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ASSESSMENT AND COLLECTION OF AD VALOREM PROPERTY TAXES

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In 1956 the total assessed value of property in Florida subject to state and local ad valorem property taxes was $6,858,000,000.[1] This astonishing figure emphasizes the continuing importance of state taxation, despite overshadowing public awe of the United States Internal Revenue Code. The ad valorem property tax, eldest in the family of state taxes, has not diminished in significance. Despite the fact that failure to file a real or personal property tax return can be costly, both procedurally and monetarily, many Floridians fail to file returns each year. It behooves Florida taxpayers and their lawyers to acquaint themselves with the procedure for assessment and collection of general ad valorem property taxes and with the restrictions upon the taxing authorities. The purpose of this discussion is to provide this information.[2]

ASSESSMENT

All Florida realty and tangible or intangible personalty is subject to taxation on January 1 of each year.[3] The two classes of personal property, however, receive special treatment with respect to the taxable date. Intangible personal property acquiring a Florida situs between January 1 and April 1 becomes taxable as of the date the situs is established; credit is allowed for any intangible tax paid to a sister state on such property for that year.[4] Tangible personal prop-

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[1]BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 416 (1959).

[2]Unless otherwise specifically noted, the textual discussion is limited entirely to general ad valorem real property and tangible and intangible personal property taxes. State excise taxes (*e.g.*, sales and use tax, gasoline tax, estate tax, etc.) are excluded, as are certain specific areas in the field of property taxes: exemptions, classification of property as real or personal, special assessments, assessment of railroad companies.

[3]FLA. STAT. §192.04 (1959).

[4]FLA. STAT. §199.07 (1959).

erty brought into the state after January 1 and before April 1, however, is subject to the tax as of the date it is brought into Florida only if it is held for resale or if the tax assessor has reason to believe that it will be removed from the state prior to January 1 of the succeeding year.[5]

The Return

The requirement that a return be filed is unequivocally pronounced by statute:[6]

> "Every person owning or having the control, management, custody, direction, supervision or agency of property of whatsoever character that is subject to taxation . . . shall return the same for taxation to the county assessor of taxes in the proper county . . . on or before the first day of April of each and every year, giving the character and the true cash value of the same . . . ."

Whether the return must be filed under oath, however, is a matter involving some statutory inconsistency. Section 192.57 (1) of Florida Statutes 1959, a general provision, specifies that *no* tax return need be made under oath, while sections 199.07 and 200.08, respectively, require that returns of intangible and tangible personalty *shall* be made under oath.[7] In any event, all returns, including returns of real property, should be filed under oath. In view of the fact that filing of a false return is a misdemeanor in any case,[8] nothing is to be gained by omitting the oath.

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[5]FLA. STAT. §200.021 (1959). This section was first enacted in 1953, and was obviously motivated, at least in part, by the decision in Overstreet v. Ty-Tan, Inc., 48 So. 2d 158 (Fla. 1950), holding that tangible personalty brought into Florida subsequent to Jan. 1, 1948, was not subject to taxation for that year. Unlike its corresponding section concerning intangible personalty (*supra* note 4), this section does not provide credit for taxes paid to a sister state.

[6]FLA. STAT. §193.12 (1959). See also *id.* §§199.07, 200.08, specifically requiring returns, on or before the same date, as to intangible and tangible personal property, respectively.

[7]FLA. STAT. §200.08 (1959), pertaining to returns of tangible personal property, contains one exception: It is not mandatory that household furnishings, wearing apparel, and personal effects be returned, and if a return is filed it need not be verified.

[8]FLA. STAT. §192.57 (2) (1959).

Returns of real property[9] should be filed with the tax assessor of the county in which the land is located. Intangible personalty should be returned in the county "where the taxpayer resides or has his usual domicile."[10] Returns of intangible property will be treated as confidential; the taxpayer, upon request, is entitled to redelivery of his return after paying the tax. In any event, the assessor is required to destroy these returns within three years after the tax is paid.[11] Taxpayers having tangible personalty in more than one county must file a return in each county in which the property is located.[12] Although it is not mandatory,[13] the tax assessor is authorized, after giving ten days' notice by publication, to make at least one visit to each precinct of the county between January 1 and March 1 for the purpose of receiving returns.[14]

It is the statutory duty of the tax assessor to determine all taxable property, value it, and include it on the tax roll regardless of the fact that no return was filed.[15] Thus the taxpayer may not necessarily escape the tax by failing to file a return, and he will certainly suffer pecuniary disadvantage and the loss of several procedural rights.

Notice of Assessment. If no return has been filed, the taxpayer is not entitled as of right to notice of the assessment or valuation of his property,[16] although he may complain to the board of equalization[17] if he independently determines the amount of assessed valuation of his property.[18]

Loss of Exemptions. A procedural disadvantage with respect to tangible personalty is that all statutory or constitutional exemptions are waived unless claimed on the return.[19] Hence, failure to file a

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[9]An application for homestead exemption does not constitute a return of real property. Adams v. Fielding, 148 Fla. 552, 4 So. 2d 678 (1941).

[10]FLA. STAT. §199.08 (1959).

[11]FLA. STAT. §199.07 (1959).

[12]FLA. STAT. §200.09 (1959). *But see* note 7 *supra,* describing one exception regarding returns of tangible personalty.

[13]Reid v. Southern Devel. Co., 52 Fla. 595, 42 So. 206 (1906).

[14]FLA. STAT. §193.11 (1959).

[15]FLA. STAT. §§193.12, 199.17, 200.05 (1959).

[16]FLA. STAT. §§193.12-.13, 199.09, 200.10 (1959); Mariani v. Schleman, 94 So. 2d 829 (Fla. 1957); Arundel Corp. v. Sproul, 136 Fla. 167, 186 So. 679 (1939).

[17]See subheading "Board of Equalization" *infra.*

[18]Amos v. Jacksonville Realty & Mtge. Co., 77 Fla. 403, 81 So. 524 (1919).

[19]FLA. STAT. §200.15 (1959).

return will deprive the taxpayer of possible exemptions to which he may otherwise be entitled.

Back-assessment. Perhaps most important procedurally, the filing of a return and payment of the tax operate to "close" the tax year as to personal property. The statutes[20] provide that upon discovery of property that has "escaped" taxation for any of three immediately previous tax years, the tax assessor may back-assess for the years in question.[21] In *Florida National Bank v. Simpson*,[22] however, the Supreme Court of Florida held that property has not "escaped" taxation if an honestly contrived return was filed and the tax paid. This is true even though it is subsequently determined that the reported valuation and resulting tax were too low. The obvious effect of this decision is to limit the back-assessment authority of the tax assessor to those cases in which no honest return was filed.[23]

Penalty. The monetary disadvantage may be illustrated by the fact that failure to file a return or to report all taxable property therein also exposes the delinquent taxpayer to a penalty of ten per cent of the tax due on the unreported personalty.[24]

The Tax Assessor

It is possible, of course, to evade taxation without committing a crime,[25] but evasion is unlikely.[26] Consequently, it is obviously ad-

[20]FLA. STAT. §§193.23, 199.29, 200.16 (1959). In order to back-assess, statutory authority must exist. State v. Beardsley, 84 Fla. 109, 94 So. 660 (1922).

[21]Exception is made for bona fide purchasers of either class of personalty as to taxes accruing prior to their purchase of the taxable property.

[22]59 So. 2d 751 (Fla. 1952), construing FLA. STAT. §199.29 (1959) and overruling a previous contrary construction in Root v. Wood, 155 Fla. 613, 21 So. 2d 133 (1945).

[23]Query: From the language of the Court, and the *ratio decidendi*, in the *Florida Nat'l Bank* case, would property be held to have "escaped" taxation, even though no return was filed, when the tax assessor had previously assessed the property, albeit at a low valuation, and the tax was paid thereon?

[24]FLA. STAT. §§199.30, 200.35 (1959).

[25]Although the statutes (see note 6 *supra*) are mandatory with respect to filing of returns, there is no criminal sanction for violation of their provisions. *But see* FLA. STAT. §193.10 (1959), making it a misdemeanor to fail to return boats for taxation.

[26]The comptroller and tax assessors, happily or unhappily as the case may be, have many effective methods of discovering unreturned, taxable property, *e.g.*,

visable to file a return. Even though a return is filed, the tax assessor may increase the taxpayer's reported valuation or include omitted property.[27] In this situation, however, unlike the case in which no return is filed,[28] the assessor is compelled to give notice of his amendatory action. Section 193.13 of Florida Statutes 1959 provides in part:[29]

> "When the tax assessor shall raise the value on any property or item of property given in by any owner or taxpayer under oath, the tax assessor shall at once give notice in writing by registered mail to such owner or taxpayer, such notice to give the amount of the raise or increase . . . ."

Similar statutes, applying specifically to tangible and intangible personalty, require the assessor to notify the taxpayer upon increasing the returned valuation of the property.[30]

Having discovered the existence and determined the valuation of all taxable property within the periphery of his jurisdiction, whether by examination of returns or by independent investigation, the tax assessor must then undertake to prepare the tax rolls. Separate rolls must be prepared for each class of property.[31] The tangible personalty tax roll must be completed by June 1,[32] and all other

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inspection of federal income tax returns for dividend or interest income from unreported intangibles. This privilege of inspection is conferred by INT. REV. CODE OF 1954, §6103 (b) (2).

[27]FLA. STAT. §§193.13, 199.10, 200.12 (1959).

[28]See note 16 *supra* and accompanying text.

[29]Note that this statute, a general provision, requires notice as to valuation increases only when the taxpayer has specified the value under oath. It has been previously indicated (see note 7 *supra* and accompanying text) that returns of real property need not be verified. The quoted section nevertheless illustrates the advisability of filing all returns under oath.

[30]FLA. STAT. §§199.09, 200.10 (1959). These sections differ in some minor respects from each other and from the general section quoted in the text. Sec. 193.13 requires that notice be given by registered mail, while these two specific provisions relating to personalty require simply mailing. Sec. 200.10, pertaining to tangible personalty, requires that the taxpayer furnish his address and request notice or he will not be entitled to it, despite an otherwise valid return; this is not required by the other sections. Finally, §193.13, the general provision, contains a proviso, unique to the three sections, that failure of the tax assessor to give the required notice shall not invalidate the assessment.

[31]FLA. STAT. §§199.04, 200.04 (1959).

[32]FLA. STAT. §200.13 (1959).

rolls must be completed by the first Monday in July.[33] Armed with the various rolls, the assessor meets with the county commissioners sitting as a board of equalization, for the purpose of equalizing valuations and otherwise reviewing the rolls.[34]

VALUATION

The process and methods or criteria of valuation are undoubtedly the most controversial subjects in ad valorem taxation. This is true because valuation is ultimately a matter of mere human judgment or opinion, regardless of an abundance of often utilized formulae and rules of thumb.

The law is crystal clear that all taxable property shall be assessed at its "full cash value."[35] The hollowness of this statutory mandate, however, was recognized by the Supreme Court when it candidly characterized as common knowledge the fact that land in Florida was not assessed at more than fifty per cent of its full cash value.[36] That practice had, in effect, previously received the Court's stamp of approval on the theory that the purpose of the full cash value requirement was to insure uniformity of taxation.[37] If all property were assessed alike or at the same percentage of full cash value, the Court reasoned, nobody should be heard to complain. The Court's indulgence in this reasoning, however, antedated the adoption of the familiar Florida homestead exemption, effective in its present form in 1939.[38] Since that time any general valuation of all real property at *less* than full cash value necessarily favors homesteads and cannot be approved.[39]

For example, if half the realty in a given county is homestead property and the other half is not, and if each half has a full cash value of $10,000 but is assessed at fifty per cent, or $5,000, the non-homestead property will supply all the tax revenue because the other half will be completely exempt. On the other hand, if each half is properly assessed at its full cash value, the homestead property

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[33]FLA. STAT. §193.25 (1959).

[34]See discussion under subheading "Board of Equalization" *infra*.

[35]FLA. STAT. §§193.11, 199.05, 200.06 (1959).

[36]Henderson v. Leatherman, 120 Fla. 496, 163 So. 310 (1935).

[37]Camp Phosphate Co. v. Allen, 77 Fla. 341, 81 So. 503 (1919), overruled by Cosen Invest. Co. v. Overstreet, *infra* note 39.

[38]FLA. CONST. art. X, §7.

[39]Cosen Invest. Co. v. Overstreet, 154 Fla. 416, 17 So. 2d 788 (1944).

will be taxed on $5,000, and the resulting reduction in the millage rate needed to produce the same amount of revenue will reduce by one third the taxes on the non-homestead property. Conversely, any general valuation of all property at *more* than full cash value is, by the same reasoning, necessarily prejudicial to homestead property and is also an effective method of circumventing constitutional and statutory limitations on millage rates that may be exacted for certain specified purposes.[40]

Thus, when all assessed valuations do not hew to the mark of assessment at full cash value, an individual taxpayer will find himself in one of four discriminatory situations.

Taxpayer's Property Assessed at 100% or Less; Other Property at a Greater Percentage. The taxpayer in this situation obviously will maintain a discreet silence. Complaint would be heroically patriotic because the discrimination is against his neighbors; he holds a favored position whether his property is homestead or not.

Taxpayer's Property Assessed at 100% or Less; Other Property at a Lesser Percentage. In this instance the taxpayer is prejudiced in any event, and proportionately more so if his property is homestead. If he is unsuccessful in obtaining equalization from the county commissioners, what avenues of judicial relief are available? Injunctive relief against collection of the "invalid" portion of his taxes occasioned by the higher valuation has apparently been foreclosed by *Cosen Investment Co. v. Overstreet.*[41] In that case, involving this factual situation, the Florida Supreme Court affirmed a refusal to enjoin collection of the tax. The Court opined that to grant the requested relief would require a holding that assessment at full cash value was improper. Such a holding would be contrary to the statutes, calculated to engender discrimination, and therefore untenable. The decision is somewhat anomalous in that it permitted the continuance of a discriminatory assessment because the requested relief would result in another discriminatory assessment. It is supportable, however, on the theory that the taxpayer has another appropriate remedy, by way of mandamus, to force the tax assessor to raise the valuation of all other property to the required level. That at-

[40]Schleman v. Connecticut Gen. Life Ins. Co., 151 Fla. 96, 9 So. 2d 197 (1942); see FLA. CONST. art. IX, §1, art. XII, §8; FLA. STAT. §193.32 (1959) with respect to maximum millage rates that may be applied for certain designated purposes.

[41]154 Fla. 416, 17 So. 2d 788 (1944).

tempt was made in *State ex rel. Kent Corp. v. Board of County Comm'rs.*[42] Again the taxpayer was denied relief, but this time only because he was unable to carry his burden in showing that the tax assessor's low valuations were so arbitrary and capricious as to overcome the presumption of correctness. Thus, although the burden is great, the taxpayer's remedy for this type of discriminatory assessment is the extraordinary writ of mandamus.[43]

Taxpayer's and All Other Property Assessed at Less Than Full Cash Value. The taxpayer in this case has cause for complaint if his property is non-homestead. Here again, because his assessed valuation is less than 100% of full cash value, the principles of the *Cosen* and *Kent* cases are applicable. His avenue of attack, once he is beyond the board of equalization, is by way of mandamus to force all assessments up to full cash value.

Taxpayer's and All Other Property Assessed at More Than Full Cash Value. In this instance the taxpayer is ipso facto prejudiced. If his property is homestead, the overassessment operates to raise the *percentage* of the total tax revenue he will have to pay — not just the *amount* of his tax. If his property is non-homestead an excessive tax may be exacted because the millage rate limitations[44] are thwarted by the unlimited dollar valuations.[45] Accordingly, overassessments may be combatted by injunction against collection of the portion of the tax exacted on that part of a valuation in excess of full cash value.[46]

The foregoing discussion was limited in scope to assessments of real property because the discrimination inherent in improper valuations is occasioned by the homestead exemption, which has no applications to personalty. It should be noted, however, that the principles are equally applicable to assessments of tangible and intangible personalty as a result of other static exemptions applicable to those classes of property.[47]

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[42]160 Fla. 900, 37 So. 2d 252 (1948).

[43]See Hackney v. McKenney, 113 Fla. 176, 151 So. 524 (1933); State *ex rel.* Dofnos Corp. v. Lehman, 100 Fla. 1401, 131 So. 333 (1930).

[44]See note 40 *supra.*

[45]These results are lucidly illustrated in Schleman v. Connecticut Gen. Life Ins. Co., note 46 *infra.*

[46]Schleman v. Connecticut Gen. Life Ins. Co., 151 Fla. 96, 9 So. 2d 197 (1942).

[47]FLA. STAT. §192.201 (1959), granting a $1,000 exemption to household goods

Everything tends to prove, therefore, that "full cash value" assessments are essential, not only because they happen to be required by law but also because the slightest deviation may gravely affect the pocketbook. Yet what is full cash value? The courts have been understandably cautious in attempting to define this enigma. Perhaps the most nearly definitive statement appears in *City of Tampa v. Colgan*:[48]

> "By fair market value is meant the amount of money which a purchaser willing but not obliged to buy the property would pay to an owner willing but not obliged to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied."

"Current market value" would seem to be another way of stating the general criterion, but other decisions cast serious doubt on this generalization. In the *Kent* case, for example, the Court indicated that "full cash value" may well lie somewhere between past and present market value, particularly in view of fluctuating real estate prices.[49] Moreover, even if market value as a criterion is the equivalent of full cash value, it cannot be applied in a vacuum; there are always items of property for which there is no market.

In *Hillsborough County v. Knight & Wall Co.*[50] the Court was called upon to decide the appropriate way to value tangible personalty consisting of inventoried merchandise. It approved a formula whereby each article was appraised at the original cost or cost of replacement, whichever was lower; and twenty per cent of the ultimate total was deducted as an allowance for depreciation. The

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and personal effects owned by a head of a family; *id.* §192.06(7), granting a $500 exemption to all property of widows and persons who have lost a limb or been disabled.

[48]121 Fla. 218, 230, 163 So. 577, 582 (1935). Note that the quotation is concerned with "fair market value" (as used in a city charter) rather than "full cash value;" but the attorney general has opined that the phrase, as used by the Court, is synonymous with "full cash value." REP. ATT'Y GEN. FLA. 233, 234 (1950).

[49]Specifically, the Court stated: "[The tax assessor] has, no doubt, witnessed times when purchasers would seldom buy at the assessed value and in recent years owners would seldom sell at the assessed value. Between these wide ranges in prices the assessor must strike a value of full, actual cash value to conform to the statute." 160 Fla. 900, 903, 37 So. 2d 252, 253 (1948).

[50]153 Fla. 346, 14 So. 2d 703 (1943).

going retail market price of the inventory was viewed with disfavor because it included allowances for overhead and profit. Bulk sale value was viewed as equally untrustworthy because of "the element of liquidation."[51] In *Root v. Wood* the Court found occasion to discuss the valuation of intangibles, consisting of closely held corporate stock that had no market history:[52]

> "[The] ratio of assets to liabilities, funded debt, character of assets, value of assets, volume of business, attractiveness of the stock to investors, stability of net income from the assets, or any other impediments to true taxable value may be considered when making the stock assessment."

The only safe, albeit not too helpful, conclusion is that each assessment must be made on the basis of its own peculiar facts. This axiom is, in effect, recognized by section 192.31 of Florida Statutes 1959, which provides that the state comptroller shall establish "standard measures of values" to be utilized by the tax assessors in arriving at the value of the various items of taxable property.[53] These measures or guides are required to be published and distributed in manual form[54] to the various taxing officials. If these are followed the resultant values placed upon particular properties are deemed prima facie equivalent to full cash value; the taxpayer has the burden of overcoming the presumption of correct valuation. If the guides are not followed, the assessor or the board of equalization must carry the burden of establishing correctness.

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[51]Although there is no apparent conflict, the opinion does not mention FLA. STAT. §192.05 (1959), which provides that stock in trade may be assessed at the average value of such property held over a period of 12 months next preceding the Jan. 1 for which the assessment is made.

[52]155. Fla. 613, 621, 21 So. 2d 133, 137 (1945). This case was overruled on other grounds by Florida Nat'l Bank v. Simpson, 59 So. 2d 751 (Fla. 1952). See note 22 *supra* and accompanying text.

[53]The constitution requires the legislature to prescribe regulations to secure the just valuation of all property. FLA. CONST. art. IX, §1. This duty has been generally delegated to the comptroller by the cited statute.

[54]STATE COMPTROLLER, FLORIDA TAX ASSESSORS' MANUAL (1959). Space will not permit detailed analysis of this manual, but it contains suggested formulae and lists of factors to be considered in valuing property generally, particularly special categories such as corner lots, irregularly shaped lots, income properties, and so on. If doubt arises concerning valuation for purposes of filing a return, or the method of the assessor in arriving at his valuation figure, reference to this manual

Valuation of certain specific items of property are especially dealt with by statute. For example, non-bearing fruit trees are not considered to add any value to land;[55] "agricultural lands" must be valued without consideration of other, possibly more profitable, uses;[56] privately owned toll bridges are assessed on a mileage basis;[57] and the possibility of subsurface oil or gas shall not be considered for the purpose of valuation.[58] There are other similar statutes.[59]

The Board of Equalization

The county commissioners, sitting as a board of equalization, are required to convene with the tax assessor on the first Monday in July for the purpose of hearing complaints on the valuation of taxable property as entered on the rolls.[60] The board may continue in session from day to day as long as necessary, but notice of its first meeting must be published at least fifteen days beforehand.[61] Although the notice of this meeting will be the only notification to a taxpayer who has not filed a return, and whose assessment is not raised by the board, it satisfies the requirements of due process even though the taxpayer will have no way of knowing the valuation placed upon his property unless he affirmatively acts to investigate.[62]

At its meeting the board may raise or lower the valuations proposed by the tax assessor and may include omitted items of personalty.[63] There are, however, at least two qualifications. The board may not *lower* the valuation of any item of personalty that was not

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will undoubtedly furnish helpful insight.

[55]FLA. STAT. §193.20 (1959).

[56]FLA. STAT. §193.201 (1959).

[57]FLA. STAT. §193.24 (1959).

[58]FLA. STAT. §211.13 (1959).

[59]*E.g.*, FLA. STAT. §192.31 (2) (1959), dealing with the assessment of platted realty as unplatted acreage of a similar character until 60% of the lots have been sold; *id.* §192.05, concerning assessments of stock in trade; *id.* §200.08 (2), involving special consideration in the valuation of household goods and personal effects.

[60]FLA. STAT. §193.25 (1959). With respect to equalization of tangible personalty assessments, FLA. STAT. §200.19 (1959) specifies that the meeting be held as soon after July 1 as convenient, and may be held on the same day that complaints as to realty are heard.

[61]FLA. STAT. §193.25 (1959). *But see* FLA. STAT. §200.19 (1959), requiring notice of the equalization of tangible personalty assessments to be published once each week for two successive weeks preceding the first meeting.

[62]Jackson Lumber Co. v. McCrimmon, 164 Fed. 759 (N.D. Fla. 1908).

[63]FLA. STAT. §§193.27, 199.12, 200.20 (1959).

returned under oath,[64] nor may it order a blanket reduction of all valuations on the basis of a general complaint.[65] If the board determines to raise a given valuation,[66] notice by publication must be given to the taxpayer at least fifteen days before the board meets on the first Monday in August or September to hear complaints on increases.[67] In this instance notice is apparently required even though no return was filed.[68] As to personalty, however, the notice need not list the name of the taxpayers whose property valuation is being increased.[69]

After it has heard all complaints and equalized the rolls, the board must determine the aggregate millage rate that will yield the desired tax revenue when applied to the total assessed valuation.[70] The tax assessor then calculates the tax applicable to each piece of property and enters the amount of the tax on the roll opposite the assessed valuation of the property.[71] On the first Monday in October the board reviews the rolls as finally completed by the assessor, rectifies any mistakes, and certifies that the rolls are correct.[72] The assessor issues his warrant to the tax collector, commanding him to collect the taxes as shown on the rolls. The assessment is then final, and the board has no further authority.[73]

Prerequisites to Judicial Relief for Overvaluation

If the board of equalization turns a deaf ear to the taxpayer who is convinced that the assessed valuation of his property is discriminatory, he may yet have judicial recourse. In reality, however, his remedy may be difficult to realize:[74]

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[64]FLA. STAT. §193.27 (1959); Sanders v. State, 46 So. 2d 491 (Fla. 1950).

[65]Armstrong v. State *ex rel.* Beaty, 69 So. 2d 319 (Fla. 1954).

[66]The board may have independently determined property values in its county by virtue of FLA. STAT. §193.111 (1959), which authorizes the county commissioners to employ appraisers. Anyone so employed, however, must comply with the Real Estate License Law. *Id.* ch. 475. Foulk v. Florida Real Estate Comm'n, 113 So.2d 714 (2d D.C.A. Fla. 1959).

[67]FLA. STAT. §§193.25, 199.12 (1959). As to tangible personalty, however, notice of increase must be given by publication for two successive weeks preceding the second meeting of the board. *Id.* §200.20.

[68]See note 67 *supra.*

[69]FLA. STAT. §§199.12, 200.20 (1959).

[70]FLA. STAT. §§193.29,.31 (1959).

[71]FLA. STAT. §193.29 (1959).

[72]*Ibid.*

[73]*Ibid.*

[74]Poland v. City of Pahokee, 157 Fla. 179, 180, 25 So. 2d 271 (1946). See also,

"Unless there be a clear and positive showing of fraud, or illegality, or of an abuse of discretion so arbitrary and discriminatory as to amount to a fraud on the taxpayer or to a denial of the equal protection of the law, the courts will not in general disturb an assessment already made or control the reasonable discretion of tax assessors in making valuations for taxation purposes."

A mere mistake in judgment as to the valuation of a given piece of property will not ordinarily be sufficient to support a claim of discrimination,[75] since it is presumed that the board of equalization will correct such irregularities.[76] Nevertheless, when property of the same class is systematically omitted[77] or undervalued,[78] or if the taxpayer's property is overvalued,[79] a constructive fraud is effectively perpetrated on the taxpayer in violation of his right to equal protection and due process.

When the taxpayer has suffered discrimination to the extent of constructive fraud and seeks to enjoin the assessment or mandamus the assessor[80] to correct the defect, there are several requisites for seeking judicial relief.

Exhaustion of Administrative Remedies. Normally an aggrieved taxpayer must utilize the procedure for complaint to the board of equalization before he may follow the path to the courts.[81] If there has been a flagrant violation of, or failure to follow, the statutory requirements pertaining to valuation, however, the courts will grant relief despite non-exhaustion of the administrative remedy.[82] This exception may be comforting to an attorney whose client first retains him after the board has met. If there is still time, however,

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e.g., City of Tampa v. Palmer, 89 Fla. 514, 105 So. 115 (1925); Wade v. Murrhee, 75 Fla. 494, 78 So. 536 (1918).

[75]Colonial Invest. Co. v. Nolan, 100 Fla. 1349, 131 So. 178 (1930).

[76]City of Tampa v. Palmer, 89 Fla. 514, 105 So. 115 (1925).

[77]Roberts v. American Nat'l Bank, 94 Fla. 427, 115 So. 261 (1927).

[78]Colonial Invest. Co. v. Nolan, 100 Fla. 1349, 131 So. 178 (1930).

[79]City of Tampa v. Palmer, 89 Fla. 514, 105 So. 115 (1925).

[80]See heading "Valuation" *supra* for discussion concerning which of the two remedies, injunction or mandamus, is appropriate in a given type of discrimination.

[81]Hackney v. McKenney, 113 Fla. 176, 151 So. 524 (1933).

[82]City of Tampa v. Palmer, *supra* note 79; Camp Phosphate Co. v. Allen, 77 Fla. 341, 81 So. 503 (1919); Graham v. City of West Tampa, 71 Fla. 605, 71 So. 926 (1916).

a complaint should be presented to the board in every case in order to avoid the responsibility of deciding when an assessor's derelictions are flagrant enough to obviate that necessity.[83]

Payment of Valid Portion of Tax Due. The constitution, as supplemented by statute, prohibits judicial relief from any illegal assessment or tax until the complaining taxpayer has paid the portion of the tax legally due.[84] In order to comply with this requirement, the taxpayer should produce a receipt or tender the proper amount at the time his complaint is filed.[85] It is not sufficient to pray in the complaint that alleged overpayments for previous years be credited on the valid portion of the tax for the year under assault.[86] If there has not even been a colorable attempt by the assessor to comply with the statutory requirements, the taxpayer's assessment is totally void and he need not tender any tax.[87]

Limitations Periods. A suit to invalidate an assessment must be instituted within sixty days from the time the assessment becomes final.[88] If, however, the complaining taxpayer is able to demonstrate some compelling equity in his favor,[89] or if the assaulted assessment is totally void,[90] the limitations period may be disregarded.

COLLECTION

All property taxes become due on November 1 of the year of assessment, or as soon thereafter as the tax collector receives the tax

[83]See Cooper v. Gautier, 77 So. 2d 615 (Fla. 1955), in which failure to complain to the board thwarted equitable relief.

[84]FLA. CONST. art. IX, §8; FLA. STAT. §196.01 (1959).

[85]FLA. STAT. §196.01 (1959); City of Fort Myers v. Heitman, 148 Fla. 432, 4 So. 2d 871 (1941).

[86]Buchanan v. City of Tampa, 134 Fla. 618, 184 So. 104 (1938).

[87]Coombes v. City of Coral Gables, 124 Fla. 374, 168 So. 524 (1936).

[88]FLA. STAT. §192.21 (1959). The limitations period in this general provision was changed from 30 to 60 days by Fla. Laws 1943, ch. 22079, §1; and §25 of the same general law operated to repeal all other laws in conflict with the chapter. Accordingly, the 30-day limitations period pertaining to tangible personalty, which still remains in FLA. STAT. §200.02 (1959), has been held to be superseded by the more recent 60-day provision in the general statute. Overstreet v. Frederick B. Cooper Co., 114 So. 2d 333 (3d D.C.A. Fla. 1959), *cert. denied*, 119 So. 2d 792 (Fla. 1960).

[89]Thompson v. City of Key West, 82 So. 2d 749 (Fla. 1955).

[90]Overstreet v. Ty-Tan, Inc., 48 So. 2d 158 (Fla. 1950).

rolls.[91] Within fifteen days after receiving the rolls, the tax collector must mail a notice to each taxpayer whose name and address appear on the rolls, advising him of the amount of tax and the available discount.[92] If the tax is paid within four months following the due date, the taxpayer is entitled to a regressive percentage discount.[93] On April 1 of the year following assessment, unpaid taxes become delinquent.[94]

Real Property Taxes

All taxes imposed against realty constitute a first lien against the assessed realty, attaching retroactively as of the date the property became subject to the tax.[95] As such, the tax lien is superior even as to previously recorded first mortgages.[96] The one apparent exception to the omnipotence of the state tax lien is a federal tax lien.[97] The latter takes precedence if it attaches prior to the state lien.[98] The lien for real property taxes is restricted to the specific property subject to

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[91]FLA. STAT. §§193.41, 199.15, 200.25 (1959). The first cited section, a general provision, also requires the tax collector to publish notice upon receiving the rolls.

[92]FLA. STAT. §193.45 (1959). Although the statute is couched in mandatory language concerning the notice requirement, it also provides that failure of the tax collector to comply will not affect the validity of any tax sale.

[93]FLA. STAT. §§193.41, 199.16, 200.26 (1959). Specifically, the allowable discount is 4% in Nov., 3% in Dec., 2% in Jan., and 1% in Feb.

[94]FLA. STAT. §§193.51, 199.18, 200.27 (1959).

[95]FLA. STAT.. §§192.04,.21 (1959). As to the date the lien attaches, see Gelb v. Aronovitz, 98 So.2d 375 (2d D.C.A. Fla. 1957).

[96]See Clermont-Minneola Country Club v. Coupland, 106 Fla. 111, 143 So. 133 (1932); Gailey v. Robertson, 98 Fla. 176, 123 So. 692 (1929).

[97]See INT. REV. CODE OF 1954, §6321, creating a lien against all property of a delinquent taxpayer.

[98]United States v. City of New Britain, 347 U.S. 81 (1953). For purposes of relative priority with the federal lien, the state lien "attaches" only when it becomes choate, including a final determination of the amount of the tax secured by the lien. See United States v. Acri, 348 U.S. 211 (1954). Thus, for this special purpose, the state tax lien would not attach as of Jan. 1, notwithstanding the Florida law (see note 95 *supra*) to that effect. With respect to personal property taxes, the state tax lien does not become choate until there has been a tax sale and the delinquent taxpayer has been deprived of both title and possession. United States v. Gilbert Associates, Inc., 345 U.S. 361 (1953). Corrective federal legislation (S. 2305, 86th Cong., 1st Sess. 1959) has been proposed in order to give state tax liens priority over federal liens irrespective of the choate factor. FLA. STAT. §28.20 (1959) provides for the recordation of federal tax liens.

the tax. Unlike the owner of taxable personalty,[99] the owner of realty has no personal obligation and the lien does not extend to any other property he may own.[100]

On or before June 1 the tax collector prepares a statement or list of all realty subject to delinquent taxes, showing the tax and the interest due on each parcel and the costs that will accrue in making the tax sale.[101] This list is then incorporated in a notice of sale specifying when the lands will be sold, and it is published once each week for four consecutive weeks preceding the date of sale.[102] On the day designated in the notice of sale, the collector actually auctions redeemable tax certificates rather than the property itself. They are sold to the bidder who, if the certificate is redeemed, will demand from the property owner the lowest rate of interest, not in excess of the maximum rate, for the remainder of the first year of delinquency.[103] In the absence of bidders, the certificates are bid off to the county at the maximum interest rate.[104]

If the tax certificate is retained by the county, the unpaid tax bears interest at the rate of eighteen per cent per annum from April 1 for one year and eight per cent thereafter.[105] If the tax certificate is sold to a bidder, the interest rate to be applied becomes a complicated and somewhat confusing problem. Section 194.02 of Florida Statutes 1959 provides that the interest rate from the date of the certificate for the remainder of the first year of delinquency shall be at the rate bid, though not in excess of twelve per cent per annum, as opposed to eighteen per cent, and eight per cent thereafter.[106]

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[99]See subheading "Comparative Recapitulation: Extent of Lien and Personal Liability" *infra*.

[100]OP. ATT'Y GEN. FLA. 057-127 (May 22, 1957) (not published in biennial report). See also Florida Indus. Co. v. State, 114 Fla. 1, 152 So. 717 (1934). *But see* FLA. STAT. §193.49 (1959), which provides that "all taxes assessed upon either real or personal property, from the date of such assessment, shall have all the force and effect of a judgment and execution at law against the owner of such property."

[101]FLA. STAT. §193.51 (1959).

[102]*Ibid.*

[103]FLA. STAT. §193.56 (1959). Any prospective purchaser must, of course, pay the tax, interest to date, and costs of sale; the competitive bidding involves only the percentage interest rate that will be demanded of the owner upon redemption. Hence the lowest rate offered is the successful bid.

[104]FLA. STAT. §§193.54,.59 (1959).

[105]FLA. STAT. §§193.51, 194.45 (1959).

[106]Prior to 1953 this section also provided a maximum interest rate of 18% for the remainder of the first year of delinquency following the tax sale. Fla. Laws 1953, ch. 28254, §1, amended the statute, however, by inserting 12% per

The attorney general has expressed the opinion[107] that, under this section, the rate of interest from April 1 to the date of the tax sale will be eighteen per cent per annum and from the date of the tax sale for the remainder of the first year it will be the rate bid, not to exceed twelve per cent per annum. Thereafter the rate will be eight per cent.[108]

The taxpayer may redeem his property at any time prior to the sale by paying the tax, accrued interest, and costs.[109] Moreover, even after tax certificates are issued at the sale, the taxpayer may redeem his land at any time before a tax deed is issued to the certificate holder by paying the amount of the certificate plus accrued interest to the clerk of the circuit court.[110]

A certificate holder other than the county may apply for a tax deed to the land at any time after two years from April 1 of the year the tax became delinquent.[111] Upon receipt of the application and payment of incidental fees, the clerk publishes notice once each week for four consecutive weeks advising that unless the tax certificate is redeemed the land will be sold, and a tax deed issued, on a designated day.[112] A copy of this notice must be mailed to the owner of the property, if his name appears on the tax roll, at least twenty days prior to the day of sale.[113] Sale by public outcry is then held on the first Monday of the month, and the certificate holder or applicant for a tax deed is automatically credited with a bid in the amount, including all accrued interest and costs, necessary to redeem his cer-

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annum in lieu of 18%.

[107]REP. ATT'Y GEN. FLA. 227 (1954).

[108]The attorney general's opinion did not mention the effect, if any, of FLA. STAT. §193.59 (1959). That section sets forth the statutory form of a tax certificate and still recites a maximum interest rate for the first delinquency year of 18% per annum. Although the failure to weigh the cited section taints the opinion with some doubt, the attorney general's analysis seems to be the soundest of several possible constructions in so far as it relates to the rates chargeable by a private certificate holder. However, the opinion indicates that the maximum interest rate of 12% is applicable to certificates held by the county as well. In this respect the opinion is probably unsound because it ignores FLA. STAT. §194.45 (1959) expressly regulating the redemption of county held certificates and specifying an interest rate of 18% per annum from the date of the certificate for the remainder of the first delinquency year.

[109]FLA. STAT. §193.51 (1959).

[110]FLA. STAT. §§194.02,.45 (1959).

[111]FLA. STAT. §194.15 (1959).

[112]FLA. STAT. §194.16 (1959).

[113]FLA. STAT. §194.18 (1959).

tificate.[114] If the applicant is the successful bidder he is entitled to a tax deed[115] and immediate possession.[116]

If the tax certificate was struck off to the county at the original tax sale, the subsequent procedure is somewhat different.[117] Within ninety days following the expiration of two years from the date of a certificate held by the county, the clerk of the circuit court prepares a list of all lands bearing such certificates and delivers it to the county commissioners.[118] Within ninety days after receiving the list, the county commissioners must file a complaint in the circuit court against the delinquent lands and the clerk must publish notice of the suit and mail a notice to the owners of the property. It must specify a return day, to be not less than fifteen or more than thirty days from the date of publication, by which time the owner must appear to contest the suit or redeem his property by paying the tax, accrued interest, and costs.[119] Otherwise, a decree will be entered vesting title to the land in the county.[120]

Tangible Personal Property Taxes

Tangible personal property taxes become "a lien on all of the personal property of the taxpayer from the first day of January for which year the property is liable to assessment."[121] It should be noted that the quoted statutory language is broad enough to extend the lien of this tax to tangible personalty not assessed, and possibly even to intangible personalty.[122]

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[114]FLA. STAT. §194.21 (1959).

[115]FLA. STAT. §194.24 (1959).

[116]FLA. STAT. §194.54 (1959).

[117]The foregoing, and following, discussion pertaining to the issuance or sale of tax certificates and tax deeds is purposefully abbreviated; it is intended only to outline the procedure of collection from the taxpayer's standpoint. There are many intricate procedural and substantive legal niceties not alluded to because at this stage of the taxing process they primarily become a concern of the certificate or deed holder rather than the taxpayer and are, therefore, beyond the scope of this article.

[118]FLA. STAT. §194.47 (1959).

[119]*Ibid.*

[120]*Ibid.*

[121]FLA. STAT. §200.02 (1959).

[122]See REP. ATT'Y GEN. FLA. 235 (1950); REP. ATT'Y GEN. FLA. 62 (1955). Also, FLA. STAT. §200.30 (1959) provides that tangible personal property taxes, from the date they become due, shall have the force and effect of judgment and execution

On April 15 the tax collector is required to publish a notice reciting the name of each delinquent taxpayer, the amount of tax due, and the fact that interest on the delinquent tax is accruing at the rate of one per cent per month.[123] If the tax is not paid by May 1, the collector issues a warrant directing levy on or seizure of all of the delinquent taxpayer's tangible personal property.[124] If the property has been removed to another county the collector's warrant may be delivered to the appropriate sheriff, who may proceed to levy as upon a writ of execution at law.[125] All property seized by the collector is advertised for sale at public auction; the taxpayer may secure its release only by paying the full amount of the tax, plus interest and costs, prior to the date of sale.[126]

If the collector is unable to find and seize the taxpayer's tangible personalty, his warrant operates as a writ of garnishment, and the tax debt may be satisfied by levy upon anyone holding assets of, or indebted to, the taxpayer.[127] Accordingly, the delinquent taxpayer's bank account may be garnished.[128]

Intangible Personal Property Taxes

This species of ad valorem taxes constitutes a lien upon all the real and personal property of the delinquent taxpayer in the county of assessment from the time it becomes due.[129] Tax executions are

against the owner of the taxed property, except that they shall not constitute a lien on the owner's real property. This provision too would impose a lien upon all personalty whether tangible or intangible, assessed or not, but it would date from Nov. 1 rather than Jan. 1.

123FLA. STAT. §200.27 (1959).

124*Ibid.*

125FLA. STAT. §200.30 (1959). This section also empowers the collector to sue out a writ of attachment against tangible personalty which he fears is about to be removed from the county.

126FLA. STAT. §§193.47, 200.28 (1959). These two sections, the former relating to sale of personalty generally and the latter pertaining specifically to the sale of tangible personalty, are somewhat conflicting. The general provision requires that the notice of sale be posted at the courthouse door, the election district in which the owner resides, and at the voting place in the district where the property is located, which shall also be the place of sale. The latter section, however, requires merely that notice be posted in three public places, one of which shall be the courthouse door, the required place of sale. This conflict has not been resolved by the attorney general or the courts.

127FLA. STAT. §200.31 (1959).

128REP. ATT'Y GEN. FLA. 142 (1957).

129FLA. STAT. §199.22 (1959). The due date is Nov. 1. *Id.* §199.15 (1959).

issued on May 1 and may be satisfied by levy upon any of the taxpayer's property, whether real or personal.[130] The tax lien may also be extended to the taxpayer's real property in other counties by recordation of the execution,[131] and it is the statutory duty of the collector to so record it.[132] With respect to the effectuation of the lien in other counties, however, the lien dates from the time of recordation.[133] In either case, it is superior to all other liens except liens for other taxes "and prior recorded liens on real estate."[134] Also in either case, the lien automatically expires seven years from the date the tax became due.[135]

All property levied upon or seized pursuant to a tax execution is advertised for sale and auctioned at the courthouse door.[136] Although there is no statutory provision for redemption of the property between levy and sale, as in the case of realty or tangible personalty, it is presumed that the right exists.

Finally, a tax execution for intangible personalty taxes, as in the case of tangible personalty tax warrants, may operate as a writ of garnishment against anyone indebted to the taxpayer.[137]

Comparative Recapitulation; Extent of Lien and Personal Liability

There are several striking dissimilarities among the three types of ad valorem property taxes concerning the extent of the liens imposed for each type and the personal liability for the various taxes.

The lien for real property taxes attaches only to the realty subject

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[130]FLA. STAT. §199.18 (1959). This section also contains provisions identical with those of the corresponding tangible personalty tax section relative to publication of notice on April 15 that the tax is delinquent and bearing interest. See note 123 *supra* and accompanying text.

[131]FLA. STAT. §199.22 (1959).

[132]FLA. STAT. §199.24 (1959).

[133]FLA. STAT. §199.22 (1959).

[134]*Ibid.* Note that the statutory language is restricted to prior recorded liens on real estate. Query: Would the tax lien be superior to prior recorded chattel mortgages on personalty? See note 98 *supra* as to superiority of federal tax liens.

[135]FLA. STAT. §§199.22,.23 (1959).

[136]FLA. STAT. §199.18(3) (1959). This section also contains an odd provision that no property shall be exempt from levy under tax executions. Clearly this mere statutory provision could not vitiate exemptions granted by the constitution, but are not certain general statutory exemptions superseded? See note 47 *supra* for examples of statutory exemptions.

[137]FLA. STAT. §199.21 (1959). The taxpayer's bank account could, accordingly, be garnished. See REP. ATT'Y GEN. FLA. 142 (1957).

to the exaction; it dates from January 1, the day the property became subject to the tax. Although there is some doubt, there is apparently no personal liability for the tax.[138]

The tangible personal property tax lien extends to all the taxpayer's tangible personalty as of January 1, even as to portions not assessed, and possibly even to his intangible personalty. It does not, however, constitute a lien upon his realty.[139] Intangible personal property taxes constitute a lien from November 1 upon all personal property, wherever situated within the state, and on all real property within the county.[140] The lien upon realty in other counties dates from recordation of the tax execution in those counties.[141] There is no specific statutory indication of the relative priority of the lien for tangible personalty taxes,[142] but intangible personalty tax liens are junior to prior recorded liens on real estate.[143] Significantly, tax warrants or tax executions issued for the enforcement of tangible and intangible personalty taxes operate as writs of garnishment.[144] It is clear, therefore, that personal property taxes do become personal obligations of the taxpayer, at least to the extent that his non-assessed property may be encumbered by these taxes and his personal debtors may be garnished.

Suits in Sister States

In view of the personal obligation of the taxpayer with respect to personal property taxes, the tax collector may on occasion find it necessary to seek collection through the courts of a sister state. There is no specific statutory authority empowering him or any other officer to bring extraterritorial suits for collection, but the attorney general has ruled that such suits may be maintained.[145] The primary question is whether a tax collection suit will be entertainable under the law of the particular sister state involved. In the absence of statute, many

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[138]See notes 95, 100 *supra.*

[139]See notes 121, 122 *supra.*

[140]As to the specific intangible which is the subject of the tax, the lien probably dates from Jan. 1. See FLA. STAT. §§192.04,.21 (1959); Gelb v. Aronovitz, 98 So.2d 375 (2d D.C.A. Fla. 1957).

[141]FLA. STAT. §199.22 (1959); see note 129 *supra.*

[142]FLA. STAT. §192.21 (1959), a general provision, provides that tax liens are superior to all others. See note 95 *supra.*

[143]See note 134 *supra.*

[144]See notes 127, 137 *supra.*

[145]REP. ATT'Y GEN. FLA. 250 (1949).

states have held that such suits cannot be brought in their courts unless the claim is first reduced to judgment in the taxing state.[146] In recent years, however, at least twenty-seven states[147] have passed legislation authorizing the prosecution of tax collection suits in their courts by officers of sister states.[148] These statutes are usually qualified to the extent that non-reciprocating jurisdictions are not allowed to benefit by their provisions.[149] Florida has not adopted such legislation, and this omission would therefore probably operate to deny local tax authorities access to the courts of sister states.[150]

Refunds

The state comptroller is required to pass upon and order refunds to taxpayers who overpay their taxes.[151] The applicable statutes[152] provide that refunds shall be directed by the comptroller whether the tax was paid voluntarily or involuntarily by the taxpayer. The liberality of that provision may be limited to administrative processing by the comptroller, however, since the Supreme Court has consistently held that a taxpayer is not entitled to sue for a refund of taxes unless they were paid involuntarily.[153]

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[146]See Annot., 165 A.L.R. 796 (1946).

[147]Ala., Alaska, Ark., Cal., Ga., Hawaii, Ind., Kan., Ky., La., Me., Md., Mich., Minn., Miss., Mo., N.H., N.C., Ohio, Okla., Ore., S.D., Tenn., Va., Wash., W. Va., Wis.

[148]22 CORPORATION JOURNAL 323 (April-May 1960).

[149]*Ibid.*

[150]*But see* Burkman v. Taran, 4 Fla. Supp. 182, 184 (1953), in which Giblin, J., by dictum and following the minority view, indicated that a sister state's tax collection suit should be entertained by the courts of Florida on the basis of comity. It is unlikely that this isolated dictum by an inferior court would satisfy the reciprocity requirements of foreign statutes.

[151]FLA. STAT. §§193.40, 199.31, 200.36 (1959).

[152]*Ibid.*

[153]*E.g.*, City of Orlando v. Gill, 128 Fla. 139, 174 So. 224 (1937); Johnson v. Atkins, 44 Fla. 185, 32 So. 879 (1902). See specifically North Miami v. Seaway Corp., 151 Fla. 301, 9 So. 2d 705 (1942), with respect to what constitutes "involuntary" payment. It should be noted that the statutes (note 151 *supra*) allowing refund even though the overpayment was voluntarily made, were enacted in 1941 and were not effective in the decisions just cited. Whether this legislation eliminates the necessity of involuntary payment with respect to *suits* for refund has not been decided. If there is questionable liability, however, the tax should be paid under protest in any event. See Overstreet v. Frederick B. Cooper Co., 114 So.2d 333 (3d D.C.A. Fla. 1959), *cert. denied*, 119 So.2d 792 (Fla. 1960).

The applicable periods of limitations and the necessity of exhausting administrative remedies constitute other problematical areas in regard to suits for refund. Both of these questions were involved in *Overstreet v. Frederick B. Cooper Co.*[154] The court distinguished between suits to enjoin the assessment and suits for refund, holding that in the latter case exhaustion of administrative remedies was unnecessary.[155] With respect to the period of limitations, however, the court did not indulge in that distinction; it indicated[156] that suits for refund must be brought within sixty days from the time the assessment becomes final. This conclusion was based upon section 192.21 of Florida Statutes 1959, which contains an edict that "no assessment shall be held invalid unless suit be instituted within sixty days from the time the assessment becomes final . . . ." It is arguable that this provision does not relate to suits for refund. The assessment becomes final on or about October 1,[157] but the tax does not become delinquent until the following April. In this situation the sixty-day period, if applied to suits for refund, might well expire even prior to the time the taxpayer paid the tax. A more reasonable result would be achieved by applying section 95.08 of Florida Statutes 1959, a general limitations statute requiring claims against a county to be presented to the board of county commissioners within one year from the time the claim became due.[158]

CONCLUSION

As initially noted, and occasionally reiterated, the purpose of this discussion is merely to delineate in outline form the Florida procedure for assessment and collection of general ad valorem taxes. Even such a cursory excursion, however, unavoidably uncovers some apparent statutory inconsistencies and conflict among court decisions, and indicates even more enigmas left unsolved by the pertinent legislation.

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[154]114 So. 2d 333 (3d D.C.A. Fla. 1959), *cert. denied*, 119 So. 2d 792 (Fla. 1960).

[155]See note 81 *supra* and accompanying text in regard to suits to enjoin assessment.

[156]The portion of the opinion dealing with the period of limitations would appear to be dictum.

[157]FLA. STAT. §193.29 (1959).

[158]A different result is necessitated in connection with intangible personalty taxes because the revenue from that exaction flows to the state. FLA. STAT. §199.31 (1959). As such, claim must be made against the comptroller within 18 months after the right accrues. *Id.* §215.26. See State v. Gay, 40 So. 2d 225 (Fla. 1949).

These areas of difficulty are only alluded to; red flags are stationed by the pitfalls. Scope and space do not permit further discussion; indeed, many of the questions raised are individually appropriate for separate legal articles.

No panacea is offered as a solution of the difficulties presented. Several committees of The Florida Bar and the legislature are currently analyzing tax structure and procedure. It is to be hoped that their efforts will eventually come to fruition in the form of corrective and simplified legislation.