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## Of Alligators and Hotel Beds: A Review of Florida Supreme Court Decisions on Taxation for 1985

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## **Abstract**

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**KEYWORDS:** alligators, hotel beds

# Of Alligators and Hotel Beds: A Review of Florida Supreme Court Decisions on Taxation for 1985

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## I. Introduction

While most states impose taxes on the personal income of their residents as a means of generating revenue,<sup>1</sup> individuals residing in Florida enjoy a life without the burdens of state income taxation.<sup>2</sup> However, the Florida Constitution and legislature do provide the state, county and local governments with useful revenue generating devices in the form of such taxes as ad valorem taxes,<sup>3</sup> convention development taxes,<sup>4</sup> and sales taxes.<sup>5</sup> The Supreme Court of Florida must often determine whether or not the taxes authorized by the Florida legislature are valid both facially<sup>6</sup> and as applied to a given taxpayer.<sup>7</sup>

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1. *E.g.*, ALA. CODE § 40-18-21 (1975).

2. The Constitution of the State of Florida prohibits the state from levying a tax upon the income of natural persons. FLA. CONST. art. VII, § 3(b).

3. FLA. STAT. § 200.01 (1985).

4. FLA. STAT. § 212.057 (1985).

5. FLA. STAT. § 212.05 (1983). The sales tax is a tax on the exercise of the privilege of engaging in the business of selling tangible property at retail in Florida.

6. *E.g.*, *DeLand v. Florida Pub. Service Co.*, 119 Fla. 804, 161 So. 735 (1935), in which a tax of ten cents for every sale of electricity in a city, which could not be passed on to the consumer, was declared to be an unconstitutional confiscation of property.

7. *E.g.*, *Eastern Air Lines, Inc. v. Department of Revenue*, 455 So. 2d 311 (Fla. 1984), in which the court upheld a tax imposed on aviation fuel but not on fuel used by railroads. Eastern claimed that such a tax was discriminatory, and was therefore invalid. The court disagreed stating that "a statute that discriminates in favor of a certain class is not arbitrary if the discrimination is founded upon a reasonable distinction or difference in state policy." *Id.* at 315. *See also*, *Delta Air Lines, Inc. v. Department of Revenue*, 455 So. 2d 317 (Fla. 1984) citing the principle that no state may impose a tax which discriminates against interstate commerce by providing a direct commercial advantage to local business. In that case, Delta challenged Florida Statute § 220.189 (1983), which granted a corporate tax credit against the Florida fuel tax; the credit was only available to Florida-based carriers, which gave such carriers a direct commercial advantage.

In 1985, the Supreme Court of Florida heard five key cases dealing with taxation. This article will discuss those cases and their impact on Florida taxpayers.

Sales Tax: *Campus Communications, Inc. v. Department of Revenue*<sup>8</sup>

While the University of Florida's football program languished under the watchful eye of the National Collegiate Athletic Association,<sup>9</sup> the Florida Department of Revenue (D.O.R.) subjected the University's student run newspaper, known as *The Alligator*,<sup>10</sup> to equally painful scrutiny.

In general, the Florida statutes provide that newspapers are exempt from sale taxes.<sup>11</sup> However, the D.O.R. is delegated the authority to make, prescribe and publish reasonable rules and regulations concerning what types of publications qualify as newspapers for the purposes of the sales tax exemption.<sup>12</sup> Pursuant to that delegated authority, the D.O.R. adopted Florida Administrative Code Rule 12A-1.08, the relevant portions of which are:

12-A-1.08 Newspapers, Magazines and Periodicals.

- (1) Receipts from the sale of newspapers are exempt. . .
- (3) In order to constitute a newspaper, the publication must contain at least the following elements:
  - (a) It must be published at stated short intervals (usually daily or weekly).
  - (b) It must not, when successive issues are published, constitute a book.
  - (c) It must be intended for circulation among the general public.
  - (d) It must have entered or qualified to be admitted and entered as second class mail matter at a post office in the county where published.

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8. 473 So. 2d 1290 (Fla. 1985).

9. In 1985, the Florida Gators were placed on probation, which precluded them from participating in post-season bowl games, and denied them a share of the Southeastern Conference championship.

10. The paper's official name is *The Independent Florida Alligator*. *The Alligator* is not under the control of the University of Florida; instead, it has been independently operated since the 1970's.

11. FLA. STAT. § 212.08(6) (Supp. 1986).

12. FLA. STAT. § 212.17(6) (1971).

(e) It must contain matters of general interest and reports of current events.

(4) To qualify for exemption as a newspaper, a publication must be sold and not given to the reader free of charge. So-called newspapers which are given away for advertising and public relations purposes are taxable.

Because *The Alligator* has no second class mailing permit, and is given to readers free of charge, it fails to meet the definition of a "newspaper" as set forth in Rule 12A-1.08 3(d) & (4).<sup>13</sup> Thus, the D.O.R. assessed sales taxes against the publisher of *The Alligator*, Campus Communications, Inc. The D.O.R. reasoned that a taxable sale occurred when Campus Communications purchased the newspaper with the intent to give the paper away rather than sell it. Campus Communications sought review of the D.O.R.'s decision within the D.O.R. itself, but to no avail. However, the trial judge in the Circuit Court granted Campus Communications' motion for summary judgment. The D.O.R. in turn appealed the trial court's decision to the First District Court of Appeal.

The district court had previously held Rule 12A-1.08 to be valid,<sup>14</sup> and thus rejected *The Alligator's* argument that the rule was an invalid exercise of delegated legislative authority.<sup>15</sup> However, the court was not certain that the Rule could be validly applied to tax a school newspaper like *The Alligator*, especially if such a publication was clearly a newspaper despite its failure to meet the criteria of the rule. Because of the district court's uncertainty on this issue, it certified the following question to the Supreme Court of Florida:

Is Rule 12A-1.08, Fla. Admin. Code, which requires taxation of all publications which are not sold but are given away, unconstitu-

13. Because a second-class mailing permit is available only to newspapers with a paid circulation, the primary "flaw" with *The Alligator* was the fact that it was a publication with free circulation. The postal regulations concerning second-class mailing were invalidated by a federal district in *The Enterprise, Inc. v. Bolger*, 582 F. Supp. 228 (E.D. Tenn. 1984). In that case, the court held that discrimination between paid and free-distribution newspapers was arbitrary and capricious, in violation of the first amendment protection of free speech and the fifth amendment equal protection clause.

14. *North Am. Publications, Inc. v. Department of Revenue*, 434 So. 2d 954 (Fla. 1st Dist. Ct. App. 1983), *review denied*, 449 So. 2d 265 (Fla. 1984).

15. *Department of Revenue v. Campus Communications, Inc.*, 454 So. 2d 30 (Fla. 1st Dist. Ct. App. 1984).

tional as applied to *The Alligator* and similarly situated school publications?<sup>16</sup>

The supreme court's answer to the question was yes.<sup>17</sup> It held that *The Alligator* was indeed a newspaper within the meaning of the statute,<sup>18</sup> and should, thus, be exempt from sales tax. The court's decision discussed the need to differentiate between shoppers and newspapers, in that the main purpose of a shopper is the widespread distribution of advertising and not news.<sup>19</sup> The court stated that Rule 12A-1.08 could be a valid tool in distinguishing between shoppers and newspapers but, that as it is now written, the rule creates an irrebuttable presumption that a free publication cannot be a newspaper, as a matter of law, even if such publication is factually a newspaper within the plain meaning of the Florida statutes.<sup>20</sup> It is this irrebuttable presumption which renders the rule void as an invalid exercise of delegated legislative authority.<sup>21</sup>

Therefore, the sales tax imposed upon *The Alligator* was improper, as the publication factually qualified as a newspaper for the purpose of the tax exemption. The supreme court's ruling forced the D.O.R. to amend 12A-1.08 to include some way for publications distributed free-of-charge to rebut the presumption that they are advertising circulars rather than newspapers. The court's decision is perfectly

16. 454 So. 2d at 31.

17. 473 So. 2d at 1295.

18. The court relied on the common sense of definition of newspaper, stating that the statutes "had reference to the natural, plain and ordinary significance of the word newspaper — the understanding of the word newspaper in general and common usage." *Gasson v. Gay*, 49 So. 2d 525, 526 (Fla. 1950). The court also looked to other jurisdictions for support in its finding. For example, the Massachusetts Supreme Court decision of *Greenfield Town Crier, Inc. v. Commissioner of Revenue*, 385 Mass. 692, 433 N.E.2d 898 (1982). The Massachusetts court in *Town Crier* held that "[T]he fact that a newspaper is not a 'publication' until it is published does not support the conclusion that a paper, which is a 'newspaper' upon publication is anything less than a 'newspaper' before publication." 385 Mass. at 695-696, 433 N.E.2d at 900.

19. *Green v. Home News Publishing Co.*, 90 So. 2d 295 (Fla. 1956). *The Alligator* was a student run publication, used to train student journalists. It had a wide range of news stories and a relatively low percentage devoted to advertisements (under 55% during the period for which tax was assessed, well below the national average of 63%).

20. See *supra* note 18.

21. A rule which enlarges, modifies or contravenes statutory provisions constitutes an invalid exercise of delegated legislative authority. *State Dep't of Business Regulation v. Salvation Limited, Inc.*, 452 So. 2d 65 (Fla. 1st Dist. Ct. App. 1984). Thus, when the administrative body, the D.O.R., created a rule which taxed a newspaper, *The Alligator*, it unconstitutionally used its delegated rule-making authority.

reasonable. It would defy logic to hold that a publication sold for a penny could be a newspaper, while one given away free could not, as a matter of law. The question of whether a publication is indeed a newspaper is essentially a question of fact, not of law.

*Hotel Bed Tax: Golden Nugget Group v. Metropolitan Dade County.*<sup>22</sup>

Section 212.057 of the Florida Statutes (1983), known as the "Convention Development Tax" Act authorizes certain counties to levy a three percent (3%) bed tax on payments made to rent, lease or use any living quarters or accommodations for a period of thirty (30) days or less. The Act only applies to counties which have adopted home rule under the Florida Constitution of 1885,<sup>23</sup> as preserved by the Constitution of 1968.<sup>24</sup> While Dade, Hillsborough and Monroe Counties qualify for home rule, only Dade county has adopted a home-rule charter. Thus, only Dade County could utilize the "Convention Development Tax".

The purpose of the Act is to provide counties with funds to improve the largest existing publicly owned convention center in the county's most populous municipality. Dade County, eagerly seeking to take advantage of a revenue making opportunity, enacted ordinance 83-91, which "implemented the tax and provided for the collection, distribution and application of the revenues."<sup>25</sup>

Naturally, hotel and motel operators in Dade County were not pleased with the prospects of an additional tax on their customers. Therefore, they filed suit seeking a determination that the Act, and the Dade County Ordinance enacted pursuant to the Act, were invalid and unconstitutional. The trial court agreed that the Act was invalid, because it included no mechanism for tax collection and by implication provided that the revenues would be segregated and paid to municipalities in contravention of Florida Statutes.<sup>26</sup> The court also held that the ordinance was invalid because it authorized the collection of tax by the Dade County Tax Collector which caused a conflict with section

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22. 464 So. 2d 535 (Fla. 1985).

23. FLA. CONST. art. VIII, §§ 10, 11 and 24 (1885).

24. FLA. CONST. art. VIII, § 6(e) (1968); see FLA. STAT. § 125.011(1) (1985).

25. FLA. STAT. § 212.057 (1983).

26. FLA. STAT. § 212.230 (1983).

212.18, Florida Statutes (1983).<sup>27</sup>

Dade County appealed the trial court's decision to the Third District Court of Appeal.<sup>28</sup> The district court did not agree with the trial court's conclusion concerning the validity of the Act "because the statute was expressly made a part of chapter 212, which includes a comprehensive scheme for the collection, administration, and enforcement of all taxes imposed by the chapter."<sup>29</sup> However, the district court refused to allow Dade County to assess the "bed tax" stating that the tax must, instead, be collected by the State Department of Revenue, and paid to the state treasurer.<sup>30</sup> The state treasurer would then return the revenues to Dade County when the county was ready to make appropriations for improvements on the largest publicly owned convention center in Miami.<sup>31</sup>

While the district court held Dade County's ordinance to be invalid, its decision was, in effect, a victory for the county over the hotel owners. The district court held that the Act itself was constitutional and was an appropriate means to enhance the tourist trade<sup>32</sup> in three tourist oriented counties. The defect found by the court of appeal concerned only the technical means for collecting the tax. Thus, the hotel and motel owners sought review by the Florida Supreme Court, in the hope that the supreme court might find the bed tax itself to be unconstitutional.

Unfortunately (?) for the hotel owners, the supreme court was in total agreement with the Third District Court of Appeal.<sup>33</sup> Furthermore, in the interim, the legislature had amended section 212.057 to

27. Section 212.18 of the Florida Statutes (1983) requires that the state be the collector of the convention development tax. More specifically, § 212.18(2) states that "the department shall administer and enforce the assessment and collection of the taxes, interest and penalties imposed by this chapter." The convention development tax, which falls under § 212.057, is clearly within chapter 213 of the Florida Statutes. There is, therefore, no authority which provides for collection of the tax by the Dade County Appraiser.

28. *Metropolitan Dade County v. Golden Nugget Group*, 448 So. 2d 515 (Fla. 3d Dist. Ct. App. 1984).

29. *Id.* at 518.

30. *Id.* at 519.

31. Miami is the largest city in Dade County. The Act requires that the funds be used to develop the convention center in the largest city of the home-rule county in question. FLA. STAT. § 213.057 (1985).

32. 448 So. 2d at 520.

33. 464 So. 2d at 535, 537.



require the D.O.R. to collect the bed tax.<sup>34</sup> Thus, anyone renting, leasing or using accommodations for less than thirty days in Dade County can expect to pay a three percent bed tax. Interestingly enough, if the revenues generated by the bed tax are used properly, Dade County's attraction as a convention center will be enhanced, which will in turn enhance the business of the hotel owners in Dade County. It is possible that, at least in terms of long-range potential, the best thing that could have happened to Dade County hotel operators was that they lost this case.

Ad Valorem Tax on Household Goods of Nonresidents:  
*Golding v. Herzog*.<sup>35</sup>

Tangible personal property<sup>36</sup> is subject to an ad valorem tax in Florida. However, this ad valorem tax is not applied to personal effects used for the creature comforts of the owner, rather than for commercial purposes.<sup>37</sup> Thus, personal clothing and household furnishings are all exempt from ad valorem taxation.<sup>38</sup> The Department of Revenue has not actually contested that exemption as applied to Florida residents.<sup>39</sup>

On the other hand, the D.O.R. has promulgated an administrative rule<sup>40</sup> which states in part that household goods and personal effects which belong to nonresidents are subject to ad valorem taxation.<sup>41</sup> The D.O.R., an ever vigilant watchdog of constitutional rights, reasoned that the legislature could not constitutionally exempt household goods

34. See 1984 FLA. LAWS 84-67; FLA. STAT. § 212.057 (1985).

35. 467 So. 2d 980 (Fla. 1985).

36. FLA. STAT. § 192.001(11) (1985) establishes the definition of "personal property." The statute distinguishes between household goods and tangible personal property. Household goods are defined as "wearing apparel, furniture, appliances, and other items ordinarily found in the home and used for the comfort of the owner and his family." The statute provides further that household goods are not held for commercial use or resale. § 192.001(11)(a).

Tangible personal property means "all goods, and chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself." Household goods are expressly excluded from this definition. § 192.001(11)(d).

37. FLA. STAT. § 192.001(11)(a), (d) (1985).

38. Department of Revenue v. Markham, 381 So. 2d 1101 (Fla. 1st Dist. Ct. App. 1979).

39. 467 So. 2d at 981.

40. FLA. ADMIN. CODE rule 12D-7.02.

41. *Id.*

and personal property from ad valorem taxation, since the Florida Constitution provides for a means of taxing "all property."<sup>42</sup> Such enlightened thinking gave rise to an administrative rule which provides that household goods and personal effects belonging to persons not making their permanent home in Florida are not exempt from ad valorem taxation, even though no such tax is imposed upon Florida residents.<sup>43</sup> Presumably, Florida residents were allowed the exemption, not because of any constitutional provision, but because the D.O.R. decided that the administration of an ad valorem tax on household goods of Florida residents would be a revenue loser due to the excessive administrative costs from such an effort.<sup>44</sup>

Interestingly enough, the First District Court of Appeal in the case of *Department of Revenue v. Markham*,<sup>45</sup> had already determined that household goods should be exempt from ad valorem taxation irrespective of the nonresident status of their owner. Unfortunately, the Florida Supreme Court quashed the *Markham* decision on the ground that "the lawsuit was improperly commenced by one who lacked legal standing."<sup>46</sup> The supreme court's refusal to accept *Markham* left open the possibility that ad valorem taxes would be applied against nonresidents, which is exactly what happened in Collier County.

The Collier County tax appraiser assessed an ad valorem tax against the household property of Peter W. Herzog, a Missouri residents, even though the assets taxed were not used for commercial purposes. Herzog contested the tax at trial, but the trial court approved the tax, granting summary judgment to the appraiser. The taxpayer appealed the trial court's decision to the Second District Court of Appeal.

The district court determined that, even though *Markham* had been quashed because of a defect in standing, the reasoning used by the First District in its *Markham* decision was perfectly sound.<sup>47</sup> In *Mark-*

42. FLA. CONST. art. VII, § 4 (1968) provides: "By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation."

43. The D.O.R. cited Article VII, section 3(b) of the Florida Constitution for the proposition that the "household goods" exclusion only applied to heads of families residing in Florida." The exclusion can be limited by the state, but in no even can the exclusion be less than one thousand dollars.

44. 467 So. 2d at 983.

45. 381 So. 2d 1101 (Fla. 1st Dist. Ct. App. 1979).

46. *Department of Revenue v. Markham*, 396 So. 2d 1120, 1121 (Fla. 1981).

47. 437 So. 2d at 227.

*ham*, the First District Court of Appeal extensively discussed the history of taxation of household goods in Florida noting that "when section 200.01, Florida Statutes (1965), was amended by the legislature in 1967 to exclude household goods and personal effects used for the comfort of the owner and for non-commercial purposes from the definition of 'tangible personal property,' such goods and effects were effectively eliminated from the operation of the taxing statutes, regardless of residency of the owner."<sup>48</sup> Following the reasoning set forth in *Markham*, the Second District Court of Appeal held that Herzog's personal effects in Florida are not subject to ad valorem taxation.<sup>49</sup>

After rendering its decision in favor of Herzog, the district court certified the question of whether or not household goods and personal effects are subject to ad valorem taxation in Florida.<sup>50</sup> The supreme court accepted jurisdiction over the matter, believing the issue to be of great public importance.<sup>51</sup>

The supreme court's decision on the certified question was not surprising. The court agreed with the district court's conclusion that all personal effect property is exempt from ad valorem taxation.<sup>52</sup> The supreme court's willingness to adopt the rationale of the First District in *Markham*,<sup>53</sup> even though *Markham* was quashed, indicates that the court was hoping that a case like *Herzog*, in which the taxpayer had proper standing, would arise, and the issue of ad valorem taxes on household goods would be resolved. Clearly, after *Herzog*, all non-commercial household property is exempt from ad valorem taxation.

### Taxpayer Standing: *North Broward Hospital District v. Fornes*<sup>54</sup>

To some extent, every taxpayer has a stake in every governmental action. After all, taxpayers ultimately pay the bills. However, the fact that a person is a taxpayer, in and of itself, is generally not enough to give that taxpayer standing to challenge the government's action in a

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48. *Id.*

49. *Id.*

50. *Id.* at 226.

51. 467 So. 2d at 981. The supreme court accepted jurisdiction under article V, section 3(b)(4) of the Florida Constitution.

52. 467 So. 2d at 982.

53. *Id.*

54. 476 So. 2d 154 (Fla. 1985).

court of law.<sup>55</sup> In fact, most courts have held that a taxpayer must show some special injury, distinct from other taxpayers, in order to have standing.<sup>56</sup> The only exception to the special injury requirement is where the taxpayer raises a constitutional challenge to the exercise of governmental taxing and spending powers.<sup>57</sup>

Therefore, when Sharon Fornes, a taxpayer, sued the North Broward Hospital District, a special taxing district, and alleged that the District acted illegally in awarding construction contracts not to the lowest bidder, but instead to favored companies, the question of taxpayer standing was raised. Ms. Fornes contended that she did not need to show any special damages in order to bring her suit, and that the fact that her taxes would be higher because of the district's actions should be sufficient to give her standing.<sup>58</sup> The trial court disagreed with Fornes, and dismissed her suit because she lacked standing.

However, the Fourth District Court of Appeal reversed the trial court's decision, and held that Fornes did, indeed, have standing to sue to prevent the illegal expenditure of public funds.<sup>59</sup> Yet, the district court decided that the issue was of great public importance and therefore merited certification to the Supreme Court of Florida.<sup>60</sup>

The supreme court quashed the district court's decision, holding that a mere increase in taxes does not confer standing upon a taxpayer to challenge a governmental expenditure.<sup>61</sup> The court emphasized that "in the event an official threatens an unlawful act, the public by its representatives must institute proceedings to prevent it, unless a private person can show a damage peculiar to his individual interests in which case equity will grant him succor."<sup>62</sup> Furthermore, the court stated that

55. *E.g.*, *Henry L. Doherty & Co. v. Joachim*, 146 Fla. 50, 200 So. 238 (1941), holding that a mere increase in taxes does not confer standing upon a taxpayer to challenge a governmental expenditure.

56. *E.g.*, *Richman v. Whitehurst*, 73 Fla. 152, 74 So. 205 (1916), holding that a private person must show some special damages in order to sue a public official who threatens an unlawful act. *See also*, *McFarland v. Atkins*, 594 P.2d 758 (Okla. 1978), and *Application of Biester*, 487 Pa. 438, 409 A.2d 848 (1979).

57. *Department of Admin. v. Horne*, 269 So. 2d 659 (Fla. 1972).

58. Fornes pointed to the fact that the district was granting contracts for bids higher than necessary. She contended that the additional cost of the contracts would cause increased taxes to cover the costs of the contracts.

59. *Fornes v. North Broward Hosp. Dist.*, 455 So. 2d 584 (Fla. 4th Dist. Ct. App. 1984).

60. *Id.* at 586.

61. 476 So. 2d at 154.

62. *Id.* at 155.

Fornes had not raised a constitutional issue upon which to base her claim of standing.<sup>63</sup>

While the court justified its decision by pointing to the importance of allowing state and county governments to exercise lawfully their taxing and spending authority without undue hinderance,<sup>64</sup> it is important to note Justice Ehrlich's dissent in this case.<sup>65</sup> The justice discussed several prior Florida decisions which allowed taxpayers to have standing upon a showing that a governmental agency had improvidently used public funds.<sup>66</sup> Such allegations constitute special injury to all taxpayers.<sup>67</sup> Otherwise, the justice argued, governmental agencies which ignored or violated the law would be insulated from accountability to the citizens whose trust they violate.<sup>68</sup>

Justice Ehrlich's argument should be noted by the court in future questions concerning taxpayer standing, as it is, in this writer's opinion, the better position for two basic reasons. First, the supreme court stated that its aim was to protect the "lawful application"<sup>69</sup> of the taxing and spending powers of state and county governments from being unduly hampered. In the *Fornes* case, on the other hand, a taxpayer was contesting an arguably unlawful application of the Hospital District's spending powers. Secondly, the supreme court majority opinion stated that public officers should bring suit against other public officials who act improvidently. Public servants often do not act against other public servants, which would leave taxpayers as a whole without any

63. *Id.*

64. *Id.* at 156.

65. *Id.*

66. *See, e.g.,* *Peck v. Spencer*, 26 Fla. 23, 7 So. 642 (1890); *Chamberlain v. City of Tampa*, 40 Fla. 74, 23 So. 572 (1898); *Crawford v. Gilchrist*, 64 Fla. 41, 59 So. 963 (1912).

67. While the cases cited by Justice Ehrlich in note 66, *supra*, are all of older vintage, it should be noted that several states have allowed taxpayer standing without a showing of damages peculiar to a particular taxpayer. For example, the Minnesota Supreme Court has held that the right of a taxpayer to maintain an action in the courts to restrain the unlawful use of public funds cannot be denied; a taxpayer, suing only as a taxpayer, has standing to challenge administrative action which is unlawful. *McKee v. Likins*, 261 N.W.2d 566 (Minn. 1977). The Georgia and Nebraska Supreme Courts have also allowed taxpayers standing solely on the basis that they were taxpayers. *Brock v. Hall County*, 239 Ga. 160, 236 S.E.2d 90 (1977); *Cunningham v. Exxon*, 202 Neb. 563, 276 N.W.2d 213 (1979).

68. 476 So. 2d at 156.

recourse. Thus, the supreme court's opinion in *Fornes*, in holding that a taxpayer must show special injury other than an illegal act by a governmental unit, in order to have standing, is much too broad. There have to be circumstances in which a private citizen can force a public agency into accountability, and *Fornes* should have been such a case.<sup>70</sup>

### Enforcement and Review: *Redford v. Department of Revenue*<sup>71</sup>

Another question resolved by the Florida Supreme Court in 1985 was whether or not the Department of Revenue has the authority to overrule or challenge decisions of a County Property Appraiser or Property Appraisal Adjustment Board.<sup>72</sup> Generally, the County Property Appraiser (appraiser) is allowed to appeal decisions of the Property Adjustment Board (board).<sup>73</sup> However, in *Redford* the appraiser refused to appeal the board's decision, so the Department of Revenue (D.O.R.) chose to bring an action itself.

Basically, the facts of *Redford* are quite simple. When the D.O.R. reviewed the appraiser's assessment roles for 1979,<sup>74</sup> it decided that some twenty-five leaseholds in Miami International Airport should not be exempt from real property taxes. In order for such leaseholds to be exempt, they must be used for some governmental, municipal or public purpose.<sup>75</sup> The D.O.R. determined that the leaseholds, while on Dade County property,<sup>76</sup> were used for commercial, rather than government-

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70. One of the major problems with the *Fornes* decision is that it is hard to imagine a taxpayer who would be able to show the special injury required by the court. After all, Ms. Fornes lived in the North Broward Hospital District. Clearly, her tax burden was more specifically affected than a taxpayer living in other parts of Broward County, or other parts of Florida. It is unfortunate that Florida views taxpayer standing on a plane equal to that of the United States federal government, which has consistently dismissed taxpayer suits for lack of showing special injury. See, e.g., *Public Citizen, Inc. v. Simon*, 539 F.2d 1347 (D.C. Cir. 1976). Florida does not need to protect itself from taxpayer suits to the same extent that the federal government does. While some protection is needed, the Court in *Fornes* seems to have completely overlooked the need to protect private citizens from the impropriety of public officials.

71. 478 So. 2d 808 (Fla. 1985).

72. *Id.*, at 810.

73. FLA. STAT. §§ 193.122(2) and 194.032(6) (1985).

74. This review was conducted in accordance with FLA. STAT. § 193.144 (1985).

75. FLA. STAT. §§ 196.012(5) and 196.199(2) (1985).

76. Certain leaseholds on property owned by a county are exempt under FLA. STAT. §§ 125.019 and 159.15 (1985). Dade County owns the Miami International Airport.

tal purposes. The appraiser agreed with the D.O.R.'s determination, and forwarded assessment rolls to the board. The board, however, refused to accept the D.O.R.'s position, and continued to treat the leaseholds as tax-exempt. The D.O.R. asked the appraiser to appeal the board's decision, but the appraiser did not make an appeal. Thus, the D.O.R. was forced to file its own suit in the circuit court.

The circuit court granted the D.O.R.'s motion for summary judgment, and held that the leaseholds were not tax-exempt. On appeal, the District Court of Appeal for the Third District agreed that the leaseholds should be placed on the tax rolls, but vacated the trial court's conclusion that the leaseholds were not tax exempt, since the actual taxpayers were not present to litigate their claims.<sup>77</sup> The district court, instead, granted the affected taxpayers sixty days to challenge the D.O.R.'s assessment.

At the supreme court, the board argued that only taxpayers or the appraiser should be allowed to challenge a decision by the board.<sup>78</sup> The court rejected this argument on three grounds. First, the appraiser had statutory authority<sup>79</sup> to appeal the D.O.R.'s initial decision that the property was taxable, but he chose, instead, to agree with the D.O.R., and therefore should have appealed the board's decision when the D.O.R. requested such an appeal. Secondly, the board acted without authority when it chose to defy both the D.O.R. and the appraiser.<sup>80</sup> Finally, the D.O.R. has statutory authority<sup>81</sup> to "bring actions at law or equity to enforce any lawful order, rule, regulation or decision . . . lawfully made under the authority of the tax laws."<sup>82</sup>

As to the merits of the D.O.R.'s assessment, the supreme court, like the district court, refused to make a determination about the actual status of the leaseholds until the taxpayers were actually before the court.<sup>83</sup> The court was mildly upset with the D.O.R. for failing to include the appropriate taxpayers in its suit; suing the taxpayers would have been much more efficient as all parties would have been before the court at one time, allowing for a resolution of the merits of the case as

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77. *Redford v. Department of Revenue*, 452 So. 2d 961 (Fla. 3d Dist. Ct. App. 1984).

78. 478 So. 2d at 811.

79. FLA. STAT. § 196.098 (1983).

80. 478 So. 2d 808, 811.

81. FLA. STAT. § 195.092 (1983).

82. 478 So. 2d at 811.

83. *Id.*

well as its procedural propriety.<sup>84</sup>

All in all, the supreme court rendered the correct decision in a case which was rather poorly handled by all parties involved. It should be noted that, for all practical purposes, the *Redford* scenario can only arise in a situation in which the appraiser changes his position mid-stream and refuses to appeal a board decision which is pro-taxpayer.<sup>85</sup>

### Conclusion

In conclusion the Florida Supreme Court's 1985 decisions on taxation can be generally be characterized as logical and well-reasoned. However, the court should revisit its determination in *Fornes*<sup>86</sup> that no taxpayer can ever have standing absent a showing of special injury, or some constitutional claim. The court must adopt a policy which allows taxpayers to have standing in situations where a denial of taxpayer standing would totally insulate governmental units from having to account for their allegedly illegal activities.

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84. The court stated "[p]arenthetically, we add that it would have been preferable from the standpoint of judicial economy for the department to have included the affected taxpayers in its suit. This would have permitted the circuit court to reach a judgment on the merits which would have bound all interested parties." *Id.*

85. After all, taxpayers themselves will appeal a decision unfavorable to them. The Department of Revenue, on the other hand, would never appeal a decision in its favor. The *Redford* case can only arise when the property appraiser refuses to appeal a decision in favor of a taxpayer, after he has previously adopted the D.O.R.'s position.

86. The court should look to the progressive standards of taxpayer standing which have been established by various other states. *See supra* note 67.