IN THE SUPREME COURT OF THE STATE OF FLORIDA

BILL FURST, as Property Appraiser
of Sarasota County, et. al.,

Appellant,

vs.

Case No.: SC19-701
Dist. Ct. Case No.: 2D17-3973
L/T Case No.: 2015 CA 006511 NC

SUSAN K. DEFRANCES,

Appellee.
_____/

APPELLANT, BILL FURST'S INITIAL BRIEF

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TABLE OF CONTENTS

TABLE OF CITATIONS

PREFACE

In this brief, the Appellant, BILL FURST, as Property Appraiser of Sarasota County, Florida shall be referenced as the "Property Appraiser." Appellee, SUSAN K. DEFRANCES, shall be referenced as "Appellee" or "Defrances."

The volume and page number of the record on appeal will be indicated by the designation (R.____), followed by the appropriate volume and page number.

REQUEST FOR ORAL ARGUMENT

Florida's system of ad valorem taxation provides for a uniform assessment as between property within each county and property in every other county or taxing district. The Second District's holding has far reaching implications, as it applies to ***all*** Florida property appraisers and prevents back assessments of taxes resulting from clerical mistakes except under the unnecessarily limited circumstance when the clerical error causes some part of the property to be skipped entirely. A full opportunity to vet the issues through oral argument would be appropriate in this case, given the far reaching implications of the Second District's Opinion. The Property Appraiser therefore respectfully requests oral argument.

POINT ON APPEAL

Whether the phrase "escaped taxation" in the implementing language of Section 193.092(1) limits the ability of a Florida property appraiser to back assess for unpaid taxes after correcting clerical/ministerial mistakes in an assessment to circumstances in which taxable property or a particular portion or improvement thereof is "skipped" entirely; or whether a Florida property appraiser may back assess after correcting clerical/ministerial mistakes that resulted in just property value escaping taxation even though the error does not result in a specifically identifiable portion or improvement of the taxable property being skipped.

STATEMENT OF THE CASE AND FACTS

The recitation of the essential facts of the case by the Second District in the Opinion on appeal summarizes the majority of the material facts:

> Ms. DeFrances holds a life estate in a large parcel of waterfront property in Sarasota County. She resides in a single family home situated on the property. There is also a rental home on the property. In 2014, the Property Appraiser assessed the value of the property at $302,400. Ms. DeFrances timely paid the taxes. The previous year, the property had an assessed value of $2,269,560. The change in assessed value occurred when the Property Appraiser's office transferred data from one computer assisted mass appraisal system to another.[1] Eventually, the Property Appraiser's office became aware that an error had occurred during the transfer, and as a result, in 2015, it sent Ms. De Frances a Notice of Proposed Increase in Assessed Value and Taxes notifying her that the 2014 assessment was being retroactively increased to $4,920,600. She also received a bill from the Tax Collector for $26,254.30 in back taxes for the 2014 tax year.
>
> Footnote 1: The parties have characterized what happened as being in the nature of a clerical or administrative error. In 2013, the system valued the parcel by treating it as being made up of five lots each with its own value. The new system, however, used a different methodology (per front foot versus per lot) to arrive at the value of the parcel, which it treated as a single parcel made up of a single lot. Other factors that the new system used to calculate value were not entered into the system resulting in the reduced value. The new system also applied Ms. DeFrances's homestead exemption to the entire parcel. (The Final Judgment is incorporated into the Notice of Appeal, located at R. 4-11).

As summarized by Appellant in his jurisdictional brief, the subject property consists of five lots combined into one parcel for

assessment purposes (the "Property").[1] The Property is improved with two homes on different lots within the parcel, one of which DeFrances utilizes as her homestead and the other she rents to tenants. In 2013 the value attributed to the land was $2,269,600.00.[2]

Until 2013, the Property was assessed as a single tax parcel utilizing the "AssessPro" computer assisted mass appraisal ("CAMA") system. Effective 2014 the Property Appraiser converted their CAMA from "AssessPro" to "Custom CAMA." Under "AssessPro" the Property was inputted as a single parcel with five lots, such that the value of all five lots was attributed to the single parcel. During the conversion from "AssessPro" to "Custom CAMA" a clerical error occurred as to the value of the land in that the value of the entire parcel was calculated based on only one of five lots, rather than all of the lots. Moreover, certain factors were not included in the land value calculation (by way of example, the waterfront factor), which resulted in the property being carried on the records as one lot with the assigned value of only one lot, rather than all five as had been historically assessed.

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[1] The basic facts of the case, cited to the record before the trial court, are set forth in the Property Appraiser's Answer Brief to the Second District, which is located in the Record at P. 88. The background facts are located at R. 92-94.

[2] This figure does not include the value of the two residences on the property. The just value of the land and the two residences totaled $2,449,400.00.

As a further result, in 2014 the land was assessed essentially as if it was one non-waterfront lot with a homestead exemption applied to all five lots and both homes, instead of five waterfront lots with a homestead exemption applied only to the portion actually utilized by DeFrances as her homestead. This caused an erroneous reduction in value of over two million dollars compared to the prior year, resulting in a massively smaller tax bill to DeFrances. When DeFrances received her conspicuously lower 2014 tax bill, she promptly paid it. In 2015, the Property Appraiser discovered the clerical error, corrected it, and adjusted the 2014 assessment to reflect the Property's correct just value. The Property Appraiser then utilized the corrected assessment for the 2014 and 2015 tax year, issued a notice of proposed increase in assessed value to the Appellee and back assessed for the value of the Property that escaped taxation in 2014, Pursuant to Florida Statute Section 193.092, which allows back assessments for up to three prior years. In response to the foregoing, DeFrances commenced the instant case, challenging both the back taxes for the 2014 year and the assessed value going forward. (R. 8-23).

Both sides moved for summary judgment with supporting affidavits. The trial court judge granted Summary Judgment for the Property Appraiser as to all counts. (R. P. 8-11), including a finding that the incorrect assessment was the result of a

clerical/administrative error, such that the Property Appraiser was authorized to back assess the property for 2014. Id.

DeFrances only appealed the trial court's ruling on the assessment of back taxes for 2014. (DeFrances Initial Brief is located in the Record at R. P. 20: her Reply Brief is located in the Record at R. P. 111). During oral argument the Appellant confirmed that the error at issue herein was, in fact, a clerical or administrative error. The Second District Court of Appeal issued its opinion (the "Opinion") on March 27, 2019. DeFrances v. Furst, 267 So.3d 525 (Fla. 2nd DCA 2019)(The Opinion is located in the Record at R. P. 123). The Second District did not take issue with the notion that the subject error was a clerical error, as compared to an error in judgment. Nonetheless, the Second District reversed the trial court's decision, holding that Florida Statute Section 193.092 only allows Florida property appraisers to back assess if a property or some specifically identified portion of land or improvements was "skipped[3]" in its entirety from the assessment. The Second District determined that the Property Appraiser's clerical error did not result in a specific portion of the Property "escaping taxation," finding instead that the entire parcel was assessed, but at a reduced, incorrect, value. The Second District therefore determined Florida Statute Section

[3] The Second District utilized the term, noting "[h]ere, no portion of Ms. DeFrances's property was skipped."

193.092 did not apply, and the Property Appraiser could not back assess based upon the correct just value of the Property for 2014.

STANDARD OF REVIEW

"The standard of review governing a trial court's ruling on a motion for summary judgment posing a pure question of law is de novo." Major League Baseball v. Morsani, 790 So. 2d 1071, 1074 (Fla. 2001).

SUMMARY OF THE ARGUMENT

This case addresses Florida property appraisers' duty to back assess properties for the purpose of collecting unpaid taxes which escape taxation due to clerical errors, not errors in judgment. Uniform and accurate modern property valuation requires correct, complete and current property characteristics. Data entry errors resulting from clerical mistakes skew the assessments. The Opinion unnecessarily limits Florida property appraisers' ability to back assess a property to a ***specific type*** of clerical or ministerial error, to wit; where some physical, separately identifiable, portion of the property was entirely "skipped" in the assessment. Under the Opinion, other errors are not correctable via back assessment. There is nothing about the statutory language "escape taxation" that requires this result. In fact, the plain language of the applicable statute and fundamental rules of statutory interpretation compel the rejection of the artificial restrictions contained in the Opinion. The Opinion directly conflicts with Korash v. Mills, 263 So.2d 579 (Fla. 1972),and multiple decisions of district courts of appeal.

A Florida property appraiser may not correct a property value and assess back taxes based purely on an error in judgment. However, a Florida property appraiser must correct a property value and assess back taxes caused by clerical errors that result in any property value escaping taxation.

In 2013, the land value of the Property was assessed at a value of over two million dollars. In 2014, due to a clerical/administrative error, the land value was assessed at millions less; despite no physical changes to the Property or any of its improvements. The change in value was not a result of any change in the Property Appraiser's judgment in valuing the Property. Rather, the error was purely clerical - this is not in dispute.

The Property Appraiser properly executed his duty under Florida Statute Section 193.092(1), which mandates that he correct the error and back assess so the Property does not escape the additional taxes due for the 2014 tax year based on the correct assessment. There is no statutory basis requiring an identifiable portion of the property be "skipped" in order for the property appraiser to back assess after correcting a clerical error. The Second District reversibly erred in determining property is not subject to back assessment when it is mistakenly undervalued if no specifically identifiable part of the Property was "skipped" entirely in the original assessment. When a property is mistakenly undervalued due to an error in judgment back assessment is not allowed. However, when a property is mistakenly undervalued due to a clerical error, back assessment is proper, regardless of the nature of the error, or whether it resulted in an identifiable portion or property or improvement being skipped.

ARGUMENT

A. THE SECOND DISTRICT REVERSIBLY ERRED IN CONCLUDING THAT THE TERM "ESCAPED TAXATION" AS USED IN SECTION 193.092 WAS LIMITED TO SCENARIOS WHERE A SPECIFICALLY IDENTIFIABLE PORTION OF THE PROPERTY WAS ENTIRELY "SKIPPED" IN THE PROPERTY APPRAISER'S ASSESSMENT, IN CONFLICT WITH KORASH v. MILLS,263 SO.2D 579 (FLA. 1972)

Florida Statute Section 193.092(1) **requires** the Property Appraiser to back assess for up to three years upon discovery of ***any*** ad valorem tax that might have been assessed but was not assessed. The specific language states:

> When it shall appear that ***any*** ad valorem tax might have been lawfully assessed or collected upon ***any*** property in the state, but that such tax was not lawfully assessed or levied, and has not been collected for any year within a period of 3 years next preceding the year in which it is ascertained that such tax has not been assessed, or levied, or collected, then the officers authorized ***shall*** make the assessment of taxes upon such property in addition to the assessment of such property for the current year shall assess the same separately **for such property as may have escaped taxation** at and upon the basis of valuation applied to such property for the year or years in which it escaped taxation, noting distinctly the year when such property escaped taxation and such assessment shall have the same force and effect as it would have had if it had been made in the year in which the property shall have escaped taxation, and taxes shall be levied and collected thereon in like manner and together with taxes for the current year in which the assessment is made. (Emphasis added)

The Second District has now determined that in order for Section 193.092(1) to apply, a specific, identifiable parcel or improvement must have been entirely missed, overlooked or

forgotten. DeFrances at 528. Otherwise, according to the Second District, nothing "escaped taxation."

This restriction is not contained anywhere in Section 193.092. In fact, a review of the statutory language compels a complete rejection of this interpretation. Section 193.092(1) requires back assessment when taxable value has escaped taxation to ensure all Florida property is assessed and taxed based on its just value as mandated by the Florida Constitution. See, Fla. Const, Art. VII, § 4; See also, e.g., Walter v. Schuler, 176 So. 2d 81 (Fla. 1965).

Section 193.092 ensures that each property bears its full tax burden by preventing real property value from "escaping taxation" due to clerical errors. It does **not** state, nor even imply, correction may be made only when a specifically identifiable portion (or all of a property) was "skipped." All Florida property appraisers utilize computer aided mass appraisal software when valuing properties. There is simply no reason to limit "escaped taxation" in a way that prevents particular properties from being assessed at anything other than just value when they are inadvertently under assessed due to a clerical error. The Second District's interpretation allows certain types of clerical error corrections to avoid back assessment when they do not result in a specifically identifiable portion of a property being "skipped."

In this case the particular error resulted in a parcel of five specifically identifiable lots being assessed based only on the value of one lot. The value of four lots was effectively skipped or forgotten. If the tax parcel at issue was five separate tax parcels consisting of one lot each, instead of one tax parcel consisting of five lots, and the Property Appraiser assessed only one and forgot four, the Second District would allow a back assessment on the forgotten lots. In the present case, however, the Second District will allow the value of four lots to be forgotten and not back assessed based only on the nature of the error. Even though the error clearly demonstrates the value of four lots was excluded from just value, the Second District denies back assessment because the error does not result in a physically identifiable portion of property being entirely skipped.

The Opinion leads to an absurd distinction which would allow a particular property owner to avoid back assessments while another property owner owes taxes on back assessments even though both circumstances were the result of purely clerical errors. Under Section 193.092(1), property mistakenly undervalued due to a clerical error is subject to back assessment regardless of whether the nature of the error allows identification of a particular portion of real property or an improvement being entirely skipped. Otherwise, similarly situated taxpayers are treated differently: One receives a windfall at the expense of other taxpayers, while

the other pays a full and fair share. This is not an obscure hypothetical, but rather is a reality of modern property appraisal - and the reality of the instant case. The principal fundamentals of statutory interpretation require this Court to reject the Second District's interpretation.[4]

Florida Administrative Code Section 12D-8.006 further undercuts the Second District's interpretation, defining "Escape taxation" as follows:

> (1) "Escape taxation" means to get free of tax, to avoid taxation, to be missed from being taxed, or to be forgotten for tax purposes. Improvements, changes, or additions which were not taxed because of a clerical or some other error and are a part of and encompassed by a real property parcel which has been duly assessed and certified, should be included in this definition if back taxes are due under Section 193.073, 193.092, or 193.155(8), F.S. Property under-assessed due to an error in judgment should be excluded from this definition. Korash v. Mills, 263 So.2d 579 (Fla. 1972).

The definition unequivocally establishes that "escape taxation" includes **any** circumstance where property is missed from being taxed

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[4] See e.g., Giamberini v. Dep't of Fin. Servs., 162 So. 3d 1133, 1136 (Fla. 4th DCA 2015)(holding that "[a]s with the interpretation of any statute, the starting point of analysis is the actual language of the statute. [internal citation omitted]. 'Where a statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent." [internal citation omitted] . . . 'a statutory provision should not be construed in such a way that it renders the statute meaningless or leads to absurd results' . . . 'A statute should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts.'" [internal citation omitted]. A single word or provision of a statute cannot be read in isolation.").

or is forgotten. It then confirms "improvements, changes, or additions" which are not taxed due to clerical errors are included, but that errors in judgment resulting in under-assessments should be excluded. The definition does not suggest clerical errors which result in under-assessed property are excluded. Rather, the definition confirms it applies uniformly to every error other than errors in judgment.

When discussing Florida Administrative Code Section 12D-8.006 the Second District states "Ms. Defrances's property was not missed, overlooked or forgotten - the entire parcel as well as the improvements were assessed... ." The Second District completely ignored over two million dollars worth of assessed value that was, in fact, skipped or forgotten. This Court, in Korash v. Mills, 263 So. 2d 579, 581-82 (Fla. 1972), did not limit the definition of "escape taxation" to such a narrow circumstance, and confirmed the basic purpose of taxation: "that none bears an added or unfair burden by reason of other taxpayers not paying their just share," and interpreted Section 193.092(1) to support this purpose consistent with the plain language of the statute.

In Korash a motel was constructed on vacant land, but was omitted from the real property assessment, resulting in a windfall to the taxpayer. This Court noted that the taxpayer was obviously aware of the windfall, having been both a sophisticated real property investor and the one who built the motel. Id. at 582.

This Court ultimately found that even though the entire parcel of real property had been assessed, the assessment did not include the improvement. This Court then confirmed that when a property's principal value escapes taxation it is subject to back assessment under Section 193.092. Specifically, the Korash Court noted:

> Thus we have here an instance where ***the principal value of the property has indeed "escaped" taxation*** which is fairly within the contemplation of Fla.Stat. § 193.092, F.S.A. It would be an extremely inequitable and unjust result for a court of equity to grant to a knowing taxpayer an outright "windfall" of $25,000 which was the additional tax he admittedly escaped for the year in question.
>
> ***Justice may be "blind" but it is not stupid***. Impartial fairness and equality is what the blindfold represents. We cannot condone a taxpayer's blithely asserting refined definitions of single assessments and separate billings when he so clearly knew that there was no tax bill whatever for the improvement of a $650,000 motel. The 1967 assessment and tax billed was precisely the same as in 1966 when the land was bare. Any taxpayer would realize that he has "escaped" a new substantial tax on a new building which he knew would be forthcoming." (Emphasis added).

In every relevant way the instant case is identical to Korash. There is no meaningful difference between the property owner in Korash knowing he built a motel on vacant land, and then getting a tax bill that does not increase the value of the land to account for the motel; and Ms. DeFrances, who owned a 5 lot parcel that had two homes on it valued at over two million dollars, getting a tax bill reducing the value by over two million dollars, when nothing about the property changed. In Korash, a motel was added and the taxpayer knew it was there, but it was not assessed due to a

clerical error. In the instant case, improvements and lots existed but four lots were effectively missed or removed from the value calculation due to the clerical error, and as a result the tax bill was obviously low. Both cases involve clerical errors completely unrelated to any change in judgment. There is no reason in law or equity that Ms. DeFrances should be treated differently than the motel owner in Korash and end up with a windfall at the expense of all other property owners in the County. Like the instant case, the property in Korash was assessed, but the assessment was erroneously low, and the court authorized a back assessment to recover the un-assessed tax. Importantly, when discussing the meaning of escapes taxation, this Court was clear that one is to also look at the ***value*** of the property and the windfall of reduced taxes. Korash at 581-82.

In the Opinion, the Second District waives this off, attempting to couch this Court's discussion of value in Korash as nothing more than distinguishing Markham v. Friedland, 245 So. 2d 645 (Fla. 4th DCA 1971). Yes, the Korash court was distinguishing Markham, ***as a way of illustrating why, in the case of clerical errors, back assessment is proper***. In other words, the Korash court concluded that clerical errors must be corrected, as the principles which preclude back assessment in the "unusual circumstance" of a change in judgment simply do not apply. The Opinion, therefore, directly conflicts with Korash.

The Korash Court confirmed that the analysis should focus on whether a correction addresses a clerical error that results in property value escaping taxation versus a change in judgment by a property appraiser. Specifically in this regard, the Korash Court concluded as follows:

> We must keep in mind the distinction between changes and "miscalculations" by the assessor which "up" the amount previously assessed after tax roll certification, and the situation here where there has been no billing at all on the improvement (**or it could be a separate, "overlooked" parcel of land**) which has been completely excluded from the tax roll. **This is obviously a mistake, error, oversight, which cannot be prejudicial to the taxpayer as in those cases where a change in judgment by the tax assessor was involved, belatedly increasing the valuation which had in fact earlier been assigned and entered on the tax roll.** In those cases the assessor had initially assessed all of the taxpayer's property including both land and improvements and in each of the cases the attempt was to increase the valuation of property already included (or considered and rejected as in Friedland) in the assessment.
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> The distinction is clear. The "back assessment" here was in fact the initial and original assessment never theretofore assigned to the principal value of the property, a new $650,000.00 motel. There has been no reevaluation, no recalculation and no reassessment of the property in this sense. It simply turns out to be a separate assessment of land and buildings which, while not intended to be the usual manner of assessment, was the result of oversight and was without any change in the basic valuation made by the assessor but "lost" on a separate card in 1967.
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> (Emphasis added).

In the present case, while the entire parcel was (technically) assessed, it was assessed based on clerical errors that resulted in the parcel's component parts (multiple lots) being ignored or

forgotten. As a result, the value was based on only a portion of the Property (that of 1 lot, rather than the entire parcel made up of five lots, and without the inclusion of material value adjustment factors such as waterfront). Korash also confirmed that a taxpayer should not get a windfall based on a clerical error that does not result in prejudice to the taxpayer. The Second District's Opinion does just the opposite. The Opinion allows DeFrances to not pay her just share by interpreting the statute in a manner that provides her with a windfall. In very real terms, the Second District's Opinion creates a subclass of unprejudiced taxpayers who inexplicably get to retain their windfall due to a restriction that does not exist in the governing statutes.

B. THE HOLDING OF THE SECOND DISTRICT IS ALSO AT ODDS WITH CASE LAW FROM OTHER DISTRICT COURTS OF APPEAL GOVERNING THE PROPERTY APPRAISER'S RIGHT TO BACK ASSESS PROPERTIES WHICH WERE UNDER-ASSESSED DUE TO CLERICAL MISTAKES.

Multiple district courts have upheld a property appraiser's duty to back assess a property where a clerical error resulted in it being under assessed. In these cases the district courts defined the phrase "escape taxation" to include property that escaped some or all of the taxes that would otherwise be owed.

In Robbins v. First Nat'l Bank, 651 So. 2d 184, 184 (Fla. 3d DCA 1995), the Third District confirmed Florida Statute Section 193.092(1) applied to allow a back assessment where a data entry error resulted in a property valued at $775,000 being taxed based on an erroneous value of $260,000. No specifically identifiable

portion of the property or an improvement was overlooked, missed, or forgotten. Rather, the entire property was simply undervalued as a result of the error. The Robbins Court observed:

> It is undisputed that the basis for the back-ad valorem tax assessment was that after the subject property was assessed at $775,000 for 1989 by the property appraiser, a key punch operator in the property appraiser's office mistakenly entered in the office's computer $260,000, instead of $775,000, as the assessed value of said property for 1989, which office computer generated the property owner's mistaken tax bill.
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> Contrary to the conclusion reached by the trial court and the Property Appraisal Adjustment Board, we hold (1) that under Sections 197.122(1), 193.092(1), Florida Statutes (1989) and Rule 12D-12.042 of the Florida Administrative Code, a clerical error of this nature was correctable by the back-ad valorem tax assessment accomplished in this case

The error in the instant case is essentially identical to the error in Robbins. There, the data entry error resulted in an erroneous value being assigned to the property. The entire parcel, as well as the improvements, were assessed and included on the tax roll, but the property was undervalued as a result of the error. The Robbins court had no issue determining that due to the error, a large portion of the value of the property escaped taxation, even though the entire property was assessed. The Second District ignored Robbins entirely in the Opinion.

The Opinion is at odds with the decision in McNeil Barcelona Assocs., Ltd. v. Daniel, 486 So. 2d 628, 629 (Fla. 2d DCA 1986). In McNeil, a property appraiser made an administrative error when finalizing an assessment for an apartment building by multiplying

the square footage by a factor of four and a half instead of a factor of six. Again, the entire property was assessed and subject to taxation, just at the wrong value. No specific portion of the property was skipped. The correct value was all that escaped taxation. The McNeil court upheld the increased taxes resulting from the correction.[5] The Opinion is in direct conflict with this holding.

Similarly, in Straughn v. Thompson, 354 So. 2d 948, 949 (Fla. 1st DCA 1978), a property appraiser corrected a "computer error" in a tax bill which omitted a zero from the assessed value of the improvements on the property, resulting in a back assessment to recover the tax due on the increased value after the taxpayer had paid the erroneously reduced tax bill. No specific portion of the property was skipped. The correct value was all that escaped taxation. The court ruled the back assessment was valid under Korash. The Opinion is therefore in direct conflict with Straughn as well.[6]

The Second District repeatedly cites Okeelanta Sugar Refinery, Inc. v. Maxwell, 183 So. 2d 567, 568 (Fla. 4th DCA 1966), in

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[5] Based on the fact that the taxpayer had paid the tax bill prior to receiving the challenged back assessment it is clear that this back assessment occurred after certification of the tax roll.

[6] Once again, based on the fact that the taxpayer had paid the tax bill prior to receiving the challenged back assessment it is clear that this back assessment occurred after the certification of the tax roll.

support of its erroneous conclusion. It is cited as "noting that section 193.092 is not a basis for the correction of tax rolls that have been accepted and certified by the property appraiser; and further "reaffirm[ing] that a back assessment that simply increases the valuation of property that was already assessed is void." The Second District's reliance on Okeelanta is misplaced. The Okeelanta decision was premised on the following facts:

> From the record we find that certain real property of the plaintiff was assessed for the years 1961 through 1964, inclusive, and the tax thereon duly paid. The assessed value of said land for 1961 was $200,800; for 1962 $200,800; 1963 $244,400; and 1964 $948,400. After the payment of the 1964 tax on the basis of the substantially increased valuation without protest, the Tax Assessor attempted to backtax the same land by the use of procedures set forth in F.S.A. Section 193.23, using as a basis for the additional assessment the valuation used for 1964.

The Okeelanta court addressed a property appraiser's attempt to retroactively apply his change in ***judgment*** concerning the value of the property and then back assess for same. This stands in stark contrast to the clerical error by the Property Appraiser in the instant case, which arose from a software update/data entry error.

The Second District cited several additional (historic) cases as ostensibly showing application of its narrow definition of "escaped taxation," however, they are all readily distinguishable for similar reasons. Initially, the Court cited Countryside Country Club, Inc. v. Smith, 573 So. 2d 14, 16 (Fla. 2d DCA 1990),

as standing for the proposition that "although a property appraiser is allowed to correct clerical errors and to assess back taxes on property that has escaped taxation, he may not reassess property once taxes are levied and paid." DeFrances at 528. The Countryside case, however, only addressed a property appraiser's error in judgment, not a clerical error as was involved herein. The Second District is attempting to utilize case law confirming errors in judgment are not subject to back assessment as support for its position that certain clerical errors essentially equate to errors in judgment. This Court should discourage such an analysis and instead support the general purpose of taxation: that everyone pay their fair share.

The Second District also cited to United Tel. Co. of Fla. v. Colding, 408 So. 2d 594, 595 (Fla 2d DCA 1981) as "distinguishing between property that has escaped taxation versus property that has been taxed but was erroneously valued." DeFrances at 528. United, however, involved an error in judgment, not a clerical error. The property appraiser in United elected to use "net taxable value" rather than "net operating personal property valuation," in determining value. The tax roll was certified. Thereafter, the property appraiser apparently changed his mind, deciding that he should have utilized the "net operating personal property valuation." As this was a change in the property appraiser's

judgment, rather than a clerical error, the Second District refused to allow a back assessment. United is therefore distinguishable.

The underlying premise throughout Florida jurisprudence is consistent. Florida law does not allow property appraisers to change their minds about an assessment and go back and surprise a taxpayer who has already paid their taxes. However, in situations where a clerical error causes a property to be undervalued, Florida law requires correction and back assessment. Back assessment is authorized by statute and mandated by fundamental principals of taxation which ensure everyone pays their fair share and abhor an unjust windfall.

CONCLUSION

The Opinion directly undermines the ability of Florida property appraisers to assess properties at their just values, forcing other taxpayers to make up the short fall. This injustice flies in the face of the most fundamental tenant of taxation, to wit: that everyone pay their fair share. To artificially constrain the meaning of the words "escape taxation" to allow an unquestionably unjust windfall finds no basis in law or equity.

The Opinion detrimentally affects the 67 County property appraisers throughout the State of Florida, limiting their ability to back-assess properties at their just value to an ***extremely*** narrow type of error, where some specifically identifiable portion of the property itself was actually "skipped" (ignored in its entirety). The inequity caused by this limitation to every other tax payer is obvious. The text of the operative statute and the authorities cited above all mandate reversal of the Opinion.

When the value of a property escapes taxation due to a clerical error, it is subject to correction and back assessment. Back assessment is not limited to scenarios where a specifically identifiable portion of a property is entirely skipped in an assessment. This Court should therefore reverse the Opinion consistent with the reasoning in Korash v. Mills, 263 So.2d 579 (Fla. 1979).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on this 16th day of September, 2019 by Electronic Mail to Sheri L. Johnson, Esq. at sjohnson@johnsonlegalfl.com; Bora Kayan Esq. at bkayan@scgov.net; and Robert P. Elson, Esq. at Robert.Elson@myfloridalegal.com, Jon.Annette@myfloridalegal.com and Lisa.Ryder@myfloridalegal.com.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Answer Brief of the Appellee satisfies the requirements of Florida Rules of Appellate Procedure 9.210(a)(2).

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