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JUL 16 1992

CLERK, SUPREME COURT.

By   
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,972

REBECCA E. WALKER, as Palm Beach County  
Property Appraiser,

Petitioner,

-vs-

4DCA CASE NO. 91-01796  
T.C. CASE NO. CL 91-1870 AO

PALM BEACH COMMERCE CENTER  
ASSOCIATION, LTD, a Florida Limited  
Partnership,

Respondent,  

---

ON DISCRETIONARY REVIEW FROM THE  
DISTRICT COURT OF APPEAL,  
FOURTH DISTRICT OF FLORIDA

INITIAL BRIEF ON THE MERITS OF  
REBECCA E. WALKER,  
AS PALM BEACH COUNTY PROPERTY APPRAISER

WILLA A. FEARRINGTON, ESQ. and  
Law Offices of  
GAYLORD A. WOOD, JR., P.A.  
304 S.W. 12th. Street  
Fort Lauderdale, FL 33315

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REEECA E. WALKER, etc., and ALLEN C.  
CLARK, etc.,

Petitioners,

-vs-

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ASSOCIATION, LTD, a Florida Limited  
Partnership,

Respondent,

*Amended  
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7-16-92*

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CITATIONS OF AUTHORITY

CASES

Blake v. Xerox Corp.,  
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Heredia v. Allstate Insurance Co.,  
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North Port Bank v. State,  
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STATUTES

§194.171, Florida Statutes . . . . . 1, 2

§194.171(1), Florida Statutes. . , , . . , . . , . . , . . . 7

§194.171(3), Florida Statutes . . . . . 1, 10

STATEMENT OF THE CASE & FACTS

This is in response to the Order of this Court postponing a decision on jurisdiction and requiring briefs on the merits. This appeal arises out of an opinion of the District Court of Appeal for the Fourth District which reversed a decision of the Circuit Court and certified the following issue on appeal to this Court:

**UNDER WHAT CIRCUMSTANCES IS A TAXPAYER ENTITLED TO A STAY OF THE COLLECTION OF TAXES PENDING HER [sic] CHALLENGE TO THE ASSESSED VALUE OF HER PROPERTY?**

References to "[A-page no.]" will be to the Appendix herewith; references to "[ROA-page no.]" will be to the Record on Appeal in the Fourth District Court of Appeal.

Palm Beach Commerce Center (PBCC) filed an action pursuant to §194.171, Florida Statutes in the Circuit Court for the Fifteenth Judicial Circuit, in and for Palm Beach County, to contest the assessment for ad valorem tax purposes on certain of its property for the year 1990. [ROA-1-5] It timely made a claimed "good faith" payment to the Tax Collector pursuant to §194.171(3), Florida Statutes of \$995,734.63, equalling approximately 60% of the taxes due and owing. [ROA-64]

It then sought, a temporary injunction against the sale of tax certificates representing the balance of taxes due on the subject property, alleging that §194.211, Florida Statutes constitutes a basis for the grant of said relief, [ROA-13-14]

On June 3, 1991, at, an evidentiary hearing on the matter, the Trial Court entered an order denying PBCC's motion for a temporary injunction, [ROA-95-96] opining that the Plaintiff must prove all

elements which would normally be necessary to show entitlement to a temporary injunction, including the likelihood of success in the ultimate litigation, which Plaintiff failed to do. [ROA-95]

PECC appealed the decision to the District Court of Appeal for the Fourth District. In an Opinion Filed April 29, 1992, [A-1-81 that Court reversed the decision of the lower tribunal, and certified the relevant question herein to this Court, holding that the operation of §194.211, Florida Statutes contemplates a stay of a collection of taxes, including the issuance of tax certificates, pending the resolution of a lawsuit when the taxpayer satisfies the burden of showing that the partial payment of taxes due and owing, **made** pursuant to §194.171, Florida Statutes has been made in good faith.

The Court determined that the issue of the circumstances under which a taxpayer is entitled to a stay of the collection of taxes pending a challenge to assessed value is one of great public importance, and certified that question to this Court. Mrs. Walker filed a Notice to Invoke Discretionary Jurisdiction of this Court on May 26, 1992.

Pursuant to this Court's Order dated June 10, 1992, requiring **briefs on the merits**, this **appeal** proceeds,

## SUMMARY OF ARGUMENT

A taxpayer contesting the valuation of property for ad valorem tax purposes who opts not to pay the full amount of taxes must fulfill the usual and normal requirements for an injunction in order to enjoin the tax collector from issuing a tax certificate on the property in question.

Section 194.211, Florida Statutes provides **for the** issuance of injunctions against the sale of property, not the issuance of tax certificates. The clear language of the statute does not apply to the present circumstance, and there is no rationale for implying such an application.

Whether or not §194.211, Florida Statutes is applied to the present circumstances, *the* normal and usual requirements for the issuance of an injunction must **be** met. To do otherwise would be to fail to attend to the potential for harm to the governing bodies who must depend upon the revenues generated by the sale of tax certificates in order *to* receive the budgeted funds which are necessary for them to function. Only **when** the taxpayer **can** meet the requirements **for** the extraordinary remedy of injunction is a court justified in overriding the compelling needs of the governing body to function in the public interest.

## DISCUSSION

Point One:

A TAXPAYER SEEKING AN INJUNCTION AGAINST THE COLLECTION OF TAXES THROUGH THE SALE OF TAX CERTIFICATES DURING THE PENDENCY OF A LAWSUIT MUST SHOW THAT THE NORMAL AND USUAL REQUIREMENTS FOR A TEMPORARY INJUNCTION ARE MET.

1. *Section 194.211, Florida Statutes, which provides for an injunction against the sale of property during the pendency of a lawsuit does not apply to the circumstances nor the question certified herein.*

In its Opinion, *the* Fourth District Court of Appeal "agree[s] with appellant that the injunction authorized by §194.211, Florida Statutes does include the sale of tax certificates as well as tax deeds..." [A-7] In *so*, stating, the Court appears to have overlooked the clear language of the statute and failed to distinguish the necessity for relief provided by that law due to the imminence of actual harm to the taxpayer from the absence of such harm in the present circumstance.

Section 192.211 reads:

In any tax suit, the court **may** issue injunctions to restrain the sale of real or personal property for any tax which shall appear to **be** contrary to law or equity, and in no case shall any complaint be dismissed **because** the tax assessment complained of, or the injunction **asked** for, involves personal property only. [e.s.]

Nowhere does the statute provide **far** the issuance of an injunction for anything other than a sale of property. The instant action concerns a request for an injunction against the **sale** of tax certificates. The sale of a tax certificate is not the sale of the property. Not until two years have elapsed *from* the sale of a certificate may an owner of the certificate **make** application for a

deed to the property. Even then, specific protection in the form of notice is provided to the owner who is responsible for the delinquent taxes (See, §197.502(1) and §§197.512 and 197.522, Florida Statutes.)

Sale of a tax deed results in the loss of the property. Sale of a tax certificate **does** not. The certificate may be redeemed by **the** property owner at any time prior to an actual sale of **the** deed to the property by payment of the face amount of the certificate plus interest and costs. §197.472, Florida Statutes

It is fitting that the Legislature chose **to** provide for injunction against the sale of property during the pendency of ad valorem tax litigation. In such a circumstance, **the** potential for harm is great. The litigant stands to lose his property, even while he fulfills all requirements of the law. The irreparable injury **is** imminent and obvious.

There is no irreparable injury to **the** property owner from the sale of a tax certificate, and the relevant statute does not contemplate such a circumstance. **The** application of the statute is clear and unambiguous, The rationale for its limitation to injunction of actual sale of property is reasonable. There is no basis to infer a meaning other than that evidenced **by** the plain language of the statute. This Court has repeatedly said that, where **the** language itself conveys unequivocal meaning, judicial interpretation is inappropriate. Heredia v. Allstate Insurance Co., 358 So.2d 1353 (Fla. 1978)

2. *Whether or not §194.211, Florida Statutes is applicable to enjoin the sale of a tax certificate, under its provisions, the normal and usual requirements for an injunction would have to be met,*

Section 194.211, Florida Statutes does not provide for an automatic injunction, but merely *permits* a taxpayer who has paid less than the amount of taxes due and owing to **seek the** remedy where a tax "appear[s] to be **contrary** to law or equity." §194.211, Florida Statutes Nothing in the concise language of the statute would indicate that the usual standard for granting an injunction should be abrogated or changed, For the same reason as stated above, no such language should be read into it.

Moreover, there is nothing about a lawsuit regarding taxation which would create a **better** right to an injunction **than** exists in any other civil action. City of Coral Springs v. Florida National Properties, Inc., 340 So.2d 1271, Fla. 4th DCA 1976, Fredericks v. Elake, 382 So.2d 368 (Fla. 3d DCA 1980) An injunction, whether provided for by statute or provisions governing actions in equity, is an extraordinary **remedy**. Coral Springs, supra. In order to enjoin the collection of a tax, the taxpayer must show the special circumstances, discussed infra, which justify the action to be taken. Nowhere is it indicated that the Legislature intended to release the taxpayer from that universal requirement.

3. *A taxpayer seeking an injunction should be required to demonstrate need for the relief by the same standard as any other litigant. A mere showing of good faith on the part of a taxpayer is insufficient for the court to enjoin the tax collector from selling tax certificates on the property.*

The prerequisites for an injunction are (1) A clear legal

right to the relief requested, Reinhold Construction Co., Inc. v. City of Vero Beach, 429 So.2d 699 (Fla. 4th.DCA 1983); (2) A substantial likelihood that Plaintiff will prevail on the merits; (3) a substantial threat that Plaintiff will suffer irreparable injury if the injunction is **not** granted, (4) the threatened injury to Plaintiff outweighs the threatened **harm** to Defendant, Harris Corp. v. National Iranian Radio and Television, 691 F.2d 1344 (CA Fla. 1982), and (5) The public interest will be served by granting the injunction. Florida Land Co. v. Orange County, 418 So.2d 370 (Fla. 5th.DCA 1982). Even if §194.211, Florida Statutes is applicable to authorize the grant of an injunction against the sale of a tax certificate, it does not lessen the general requirements which must be shown as prerequisites for an injunction. A mere showing of "good faith" is simply not satisfactory **for** the grant of this extraordinary remedy, and there is no case where, absent a showing of imminent, great, irreparable harm to the seeker, the requirements for an **injunction have** been found to be less stringent than those above. (See, First National Bank v. Ferris, 156 So.2d 421 (Fla. 2d DCA 1963), Sackett v. City of Coral Gables, 246 So.2d 162 (Fla. 3d DCA 1971), City of Coral Springs v. Florida National Properties, supra, Goldberger v. Regency Highland Condominium Association, Inc., 383 So.2d 1173 (Fla. 4th DCA 1980)

Plaintiff clearly has an adequate remedy at law. §194.171(1), Florida Statutes provides that the circuit court's jurisdiction in an ad valorem tax case is at law. There is no clear legal right to an injunction. The only irreparable harm that could happen would

be if in several years the owner of the tax certificate(s) put the same up for tax deed and the owners of the subject property did not see fit to take advantage of the protections accorded under Chapter 197, F.S. The public interest and need would be better served by the taxing bodies receiving those funds for which they budgeted as coming from Plaintiff's property, rather than the taxing bodies having to do without pending the course of the litigation.

In spite of ample opportunity at the evidentiary hearing at the trial level, PECC either was unable or opted not to show that it was likely to prevail on the merits. [ROA-86] The Property Appraiser comes to the courtroom with a presumption that her assessment is correct -- a presumption which the Plaintiff must disprove to the exclusion of any hypothesis of a valid assessment, Elake v. Xerox Corp., 447 So.2d 1348 (Fla. 1984); Straughn v. Tuck, 354 So.2d 368 (Fla. 1977); Powell v. Kelly, 223 So.2d 305 (Fla. 1969). Under the standard requiring a showing of likelihood of success, it is incumbent on the court to require that the Plaintiff establish a basis upon which its claim might prevail against the presumption. No such basis was presented in this case, in spite of the opportunity to do so.

The basis upon which PECC claimed irreparable harm was its claimed effect on the buying public of a notice that tax certificates were to be sold. [ROA-54-56] This amounts to a claim that the sale of a tax certificate would defame the taxpayer's reputation in the real estate community, Injunctive relief has specifically been found to be unavailable to restrain an actual or

threatened defamation. Rodriquez v. RAM Systems, Inc., 466 So.2d 412 (Fla. 3d DCA 1985) The harm which must be alleged and proven by the taxpayer must be "great and irreparable". Sackett, *supra*, at 164 PECC has made no such showing.

Furthermore, an injunction should **not** be granted where it will result in confusion and disorder and produce injury to the public which outweighs that of the taxpayer. Fredericks v. Blake, *supra* In this case, the public need for budgeted funds far outweighs PBCC's speculative claim that **its** reputation, and hence, its sales, would be negatively affected **by** the advertising of a sale of a tax certificate on **its** property.

PBCC must meet the standard for grant of an injunction. It was clearly unable to do so. It attempts to cover for that inability by reading a nonexistent sight into an inapplicable statute.

Point Two:

**IN THE ABSENCE OF A STRINGENT STANDARD FOR THE GRANT OF INJUNCTIONS AGAINST THE SALE OF TAX CERTIFICATES, A REAL POTENTIAL FOR HARM TO THE COUNTY AND MUNICIPAL GOVERNMENTS' BUDGETARY PROCESS AND SOURCE OF FUNDING EXISTS. THERE IS NO OTHER SATISFACTORY PROTECTION WHICH WILL ASSURE THAT LOCAL GOVERNMENT RECEIVES THE FUNDS NECESSARY TO PROVIDE SERVICES DURING THE PENDENCY OF AN ACTION TO CONTEST AN ASSESSMENT.**

The Court of Appeal cites North Port Bank v. State, 313 So.2d 683 (Fla. 1975), to support the proposition that §194.192(2), Florida Statutes provides adequate protection for county and local government from temporary loss of revenues **during** the pendency of tax contests.

North Port Bank is inapplicable to the present circumstance.

The reference in that case to §194.192, Florida Statutes is obiter dicta, as the case concerns neither that statute, a request for an injunction nor ad valorem tax litigation.<sup>1</sup>

In fact, that statute in no way creates a source of replacement funding for the amount of taxes withheld under the "good faith payment" provision of §194.171(3). While §194.171(3) provides that a taxpayer contesting the amount of ad valorem taxes assessed to him may make a "good faith" partial payment, §194.192 provides for interest and penalty to be assessed if the taxpayer fails to prevail on the merits. This means that, during the pendency of the lawsuit, having made a "good faith" payment, the taxpayer need pay no more. Neither the balance nor any interest need be paid until after the lawsuit, is ended (usually years beyond the time when the taxing bodies have budgeted for the money). During the pendency of the lawsuit, the taxing bodies do not receive one cent of the remaining amount due; It is only through the sale of tax certificates that the tax collector can make up the shortfall during the time for which the taxes are budgeted. The

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<sup>1</sup>The Court in North Port merely compares the protections afforded the taxing body in matters of real estate taxation versus that of intangible property. It indicates that a deposit of bond in the court, registry is appropriate in an intangible tax contest, and not where real estate is concerned, because the state is protected by the tangible nature of the real estate, which it can attach, but has no such protection where intangible property is involved. The passing mention of §194.192, F.S. is merely a statement, that the interest provision which applies to real state contests is satisfactory for the state to recoup its losses, but would not serve the same purpose where intangible property is involved. On that basis, the Court goes on to find constitutional the statute requiring the posting of bond during the pendency of a contest over intangible taxes.

taxpayer need not post bond, nor make any further payment until the final judgment is filed.

Therefore, the interest and penalties provided for by §194.192, Florida Statutes serve as no protection for the taxing bodies during the pendency of the action, and provide no protection for temporary loss of revenue.

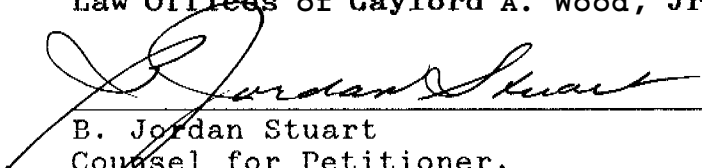
If there were a significant number of tax actions in a given year, each of which involved a statutory "good faith" payment and an "automatic" injunction against the sale of tax certificates, a county might well find itself without the expected funds necessary to meet its needs. The potential for irreparable harm to the community is substantial, and at least, should be measured against the normal standard for the grant of an injunction.

On the other hand, the taxpayer incurs no detriment. If it loses on the merits, it may redeem any tax certificates which have been sold. If it prevails in its action, the tax certificates are cancelled, and the taxes are adjusted to conform to the terms of the taxpayer's success on the merits.

CONCLUSION

For all of the above reasons, Rebecca Walker, as Palm Beach County Property Appraiser, respectfully requests that this Court take jurisdiction of this case, and address the question certified to it, by the District Court of Appeal for the Fourth District.

Respectfully submitted,  
Willa A. Fearrington, Esq. and  
Law Offices of Caylord A. Wood, Jr., P.A.

A handwritten signature in cursive script, appearing to read "B. Jordan Stuart", is written over a horizontal line.

B. Jordan Stuart  
Counsel for Petitioner,  
Rebecca E. Walker, as  
Palm Beach County Property Appraiser

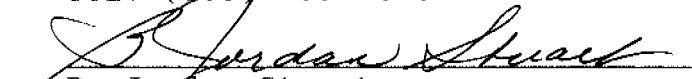
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Initial Brief of Petitioner and Appendix thereto has been furnished by mail this 1<sup>ST</sup> of July, 1992, to JOHN C. DENT, Suite 500, 1549 Ringling Blvd., Sarasota, Florida 34236, Counsel for Respondent, and WAGNER, NUGENT, JOHNSON, ROTH, KUPFER & ROSSIN, P.A., Counsel for the Palm Beach County Tax Collector.

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CLARK, *etc.*,

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-vs-

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Partnership,

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APPENDIX TO

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WILLA A. FEARRINGTON, ESQ. and  
Law Offices of  
GAYLORD A. WOOD, JR., P.A.  
304 S.W. 12th. Street  
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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

JANUARY TERM 1992

PALM BEACH COMMERCE CENTER  
ASSOCIATED, LTD., a Florida  
limited partnership,

Appellant,

v.

REBECCA E. WALKER, as  
Property Appraiser for Palm  
Beach County, Florida, and  
JOHN K. CLARK, as Tax  
Collector of Palm Beach  
County, Florida,

Appellees.

CASE NO. 91-1796.

Opinion filed April 29, 1992

Appeal of a non-final order from  
the Circuit Court for Palm Beach  
County; Richard B. Burk, Judge.

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF.

John C. Dent, Jr., of Dent, Cook  
and Weber, Sarasota, for appellant.

Willa A. Fearrington of Arnstein and  
Lehr, West Palm Beach, and Gaylord A.  
Wood, Jr., of Law Offices of Gaylord  
A. Wood, Fort Lauderdale, for Appellee-  
Rebecca E. Walker.

Richard A. Kupfer of Wagner, Nugent,  
Johnson, Roth, Kupfer and Rossin, P.A.,  
for Appellee-John K. Clark.

ANSTEAD, J.

Palm Beach Commerce Center Associates, Ltd., appeals  
from an order denying its motion to temporarily enjoin the Palm  
Beach County tax collector from issuing tax certificates for the  
1990 taxes claimed to be due after appellant's alleged good faith

payment of a portion of the **taxes** pending appellant's legal challenge of the 1990 assessed valuation of its property. We reverse and certify an issue of great public importance.

#### FACTS

Appellant filed a complaint pursuant to section 194.171, Florida Statutes (1991), alleging that the property appraiser **had** assigned its property a value greater than its just value. Appellant also alleged that unless an injunction issued, the tax collector would attempt to collect the balance of the assessment by the **sale** of **tax** certificates, **thereby** causing appellant irreparable damage.

Appellant moved under section 194.211, Florida Statutes (1991), for a temporary injunction pending the resolution of its action contesting the assessment for the property in question. Upon hearing, the trial court denied the motion on the **basis** that appellant **had** failed to **prove** the traditional prerequisites for the issuance of an injunction, particularly the likelihood of success on **the merits**. Appellant disputes that such a showing is required in this context.

#### LAW AND ANALYSIS

In City of Coral Springs v. Fla. Nat'l Properties, Inc., 340 So.2d 1271 (Fla. 4th DCA 1978), this court announced the general rule that "(w)e cannot agree with [the] contention that the essential requisites for an injunction are any different when a question of taxation is involved than any other circumstances..." Id. at 1272. See also Islandia Condominium Ass'n., Inc. v. Vermut, 438 So.2d 89 (Fla. 4th DCA 1983) and Muss

## SUMMARY OF ARGUMENT

A taxpayer contesting the valuation of property **for** ad valorem tax purposes who opts not to pay the full amount of taxes must fulfill the usual and normal requirements for an injunction in order to enjoin the tax collector from issuing a tax certificate on the property in question.

Section 194.211, Florida Statutes provides for the issuance of injunctions against the sale of **property**, not the issuance of tax certificates. The clear language of the statute does not apply to the present circumstance, and there is no rationale for implying such an application.

Whether or not §194.211, Florida Statutes is applied to the present circumstances, the normal and usual requirements **for** the issuance of an injunction must be met. To do otherwise would be to fail to attend to the potential **for** harm to the governing bodies who must depend upon the revenues generated by the sale of tax certificates in order to receive the **budgeted** funds which are necessary **for** them to function. Only when the taxpayer can meet the requirements **for** the **extraordinary remedy** of injunction is a court justified in overriding the compelling needs of the governing body to function in the public interest.

In reversing that decision, **the** Third District **held that** on a **motion** for temporary injunction, **the** question is whether the movant has made a showing that a temporary injunction is necessary to prevent irreparable harm. In remanding, the court also cited the **traditional** considerations for injunctive relief. The court also rejected the **tax** collector's contention that the taxpayer must prove **that** its partial payment was a good faith estimate of what **is actually owed** in order to secure a temporary injunction:

That **the** amount paid **is** not a good faith estimate of **what** is actually **owed** does not preclude **granting** injunctive relief, **but** is the basis for stiff statutory **penalties**.  
**See** § 194.192, Fla. Stat. (1983).

**Id. at 838** n.1.

Appellant contends that the statutory **scheme** relating to **good faith challenges** to **tax assessments** implicitly contemplates a stay of **the tax collection** process **pending** resolution of the challenge. Appellant asserts **that**, upon filing an appropriate complaint in compliance with **section** 194.171, Florida Statute (1989) and making a good faith payment, it was **entitled** to enjoin further collections of any balance pending determination of the suit. Otherwise, appellant asserts, the legislature would not have made provision in section 194.192(2) for interest and **penalties** to **be** collected after an unsuccessful challenge. **Section** 194.192(2) provides:

If the court finds that the amount of tax owed by **the taxpayer is** greater than the amount the taxpayer has in good **faith** admitted **and paid**, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency **at** the rate

of 12 percent per year from the date the tax became delinquent or from January 1, 1971, whichever is later, and **at** the rate of 6 **percent per year** for any **period of delinquency before** January 1, 1971. If it finds that the amount of **tax** which the **taxpayer** has **admitted** to be owing is grossly disproportionate to the **amount of tax found** to be due and that the taxpayers's admission **was not made** in good faith, the court shall also **assess** a penalty **at** the rate of 10 percent of the deficiency **per year** from the date the **tax became delinquent**.

Appellant points out that the sale of **tax** certificates during the pendency of his action will require him to pay the taxes **plus additional costs and interest at a rate well above that which the statute mandates for judgments in assessment challenges**. There is no provision for avoiding or recouping **these** additional payments. This, appellant contends, together with the public notice associated with the advertisement **and** sale of the **tax** certificate, constitutes sufficient irreparable harm to the taxpayer to merit an injunction.

The tax collector states that the injunction **statute** does not, according to its **own** language, **even apply** to this **case**. In particular, the **tax** collector **points out, the statute** only specifically permits the court to **restrain** the impending "**sale** of real or personal property for any tax." Therefore, it argues, by **negative** implication, a party **who** seeks to obtain an injunction to restrain the issuance of **tax certificates** must rely on general equitable principles that **apply** to all injunctions, rather than on this statute.

The tax collector emphasizes that its duty to issue **tax** certificates is not a discretionary act, **but** instead a

ministerial, statutory responsibility of that public office. Section 197.432 (1) requires the tax collector to pursue these means to collect needed revenue and makes no exception because of the pendency of a tax contest. He suggests that we envision the consequences of permitting all property owners who contest their tax assessments and who make a **good** faith partial **payment**, to automatically be entitled to enjoin the **tax** collector from obtaining from a third party by issuing a tax certificate, the balance of that revenue, which could be sizable. **The wheels of** county government services would potentially come to a **grinding** halt for lack of revenue. The entire budgetary process **of** the county and other levying authorities could **be** thrown into complete disarray. In sum, the collector contends that public policy would be best advanced by requiring a movant under section 194.211 to show the usual prerequisites for issuance of an injunction.

In North Port Bank v. State, 313 So.2d 683 (Fla. 1975), the supreme court **treated** the **provisions of** section 194.192(2) **as** if they were, indeed, the sole protections for **payment** afforded the government during the pendency of a real estate tax challenge **case**. The court found no constitutional flaw in a more stringent scheme setup in personal property **tax** challenges requiring all of the **taxes** or a bond in the same amount to be posted **as** a condition to the challenge. Although the case did not directly involve the application of section 194.192(2), the court's comment suggests this section **was** intended to be used in much the same way that a bond might be **used** :

In our opinion, the transitory nature of intangible **taxes** justifies the **state** in adopting methods of collection which differ from those used to collect **real property ad valorem taxes**. Liens can be effectively imposed upon **lands** and improvements, but intangible property and its **owners** sometimes are difficult or impossible to locate.

Assessment and collection of taxes are problems of the utmost importance to the government and property owners alike. No government can exist without income, and taxation is its principal source. The owners of property can never forget that the power to tax is the power to destroy. Those who assess **and** collect taxes, like other human beings, make mistakes. The only nonviolent defense is legal action against the government.

Id. at 687.

We believe the issue to be close, **'but we are strongly** influenced by the Supreme Court's opinion in ~~North Port Bank~~, We **read** that opinion **as** indicating that ordinarily the interest and penalties of **section 194.192 will** protect the **tax collector from** any temporary loss of revenue while the **tax challenge is pending**. We simply cannot logically reconcile this provision for interest and penalties with the provision for additional interest and costs that must be paid by the taxpayer if tax certificates are sold on the property. We agree with appellant that the injunction authorized by section 194.211 does include the sale of **tax** certificates as well as tax deeds, and that the statutory scheme contemplates the ordinary situation to be one of staying the collection of taxes, including the issuance of certificates, pending the resolution of the lawsuit when the taxpayer **has** made a good faith payment of the **taxes due**.

We disagree with the Third District's opinion in Hotelerama to the extent that we believe it is **the** burden of the taxpayer to establish at the injunction hearing that its **partial** payment was made in good faith. By providing for an injunction in section 194.211 we believe the legislature intended some burden, other than the pendency of the **tax** challenge, **to be** carried by the taxpayer in **order** to secure an injunction, and logically, to us, that would concern the good faith **payment** of the **tax** believed due. Upon that showing, **however**, absent unusual circumstances, we believe a temporary injunction should **issue**.

Accordingly, we reverse and remand for further proceedings in accord herewith and certify the issue we have **decided as one of great public importance:**

UNDER WHAT CIRCUMSTANCES IS A TAXPAYER ENTITLED TO A STAY OF THE COLLECTION OF TAXES PENDING HER CHALLENGE TO THE ASSESSED VALUATION OF HER PROPERTY?

FARMER, J., concurs.  
HERSEY, J., concurs in conclusion only.