuit court on the grounds that the assessment of a documentary stamp tax was invalid on the given facts and that the penalty imposed was unconstitutional.[214] The department sought an interlocutory appeal of the denial of its motion for dismissal for lack of subject matter jurisdiction.[215]

The thrust of the department's argument in *University Square* was that the provisions of the 1974 APA required the sole route for appeal of state tax assessments to be via an administrative hearing with appeal to the district court of appeal rather than de novo trial in the circuit court.[216] The department argued that this result was mandated by the 1974 APA provisions that judicial review "shall be instituted by filing a petition in the district court of appeal"[217] after final agency action to include an administrative hearing "in all proceedings in which the substantial interests of a party are deter-

208. *Id.* at 865.

209. *Id.*

210. *Id.* The Second District Court of Appeal has adopted this position verbatim. Department of Revenue v. Crisp, 337 So. 2d 404 (2d D.C.A. Fla. 1976).

211. The DOR argued that the court had failed to recognize the distinction between a challenge to a rule and a challenge to an order; review of the former was within the jurisdiction of the circuit courts and review of the latter was by the district court of appeal after administrative adjudication. In support of this proposition the DOR cited FLA. STAT. §§120.52(9), (14), .56, .73 (1975). In the instant case the plaintiff had prayed for relief only from the effect of an order and therefore, the DOR argued, relief should be sought only via the administrative appeals procedure with review by the district court of appeal. Petition for Rehearing at 1-3. The lesson for the practitioner is that if he feels the circuit court would provide a more receptive forum he can invoke its jurisdiction by constitutional attack on the assessment.

212. In the petition the DOR suggested in the alternative that the question be certified to the Supreme Court of Florida. Petition for Rehearing at 1.

213. 336 So. 2d 371 (1st D.C.A.), *cert. denied*, 342 So. 2d 1101 (Fla. 1976).

214. Brief for Appellee at 1.

215. 336 So. 2d at 371.

216. Brief for Appellant at 11-12; Reply Brief for Appellant at 3-5.

217. FLA. STAT. §120.68(1)-(2) (1975).

mined."[218] Further, the stated legislative intent, that all inconsistent statutory provisions relating to administrative adjudication or judicial review were thereby replaced, supported the department's contentions.[219] The aforementioned provisions were the general law contemplated in the phrase "until changed by general law" in the constitutional provision[220] for review of all taxes by trial in circuit court. The constitutional provision, the department argued, remained valid but applied only to appeals of ad valorem taxation. Through strained interpretation the department reasoned that the 1975 amendment's[221] preservation of circuit court jurisdiction by preventing implied repeal of previous statutes authorizing circuit court review was not invoked because the statutory provisions for tax appeals retained vitality with only the force for state tax appeals impaired.[222]

With respect to the preservation of declaratory judgment jurisdiction by the circuit courts, the department pointed out[223] that even prior to the 1974 APA the law was settled that "the declaratory decree statute is not a substitute for certiorari to review an administrative order of a state board or agency; certiorari to the district is the sole remedy."[224] Thus, assuming the 1974 APA imposed mandatory administrative hearings, a taxpayer would be precluded from seeking declaratory relief in circuit court from a department order involving a state tax assessment.[225]

In a perfunctory opinion addressing few of the arguments raised by the department, the First District Court of Appeal in *University Square* recited the provisions in the Florida constitution and statutes specifying jurisdiction in circuit courts in cases involving legality of tax assessments and concluded that circuit courts retained "their historical jurisdiction" in documentary stamp tax appeals. Had the legislature intended otherwise, "it would have said so in specific language, and would have expressly repealed the inconsistent laws."[226]

The holdings of *Young American Builders* and *University Square* were followed by the Second District Court of Appeal in *Department of Revenue v. Crisp*.[227] *Crisp* focused on section 26.012,[228] which provides for original

218. *Id.* §120.57.

219. *Id.* §120.72(1).

220. See text accompanying note 115 *supra.*

221. See text accompanying note 202 *supra.*

222. Reply Brief for Appellant at 4-5.

223. *Id.* at 5.

224. School Bd. of Flagler County v. Hausner, 293 So. 2d 681, 682 (Fla. 1974).

225. In its brief the DOR pointed out that the general rule that the right to seek a declaratory judgment is not "precluded by the existence of another adequate remedy, [FLA. STAT. 86.111 (1975)], . . . has no application where the declaratory action is used to bypass procedures established by law for the appellate review of administrative orders." Reply Brief for Appellant at 5. *Accord,* Boone v. Division of Family Serv., 297 So. 2d 594 (1st D.C.A. Fla. 1974).

226. 336 So. 2d at 372.

227. 337 So. 2d 404 (2d D.C.A. Fla. 1976). This case dealt with issues and background essentially identical to *University Square. Inter alia,* the DOR was pursuing an interlocutory appeal of the trial court's denial of its motion for dismissal on the ground of lack of subject matter jurisdiction for declaratory judgment action arising from a docu-

jurisdiction in circuit courts, and argued that the legislature would have appealed or amended this section had it intended to divest circuit courts of jurisdiction over this matter.[229] Unlike the *University Square* court, however, the court in *Crisp* declined to rest its decision solely on statutory interpretation. Instead, the court adopted the view of *Young American Builders*[230] that the legislature had no power to "impair the judicial function to determine constitutional disputes."[231]

Analysis

Under these cases, those seeking review in the circuit court would have a dual foundation for support: strict statutory construction as well as identification of functions reserved to the judiciary.[232] It is not clear, however, that this foundation is unshakable. First, the inconsistent statutory provisions remain. Although the First and Second District Courts of Appeal have reached the preferable construction, the Florida supreme court has yet to rule on the matter.[233] Moreover, regardless of judicial construction, the ambiguous and inconsistent statutory provisions demand and may well receive legislative clarification.

It is also unclear if the broad reservation of judicial power in *Young American Builders* and *Crisp* is well-founded.[234] The ultimate basis for jurisdiction of circuit courts over tax appeals lies in article V of the Florida constitution, which specifies that such jurisdiction shall exist "until changed by general law."[235] Thus a statute requiring judicial review to be by the district court after mandatory review by an administrative tribunal would appear to be a legal exercise of legislative power rather than an unconstitutional impairment of judicial function. Since the DOR may still pursue its position in the Third and Fourth District Courts of Appeal and in the legislative arena, it is therefore appropriate to analyze each of the alternatives in light of the overriding goals which a tax appeals system should serve.

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mentary stamp tax assessment. The case also deals with the issue of proper venue for judicial review. *Id.* at 405.

228. See note 118 *supra.*

229. 337 So. 2d at 405-06.

230. *Id.* at 406.

231. Department of Revenue v. Young Am. Builders, 330 So. 2d 864, 865 (1st D.C.A. Fla. 1976).

232. A possible additional basis for circuit court jurisdiction may arise from the constitutional preservation of jurisdiction of circuit courts to issue prerogative writs. *See* Levinson, *supra* note 113, at 681-82 (arguing that a different interpretation is preferable).

233. The Supreme Court's denial of certiorari in *University Square* was based on its finding that it lacked jurisdiction because there was no conflict among the circuits. 342 So. 2d 1101 (Fla. 1976).

234. *Young American Builders* and *University Square* were both decided by the First District Court of Appeal. Query if in *University Square* the court's failure to mention legislative powers to restrict review by circuit courts may be interpreted as a withdrawal from its previous broad pronouncements in *Young American Builders.*

235. FLA. CONST. art. V, §20(c). See text accompanying note 115 *supra.* An argument supporting the court's interpretation would be that these general laws were inconsistent with other constitutional provisions. See notes 256-257 *infra.*

No Florida case law to date has discussed the competing policy goals underlying the issue in litigation. On the DOR's side lies the policy underlying the 1974 APA: uniformity.[236] The decisions reached by the district courts of appeal run counter to this policy. Also, concurrent jurisdiction encourages forum shopping[237] and makes the incremental cost of maintaining distinct appeals structures difficult to justify.

The need for uniformity is countered by the need for separation of judicial and executive functions. Functions normally judicial in nature are preempted by the executive under the DOR's interpretation. Judicial review is limited to the appellate level with the scope of review confined to the record from administrative hearing. This is a "significant difference" from the "circuit court sit[ting] as a court of original jurisdiction providing an opportunity for full judicial proceedings."[238] It is this difference that may account for at least some taxpayers preferring review in the circuit court. Administrative hearing officers, though generally independent of the agency, are still part of the executive and may have had a past history of representing state agencies.[239] The taxpayer may view them as a combination of judge and prosecutor and feel that he will receive better treatment at the hands of an elected circuit court judge.[240] Moreover, the agency itself can overrule a hearing officer's decisions of law on any ground and decisions of fact if it finds they are not supported by any substantial evidence.[241] The agency has no such powers when initial determinations are made in the circuit court. Tactically the taxpayer may be in a better position in circuit court.

The issue of separation of executive and judicial functions is a recurring theme in literature analyzing appellate tax structure. As noted by one commentator:

> Although revenue agencies are executive in nature, when they interpret and apply tax legislation to determine individual liability they perform a function essentially judicial. Therefore, when controversies are resolved by an appellate division within the tax agency, this agency arm in effect sits in judgment upon itself and the taxpayer appears before an authority acting as both judge and prosecutor.[242]

The combination of judge and prosecutor in the executive branch, albeit in the nominally independent hearing officer, can do little to achieve the appearance of an impartial and competent tribunal deemed to be the ideal. The result reached in the courts is favored by the overriding policy concern. Concurrent jurisdiction allows the taxpayer to select the forum which he perceives will give him an impartial hearing.

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236. See text accompanying notes 115-119 *supra*.

237. *See* Levinson, *supra* note 113, at 682.

238. Department of Revenue v. Crisp, 337 So. 2d at 406.

239. Interview with William F. Lutschak, Tax Conferee for Corporate Income Tax Bureau, DOR, in Tallahassee, Fla. (Apr. 12, 1976) [hereinafter cited as Lutschak Interview].

240. *Id.*

241. See text accompanying notes 184-185 *supra*.

242. Kray, *supra* note 6, at 488.

Although maintaining circuit court jurisdiction may be preferable to limiting judicial review to district court review of administrative hearings, it does not necessarily follow that the result achieved is itself above reproach. The appeals system is plagued by a multitude of diverse statutory provisions[243] for the separate state taxes and this precludes achieving the goal of uniform resolution. Moreover, availability of suit in circuit court with venue frequently in Leon County[244] does little to make pursuit of the small claim economically feasible so that the small taxpayer is effectively without a forum in which to vindicate his rights.

A Recommendation for Reform

Efforts to improve Florida's appeals procedures need not be limited to minor corrections within existing institutional structures. Preferable alternatives to the Florida approach exist. There has been a movement in some states to create an independent tax tribunal to provide prompt, inexpensive, and unbiased resolution of state tax controversies.[245] Although some states have used an administrative tribunal,[246] others have established a judicial tribunal[247] as contemplated in the Revised Model Tax Court Act.[248]

Wisconsin is one of the several states opting for an independent administrative tribunal.[249] The Wisconsin Board of Tax Appeals replaced seventy-one county tax appeal boards and operates with truly independent members who hear cases and issue decisions that are binding on both the taxpayer and government and are subject only to judicial review.[250] This finality in administrative adjudication contrasts sharply with the Florida state administrative hearing officer's decisions, which may be overruled by the executive branch. The Wisconsin board in effect serves the role of an independent judicial court.

A similar structure is used in Oregon except that the tribunal is actually classified as a part of the judicial system.[251] Oregon tax court judges are

243. See text accompanying notes 130-174 *supra*.

244. *See, e.g.*, Department of Revenue v. Crisp, 337 So. 2d 404 (2d D.C.A. Fla. 1976). In this respect, for tax appeals with venue specified in Leon County the appeals route with an administrative hearing is more accessible to many taxpayers because the Division of Administrative Hearings holds hearings throughout the state. Lutschak Interview, *supra* note 239.

245. Kray, *supra* note 6, at 507.

246. *Id.* at 509-14.

247. *Id.* at 514-17.

248. *See* Morgan, *The Model Tax Court Act*, Proceedings of Nat'l Tax Ass'n, 50th Annual Conference 93 (1957); Committee on State and Local Taxes, *Report*, 24 Tax Law. 945 (1971) [hereinafter cited as *Report*].

249. *See* Kray, *supra* note 6, at 509-12. *See generally* Smrz, *Practice Before the Wisconsin Tax Appeals Commission*, 49 Wis. Bar Bull., June 1976, at 48. Other states that have established independent administrative tribunals include New Jersey and Massachusetts. *See* Kray, *supra* note 6, at 512-14.

250. Kray, *supra* note 6, at 509. The board consists "of three members 'experienced in tax matters' who are appointed by the governor 'with the advice and consent of the Senate' for staggered six year terms. . . . [O]fficial reports are published of those selected opinions which 'are of public interest.'" *Id.*

251. *Id.* at 515.

elected for six year terms and ride circuit so that convenient proceedings are held in each of the states' counties.[252] A small claims division with informal proceedings facilitates hearings for the taxpayer within the jurisdictional limits, for whom appeal would otherwise be economically unfeasible.[253]

Although there are two possible approaches, it is not initially crucial whether the alternative adopted in Florida is nominally an administrative or a judicial tribunal. Because the public perceives courts to be more trustworthy than administrative tribunals, a fully judicial court represents the ultimate solution.[254] What is of immediate importance, however, is the actual competence, impartiality, and independence of the tribunal.[255] Unfortunately, Florida's administrative machinery does not meet these standards. Administrative review of tax assessments in Florida is the only viable route for many taxpayers but it is not sufficiently insulated from executive bias to serve functions essentially judicial in nature.

The route for reform is evident. An independent tribunal whose findings would be binding on the executive should be established to hear both state and local tax appeals. If the tribunal is to be a judicial court, amendment of the Florida constitution is required.[256] An unanswered question is whether the legislature in the interim can constitutionally establish a fully independent administrative tribunal.[257] In either event the independent tribunal should contain a small case division with informal proceedings so that the taxpayer

252. *Id.*

253. *Id.* Detailed exploration of the specific procedures adopted in other states is unnecessary for present purposes.

254. This rationale is one of several policy reasons underlying the choice of a judicial court in the Revised Model State Court Act. *Report, supra* note 248, at 946.

255. *See* Hellerstein, *supra* note 6, at 349. A good example of evolution from an administrative to a judicial body is the United States Tax Court. For decades this court was an administrative tribunal but performed judicial functions with the independence of an actual judicial court. In practical effect it was a judicial court and Congress eventually redesignated it as an article III court under the United States Constitution. For a detailed history of the development of the United States Tax Court, see Dubroff, *The United States Tax Court: An Historical Analysis* (pts. 1-3), 40 ALBANY L. REV. 7, 53, 253 (1975-1976).

256. The Florida constitution specifies that the "judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. No other courts may be established by the state, any political subdivision or any municipality." FLA. CONST. art. V, §1.

257. The Florida constitution also specifies that "[c]ommissions established by law, or administrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices." *Id.* The issue is whether the functions of an independent administrative tribunal would encroach on "judicial power" reserved to constitutional courts. See note 256 *supra.* The language in Department of Revenue v. Crisp, 337 So. 2d 404 (2d D.C.A. Fla. 1976), and Department of Revenue v. Young Am. Builders, 330 So. 2d 864 (1st D.C.A. Fla. 1976), suggests that to the extent an administrative tribunal precludes circuit court review, it is an unconstitutional restriction of judicial function. See text accompanying notes 207-231 *supra.* If this view is followed the circuit courts would retain concurrent jurisdiction to hear initial tax appeals, and appeal from both the circuit court and the administrative tribunal would be to the district courts of appeal. Concurrent jurisdiction resulting under this construction would encourage forum shopping so that constitutional amendment eliminating circuit court jurisdiction and establishing a fully judicial tax court may be preferable.

may pursue the small claim without the expense attendant upon formal proceedings.[258] Furthermore, proceedings should be held throughout the state so that they are accessible to all taxpayers,[259] and decisions should be published and have precedential value.

Until an independent tribunal with the above features is established, the concurrent jurisdiction of circuit courts should be maintained. As a temporary measure, the legislature should define property appraisers as agencies under the 1974 APA.[260] An advantage of this procedure over the current PAAB is that the hearing officer would be an attorney, trained in fact-finding, evidence, and legal reasoning. Moreover, the state hearing officer would be one step removed from local budgetary and political concerns so that the appearance of a disinterested arbiter would be projected. The hearing officer would not have as close a working relationship with the property appraiser and could be less reliant on his judgment.

This interim arrangement could be used to develop individuals with the expertise essential for a competent tax tribunal. A major drawback of a general administrative hearing agency is that hearing officers do not specialize in any particular problem.[261] An independent tax tribunal solves this problem, but until one is established hearings of tax appeals should be sufficiently numerous that one or more specifically selected officers can hear tax appeals exclusively. These same individuals could be used as the initial hearing officers or judges once an independent tribunal is established. This process would allow an orderly progression from the present tax appeals procedures to an independent administrative tribunal or a full constitutional court.

CONCLUSION

Both the local and the state tax appeals systems are inadequate to achieve the ideal of an accessible, competent, and unbiased forum. To alleviate deficiencies some corrective actions could be taken within existing institutional structures. PAAB decisions should be published to enhance the predictability

258. "[I]t should be observed that the establishment of an independent state board of tax appeals and the realignment of the interrelations of the assessor and the courts will not meet the needs of the average small taxpayer who feels aggrieved by his assessment. He shies away from a formal proceeding before boards of tax appeal or the courts because of the need and expense of hiring a lawyer and his general distaste for the formalities and delays of such proceedings. In some respects, the single most important problem in the entire property tax system, in terms of equality among taxpayers and the dissatisfaction of the citizenry with the tax system, is that of providing an informal, inexpensive, and impartial forum where the ordinary citizen can have his day in court without lawyers, delay, or the paraphernalia of a judicial proceeding.

"For that reason, a program for the establishment of adequate tax appeal machinery should include the institution of a small claims branch of the appeal board, which would be fashioned to meet the needs of the small taxpayer." Hellerstein, *supra* note 6, at 351-52 (footnotes omitted); *Report*, *supra* note 248, at 947.

259. The hearing officers or judges could ride circuit and sit in each county of the state so the geographical convenience of the PAAB's would not be lost.

260. See text accompanying notes 106-107 *supra*.

261. Coan, *Operational Aspects of a Central Hearing Examiners Pool: California's Experiences*, 3 FLA. ST. U.L. REV. 86, 88 (1975).

of board actions and to improve the quality of the hearing.[262] Price/appraisal ratios should be assembled and made available to the public to aid in case preparation.[263] Legislative amendment to make state tax appeals procedures uniform with respect to such matters as statute of limitation and venue should be enacted.[264]

These actions alone, however, would fall short of attaining the previously enumerated goals[265] for an appeals system. Pursuit of small claims in an impartial forum still would not be economically feasible. The PAAB's flaws lie in its composition, its political nature, and its identity with the executive branch.[266] Appeal of state taxes in circuit court with venue often in Leon County may also be economically unfeasible.[267] The alternative of administration adjudication of state tax assessments is unpalatable. The executive branch retains power to overrule the hearing officer's findings so that the adjudication is not truly independent of executive prejudice and potential abuse. As previously explored, this independence of judicial and executive functions, while prerequisite to a satisfactory appeals system, is currently lacking in both state and local appeals procedures. For these reasons, a major overhaul of the entire appeals system is preferable to a patchwork approach. Florida should follow the trend in other jurisdictions and establish a truly independent tax tribunal with a small claims division to hear all state and local tax appeals.[268] Such a step will not be universally welcomed. Traditional reluctance of local officials to relinquish power over administrative appeals may hinder efforts to adopt a state tax court. However, the gains to be realized by the taxpaying public — a competent, impartial tribunal for the speedy, economical, and uniform resolution of tax controversies — mandate the necessary legislative action and constitutional amendment to establish an independent state-wide tax tribunal.

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262. See text accompanying notes 92-95 *supra.*
263. See text accompanying notes 88-90 *supra.*
264. See text accompanying notes 188-190 *supra.*
265. See text accompanying notes 6-11 *supra.*
266. See text accompanying notes 96-104 *supra.*
267. See text accompanying note 244 *supra.*
268. See text accompanying notes 245-261 *supra.*