

IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No.: SC19-701

L.T. Case Nos: 2D17-3973;
582015CA006511XXXANC

BILL FURST, et al.,

Petitioners,

v.

SUSAN K. DEFRANCES,

Respondent.

**PETITIONER, DEPARTMENT OF REVENUE'S, MOTION FOR
CLARIFICATION**

Petitioner, Jim Zingale, as Executive Director of the State of Florida Department of Revenue ("Department"), pursuant to Rule 9.330(a)(2)(B), Fla. R. App. P., respectfully moves the Court to provide clarification of the Opinion rendered in this cause on September 2, 2021. In support of the Motion, Petitioner states:

1. This Court affirmed the Second District Court of Appeal's opinion which determined that DeFrances' property did not "escape taxation" for tax year 2014 when the Property Appraiser's conversion to a new mass appraisal computer program resulted in the new computer program failing to accept and account for all of the data factors required to

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correctly assess DeFrances' property, and held that Section 193.092(1), *Florida Statutes*, did not authorize the Property Appraiser to correct the error in assessment occasioned by the computer system conversion and lost data factors.

2. The Court correctly recognized that DeFrances' property was taxed, as opposed to not being tax at all, albeit at an "implausibly low" amount. However, the Department respectfully suggests that the Court did not address the requirements of Article VII, Section 4 of the Florida Constitution that all property be assessed at just value as of January 1 of each year, and that annual increases in assessed value are capped as provided in Article VII, Section 4(d)(1) for homestead property and as provided in Article VII, Section 4 (g) and (h) for non-homestead property.

3. The Court's Opinion allows DeFrances' property to be assessed at less than just value for tax year 2014, the year of the CAMA system conversion error. Because of the operation of the limitation on annual increases in assessed value, absent limitation of the Court's holding to the 2014 tax year, the Opinion does not address whether DeFrances' property should be assessed at less than just value in perpetuity, unless and until a qualifying change in ownership occurs that would require the property to then be re-assessed at just value, as required by Article VII,

Section 4 (d)(3), (g)(3) and (h)(4). The Department respectfully suggests that the Court's Opinion could reach an unconstitutional result absent clarification that, as to all or portions of the property, tax years subsequent to 2014 are not affected by the Court's decision.

4. Further, the Court analyzed *Robbins v. First National Bank of South Miami*, 651 So. 2d 184 (Fla. 3d DCA 1995); *McNeil Barcelona Associates, Ltd. v. Daniel*, 486 So. 2d 628 (Fla. 2d DCA 1986); and *Straughn v. Thompson*, 354 So. 2d 948 (Fla. 1st DCA 1978) and determined that these decisions were not persuasive or helpful for resolving the question presented in this case. The Department respectfully requests that the Court clarify that these cases remain good law for purposes other than the issue of whether property escaped taxation, such as for determining a taxpayer's entitlement to refund for overpayment of tax. The Department submits that clarification would be appropriate and would serve to prevent confusion as to the effect of this Court's Opinion on the validity and applicability of these cases in other contexts.

WHEREFORE, the Department respectfully moves the Court for an Order granting clarification that the Court's holding is limited to the 2014 tax year, and for clarification as to the effect of this Court's Opinion on the

validity and applicability of *Robbins*, *McNeil Barcelona*, and *Straughn* in other contexts.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

s/ Robert P. Elson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof was furnished on September 17, 2021, via email to: Sherri L. Johnson, Esquire, Johnson Legal of Florida, P.L., 5602 Marquesas Circle, Suite 208, P.O. Box 20998, Sarasota, Florida 34276, sjohnson@johnsonlegalfi.com; John Geoffrey Pflugner, Esquire, Jason A. Lessinger, Esquire, Anthony J. Manganiello, III, Esquire, Icard Merrill Cullis Timm, et al., 32033 Main Street, Suite 600, Sarasota, Florida 34237, jpflugner@icardmerrill.com, dmartin@icardmerrill.com, jlessinger@icardmerrill.com, thashem@icardmerrill.com, lkarpova@icardmerrill.com, amanganiello@icardmerrill.com; Bora S. Kayan, Assistant County Attorney, Office of the County Attorney, 1660 Ringling Blvd., 2nd Floor, Sarasota, Florida 34236, bkayan@scgov.net.

s/ Robert P. Elson

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