# TAXATION

### Taxation: Ad Valorem

***Robbins v. Mount Sinai Medical Center, Incorporated,***
748 S.2d 349 (Fla. Dist. App. 3d 1999)

Generally, a tax-exempt lessee "owns" leased property if the lessee has "equitable ownership" in the property. To qualify for equitable ownership, the lessee must either automatically receive title to the property or retain an option to purchase the property for a nominal amount at the end of the lease.

FACTS AND PROCEDURAL HISTORY

The lessee, a tax-exempt, not-for-profit medical hospital, leased medical equipment through individual, long-term leases. The lessee was required to make periodic payments throughout the term and had the option to purchase the equipment for its fair-market value at the end of the lease, subject to the lessor's approval.

The lessee applied for a charitable ad valorem tax exemption for the equipment, claiming that it was the equitable owner of the property. The property appraiser denied the lessee's application, and the Value Adjustment Board affirmed the appraiser's decision. The trial court reversed the decision and held that the lessee was the "equitable owner" because it insured and maintained the properties, used the properties for tax-exempt purposes, paid taxes on the properties, and obtained an option to purchase the properties at their fair-market value at the end of the lease. The property appraiser appealed.

LEGAL ANALYSIS

Florida Statutes Section 196.192(1) provides that "[a]ll property owned by an exempt entity and used exclusively for exempt purposes shall be totally exempt from ad valorem taxation." "A tax-exempt lessee 'owns' leased property" when the lessee has equitable ownership. *Robbins,* 748 S.2d at 351. Further, a lessee is deemed to be the "equitable owner" of property "if the lessee

holds 'virtually all the benefits and burdens of ownership.'" *Id.* (quoting *Leon County Educ. Facilities v. Hartfield*, 698 S.2d 526, 530 (Fla. 1997)).

Courts consider several "benefits and burdens," including the obligation to maintain, insure, and pay taxes on the leased property, when determining whether a lessee has equitable ownership. In addition, courts will consider whether there is an option to purchase the property at the end of the lease. To determine whether the lessee has equitable ownership, the presence of any one factor does not constitute equitable ownership, but the courts must consider the factors together and in relation to one another.

Although there are several factors that must be considered, Florida courts have granted equitable ownership only when the lessee retained an option to purchase the leased property for nominal consideration at the end of the term. In *Robbins*, the lessee did not have an option to purchase the equipment at a nominal value at the end of the lease. Instead, the lessee's only option was to purchase the equipment at its fair-market value, and even that option was subject to the lessor's approval. The lessee's payment of taxes, insurance, and maintenance on the property was insufficient to convey equitable ownership in the property. Therefore, because the lessee did not have equitable ownership, the court reversed the trial court's decision granting the lessee an ad valorem tax exemption.

## COMMENT

When determining whether a lessee is the "owner" of certain property for purposes of Section 196.192(1), Florida courts examine a variety of factors considered to be the "benefits and burdens" of property ownership. However, under no circumstance will courts grant equitable ownership unless the lessee retains the right to purchase the property for a nominal amount at the end of the lease. This requirement is fundamental to the ownership of leased property.

When a lessee purchases property for only a nominal amount at the end of the term, he has, in effect, purchased the property through the lease. Although termed a lease, this type of transaction essentially operates as a sale, and equitable ownership is conveyed. However, when, as in this case, the lessee must either pay fair-market value for the property or obtain the lessor's consent to the purchase, the lease does not operate as a sale, and

equitable ownership is not conveyed. Thus, at an absolute minimum, the lessee must retain the option to purchase the property for a nominal amount.

RESEARCH REFERENCES

- *Leon County Educ. Facilities Auth. v. Hartsfield,* 698 S.2d 526 (Fla. 1997).
- Eugene McQuillin, *The Law of Municipal Corporations* vol. 16, §§ 44.68, 44.69, 44.77 (Dennis Jensen & Gail A. O'Gradney eds., 3d ed., Clark Boardman Callaghan 1994).

Dustin Duell Deese

## Taxation: Ad Valorem

### *Zapo v. Gilreath,*
779 S.2d 651 (Fla. Dist. App. 5th 2001)

If a mobile home is affixed to leased property, Florida Statutes Section 193.075 (2001) exempts the mobile-home owner from ad valorem taxes. Should the same statute require mobile home owners to pay ad valorem taxes when they own the property to which the mobile home is affixed? Under the Florida Constitution, this differential treatment is permitted. Appellants own mobile homes and the property to which the homes are affixed. Appellants argued that Section 193.075 violated Article I, Section 2 (their Equal Protection Claim), and Article VII, Section 1(b), of the Florida Constitution. The trial court found the challenged statute to be constitutional.

COURT'S ANALYSIS

The Legislature is charged with "passing laws that secure a just valuation of all property for *ad valorem* taxation" under Article VII, Section 4 of the Florida Constitution. *Zapo*, 779 S.2d at 653. However, under Article VII, Section 1(b), certain property is exempt from ad valorem taxation, namely "[m]otor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes, as defined by law." *Id.* Thus, the Florida Constitution exempts a class of property and authorizes the Legislature to define what property will qualify for the exemption. That is, the Legislature is free to define what constitutes a mobile home or airplane.

A "mobile home" is defined as a structure that is

"transportable in one or more sections" and "designed to be used as a dwelling when connected to the required utilities." Fla. Stat. § 320.01(2)(a) (2001). Further, a mobile home qualifies as "real property only when the owner of the mobile home is also the owner of the land on which the mobile home is situated and said mobile home permanently affixed thereto." *Id.* § 320.015(1). A mobile home is "permanently affixed" when "it is tied down and connected to the normal and usual utilities." *Id.* § 193.075(1). Following basic statutory construction, the court construed these statutes "together and compared with each other" to determine their constitutionality because the statutes relate to the same subject matter. *Zapo*, 779 S.2d at 654.

**Article I, Section 2 (Equal Protection Claim)**

Appellants claimed that a distinction between mobile homes affixed to land owned by the homeowner and mobile homes that are affixed to leased land violates the Equal Protection Clause of the Florida Constitution. The State must afford all persons equal protection of the law; nonetheless, the Legislature has the power to create classifications. *E. Airlines v. Dept. of Rev.*, 455 S.2d 311, 314 (Fla. 1984); *Dept. of Ins. v. Keys Title & Abstract Co.*, 741 S.2d 599, 601 (Fla. Dist. App. 1st 1999). Because this statute does not involve fundamental rights or a suspect classification, the rational-relationship test is applied to determine whether the classification is proper.

Under the rational-relationship test, the court must uphold a statute when: "(1) . . . the challenged statute serves a legitimate governmental purpose and (2) . . . it was reasonable for the Legislature to believe that the challenged classification would promote that purpose." *Zapo*, 779 S.2d at 655. "Raising revenue is a legitimate purpose for enacting legislation," and thus the first prong is met. *Id.* In considering the second prong, the court examined the purposes of the statute. Clearly, the statute mandates that mobile-home owners be treated differently for tax purposes. But the true question is whether such differential treatment is warranted to achieve the statute's purpose.

The court noted that the statute is underinclusive. Specifically, the Legislature could have eliminated the classification and "imposed a tax on all mobile homes permanently affixed to real property." *Id.* To do so would have been as simple as recognizing that mobile homes are no longer mobile once attached to real property. However, underinclusiveness does not render a

statute unconstitutional. Accordingly, the decision of the legislature was reasonable in concluding that a mobile home was more analogous to a permanent structure when the mobile-home owner owns the underlying property as opposed to leasing it. *Id.* at 656.

**Article VII, Section 1(b)**

The appellants also argued "that the statutory definition of 'mobile home' is unconstitutional because it . . . departs from the normal and ordinary understanding of what a mobile home is." *Id.* Specifically, the appellants assert that the Legislature was not authorized to "define[ ] mobile homes by reference to whether or not the home is permanently affixed to real property." *Id.* Appellants relied on the reasoning found in *Department of Revenue v. Florida Boaters Association*, 409 S.2d 17 (Fla. 1981). In *Florida Boaters*, the Florida Supreme Court held that the Legislature's power to define did not extend to departing from the normal and ordinary meaning of a word when dealing with the constitutionality of treating live-aboard boats differently from boats upon which people do not live for purposes of ad valorem taxation. *Id.* at 19. The court went on to explain that it might be possible for a floating structure to have specific characteristics that differentiate it from the commonly-understood concept of a boat; in such a case, the Legislature could properly declare that the structure is not a boat. *Id.* at 19–20.

The court found that the exemption for mobile homes in Article VII, Section 1(b) was intended to apply to modes of transportation, not fixtures used as residences. "The challenged statute only strips mobile homes of their constitutional exemption when they become affixed to real property." *Zapo*, 779 S.2d at 656. In so doing, the Legislature found that, once attached to real property, the mobile home lost its mobile character. This being the case, classifying it as real property was consistent with the decision in *Florida Boaters*, because the structure no longer had the characteristics of a mobile home. Thus, the Legislature's decision did not depart from the normal and ordinary meaning of "mobile home" as used by the drafters of the Florida Constitution and was valid under Article VII, Section 1(b).

RESEARCH REFERENCE

- Eugene McQuillin, *The Law of Municipal Corporations* vol. 16, § 44.45 (Dennis Jensen & Gail A. O'Gradney eds., 3d rev. ed., Clark Boardman Callaghan 1994 & Supp. 2001).

Addie Patricia Asay

## Taxation: Deeds

### ***Sugarmill Woods Oaks Village Association, Incorporated v. Wires,***
766 S.2d 487 (Fla. Dist. App. 5th 2000)

Under Florida Statutes Section 197.552, "no right, interest, restriction, or other covenant shall survive the issuance of a tax deed," except those liens held by governmental units. However, if "a deed in the chain of title contains restrictions and covenants running with the land," then the restrictions and covenants are "enforceable after the issuance of a tax deed." Fla. Stat. § 197.573(1) (2000). Specifically, restrictions and covenants that limit the use of property, such as the location of buildings and covenants against undesirable conditions, will survive the issuance of a tax deed. *Id.* § 197.573(2). However, covenants that create any debt or lien against the property will not survive the issuance of a tax deed unless such debt or lien is held by a governmental unit. *Id.*

The public policy behind these statutes is simply "to allow local governments to protect their taxing basis and facilitate recoupment of unpaid taxes through tax sales of property upon which taxes have not been paid." *Sugarmill Wood Oaks Village Assn.*, 766 S.2d at 489. In 1995, the Legislature granted *restrictions* imposed by homeowners' associations the same protection that is given to *liens* held by governmental units — thus, these restrictions survive the issuance of a tax deed. Fla. Stat. § 617.312 (2000). However, the Legislature did not provide for the survival of *liens* assessed pursuant to restrictions and covenants. On the contrary, the only liens that survive the issuance of tax deeds are those held by local governments. Therefore, liens assessed by homeowners associations do not survive the issuance of a tax deed.

RESEARCH REFERENCES

- Eugene McQuillin, *The Law of Municipal Corporations* vol. 16, § 44.163. (Dennis Jensen & Gail A. O'Gradney eds., 3d ed., Clark Boardman Callaghan 1994).
- 52 Fla. Jur. 2d *Restrictions & Covenants* § 2019 (1999).

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## Taxation: Tax Deed Sale

### *Saggese v. Department of Revenue of the State of Florida,* 770 S.2d 1244 (Fla. Dist. App. 4th 2000)

Does a property owner's failure to receive actual notification of a tax-deed application render any subsequent tax-deed sale invalid? Chapter 197 of the Florida Statutes requires only that the clerk of the circuit court follow the notice procedures contained in the statute, irrespective of whether the property owner actually receives notice, because owners have a duty to know that they owe property taxes.

FACTS AND PROCEDURAL HISTORY

The trial court entered summary judgment quieting title in favor of the plaintiffs. The former property owners, the Saggeses, appealed the decision, arguing that they failed to receive proper notification of the tax-deed application. The Saggeses argued that the notice was marked "Undeliverable as Addressed" and returned to the clerk, thereby proving they had not received any notification. The District Court of Appeal rejected the Saggeses's argument and affirmed the trial court's decision.

ISSUE ANALYSIS

Florida Statutes Section 197.522(1), which requires the county to give notice to a property owner when a tax-deed application is filed, meets all constitutional due-process requirements. The Saggeses argued that their failure to receive such notice rendered the subsequent tax-deed sale invalid.

Florida Statutes Section 197.522(d) provides that "[t]he failure of anyone to receive notice as provided herein shall not affect the validity of the tax deed issued pursuant to the notice." In *Dawson v. Saada*, 608 S.2d 806, 808 (Fla. 1992), the Florida

Supreme Court held that a person's failure to receive actual notice will not affect the validity of the tax-deed sale, so long as the notice requirements in Section 197.522(1) are met. This provision requires the clerk to comply with the statutory notice procedures, but does not require the clerk to guarantee receipt of such notice. Despite the Saggeses's failure to receive actual notice, the clerk met the notice requirements of Chapter 197; therefore, the tax-deed sale was valid. This interpretation is not unprecedented. In *Alwani v. Slocum*, 540 S.2d 908, 909 (Fla. Dist. App. 2d 1989), the former property owners challenged the validity of a tax-deed sale on the grounds that they never received actual notice of the sale. They argued that the notice had been mistakenly sent to their former address. *Id.* Rejecting the owners' argument, the court held that the notice requirements were properly followed and that the owners' failure to receive the notice did not invalidate the subsequent sale. *Id.*

Alternatively, the Saggeses argued that the tax collector erred by sending the notice to the address on their tax assessment and not the address listed on their warranty deed. However, the Saggeses's argument misinterpreted Florida Statutes Section 197.502(4)(a). This Section states that, if the legal titleholder is the same person to whom the property was last assessed, then the notice must be sent "to the address of the legal titleholder as it appears on the latest assessment roll." Fla. Stat. § 197.502(4)(a) (2001). The court found that assessment rolls had been prepared on the Saggeses's property since the issuance of the warranty deed. Therefore, notice was properly sent to the address listed on the tax assessment.

## COMMENTARY

Florida statutes impose a duty on property owners to ascertain the amount of current and delinquent taxes on their property and pay such amount before April 1 of the following year. Fla. Stat. § 197.122(1) (2001). Property owners are held to know that such taxes are due and payable annually. Although these requirements seem rigid, they are fair. The statutes covering property-tax payments, tax-deed applications, and tax-deed sales clearly articulate the rights and duties of all parties involved.

In the present case, the court properly considered the detrimental impact that could result if the court decided this case differently. If a tax-deed sale was invalidated anytime a property

owner showed that notice was sent to the wrong address, an intolerable burden would be placed upon the clerk of court to make an independent examination for each sale to determine the accuracy of the names and addresses listed.

RESEARCH REFERENCES


- Eugene McQuillin, *The Law of Municipal Corporations* vol. 16, §§ 44.152, 44.153, 44.155, 44.156 (Dennis Jensen & Gail O'Gradney eds., 3d ed., Clark Boardman Callaghan 1994 & Supp. 2001).
- Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 Ind. L.J. 747 (2000).


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