

IN THE DISTRICT COURT OF APPEAL OF THE EIGHTH JUDICIAL  
CIRCUIT  
ALACHUA COUNTY, FLORIDA

ED CRAPO, as Alachua  
County Property Appraiser

Appellant/Cross-Appellee,

v.

CASE NO.: 1D17-1895  
L.T. NO.: 2015-CA-001554

ACADEMY FOR FIVE ELEMENT  
ACUPUNCTURE, INC. a Florida  
Non-Profit Corporation

Appellee/Cross-Appellant.

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**APPELLANT'S MOTION FOR REHEARING  
EN BANC AND FOR CERTIFICATION**

**I. Motion for Rehearing en Banc**

1. On August 30, 2018 (corrected September 4, 2018) this Court affirmed the trial court's final judgment in favor of the Appellee, Academy for Five Element Acupuncture, Inc., a Florida Not-Profit Corporation (Academy). The trial court had entered a judgment in favor of the Appellee finding that the Appellee's property was entitled to an exemption from ad valorem taxation as an educational institutional as defined by Section 196.012(5) Florida Statutes and used its property for educational purposes and therefore entitled to an educational exemption. §196.198 Fla. Stat.

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2. The trial court, however, denied Appellee's claim of res judicata (administrative equivalent - administration finality). See *Peoples Gas System, Inc. v. Mason*, 187 So. 2d 335 (Fla. 1966); *Thompson v. Department of Environmental Regulations*, 311 So. 2d 989 (Fla. 1987).

3. This Court did not address Crapo's challenge to the trial court's ruling on the exemption (Maker, J. concurred separately on the exemption issue).

4. This Court rejected the law of prior decisions of this Court that there is a "general tenet that each tax year's assessment 'must stand or fall on its own validity' without reference to prior years" and other district courts. See *Container Corp. of Am. v. Long*, 274 So. 2d 571, 573 (Fla. 1<sup>st</sup> DCA 1973); *Davis v. Macedonia Hous. Auth.*, 641 So. 2d 131 (Fla. 1<sup>st</sup> DCA 1994); *Spencer Estates of Fla., LLC v. Havill*, 125 So. 3d 795 (Fla. 5<sup>th</sup> DCA 2012); *Keith Investments v. James*, 220 So. 2d 695 (Fla. 4<sup>th</sup> DCA 1969).

5. The basis for this Court's opinion is contained in *Florida Power Corp. (FPC) v. Garcia*, 780 So. 2d 34, 44 (Fla. 2001).

6. The doctrine of administration finality is the application of the doctrine of res judicata in administration proceedings. *Thompson v. Department of Environmental Regulations*, 311 So. 2d 989 (Fla. 1987); *Delray Med. Ctr. v. State Agency for Health Care Admin.*, 5 So. 3d 26 (Fla. 4<sup>th</sup> DCA 2009).

7. In this case, Crapo in the first Value Adjustment Board (VAB) proceeding, when making a decision to not file an appeal under Section 194.036 Florida Statutes would have been under the belief he could rely on the above tenet regarding ad valorem cases being applied. See *Container Corp. of Am. v. Long*, 274 So. 2d 571, 573 (Fla. 1<sup>st</sup> DCA 1973); *Page v. City of Fernandia Beach*, 714 So. 2d 1070 (Fla. 1<sup>st</sup> DCA 1998); *Davis v. Macedonia Hous. Auth.* 641 So. 2d 131 (Fla. 1<sup>st</sup> DCA 1994); *Spencer Estates of Fla., LLC v. Havill*, 125 So. 3d 795 (Fla. 5<sup>th</sup> DCA 2012); *Hect v. Dade County*, 234 So. 2d 709 (Fla. 3<sup>rd</sup> DCA 1970); *Keith Investments v. James*, 220 So. 2d 695 (Fla. 4<sup>th</sup> DCA 1969).

8. This Court has heretofore applied that each year is separate assessment and has held that the concept of a grant of a continuing benefit by statute was a violation of the Florida Constitution. *Fla. Dep't. of Revenue v. Howard*, 859 So. 2d 619 (Fla. 1<sup>st</sup> DCA 2003) rev. *Fla. Dep't. of Revenue v. Howard*, 916 So. 2d 640 (Fla. 2005). See also, *Tilton v. Gardner* 52 So. 3d 771 (Fla. 5<sup>th</sup> DCA 2010). The Supreme Court reversed but clarified the interpretation of the statute to provide that the statute did make the prior year's assessment conclusive. Similarly, the Fifth District in *Tilton v. Gardner*, 52 So. 3d 771 (Fla. 5<sup>th</sup> DCA 2010) found that the concept that an unappealed VAB decision granting an agricultural classification was continuing in its application only by reason of a

Florida Statute abrogating the tenet that each year stands on its own.

§193.461(3)(c) Fla. Stat.

9. The application of res judicata of a circuit court decision has been rejected by the Fourth District in *Southern Bell Tel. S. Tel. Co. v. Broward County*, 665 So. 2d 272 (Fla. 4<sup>th</sup> DCA 1995), where a taxpayer challenged a trial court's decision in a second case as being decided under the doctrine of res judicata of a prior years court decision in violation of the tenet that each year stands alone. The Fifth District in *Spencer Estates of Fla., LLC v. Havill*, 125 So. 3d 795 (Fla. 5<sup>th</sup> DCA 2012) states the taxpayer sought to have his agricultural classification granted on the basis of res judicata. The Fifth District held that the taxpayer sought an improper remedy and was required to file a new action challenging the subsequent years' denials.

10. This Court's decision raises significant issues for both taxpayers and taxing officials. In petitions now filed with the VAB, both taxpayers and tax officials will have to contemplate that if they receive an adverse decision from the VAB, they have to file an action in circuit court or forever be barred from future consideration. If the VAB determines that a particular value's approach is applicable, it becomes settled law for that taxpayer. If a taxpayer is denied an

exemption by the VAB it would be barred from reapplying. *Bystrom v. Equitable Life Assurance Soc.*, 416 So. 2d 1133 (Fla. 3<sup>rd</sup> DCA 1982).

11. The Florida Supreme Court in two cases has indicated there is no vested right to an exemption and each year is determined anew by a property appraiser with the filing of a new application. *City of Largo v. AHF-Bay Fund, LLC*, 215 So. 3d 10 (Fla. 2017); *Sowell v. Pan. Commons L.P.*, 192 So. 3d 27 (Fla. 2016). See also, *Macedonia*, id.

12. In this case Alachua County had adopted the automatic renewal of Sections 196.011(9)(a) Florida Statutes relieving a taxpayer under certain circumstances of filing a new application under Section 196.011(1)(a) Florida Statutes.

13. However, as was done in this case, if a property appraiser when reviewing all exemptions on the roll, determines a taxpayer in the current year is not entitled to an exemption, the property appraiser may remove the exemption by notice, allowing the taxpayer to file a new application subject to review by the property appraiser. §196.011(6) Fla. Stat.; §196.011(9)(e) Fla. Stat. This is what happened in this case.

14. This interpretation of the effect of an unappealed VAB decision will have an impact on all taxpayers and property appraisers. This Court's decision

would, therefore, vest an exemption indefinitely in the future until some change occurs. The informal and inexpensive VAB process will be transformed to a more intensive process in the development of their case of both a taxpayer and property appraiser or be forced to go to circuit court. See concurring opinion in *Bystrom v. Equitable Life Assurance Soc.*, 416 So. 2d 1133, at p. 1145, 1147 (Fla. 3<sup>rd</sup> DCA 1982).

15. This case is therefore of exceptional importance to the property appraisers and taxpayers of the State of Florida, and should be considered by this Court en banc.

### **Statement of Counsel**

I express a belief, based on a reasoned and studied professional judgment that the panel decision is of exceptional importance.

/s/ John C. Dent, Jr.  
JOHN C. DENT, JR.  
DENT & MCCLAIN, CHARTERED

### **II. Motion for Certification**

16. The question of application of the doctrine of administration finality is in conflict with decisions of this Court and other district courts. *Spencer Estates of*

*Fla., LLC v. Havill*, 125 So. 3d 795 (Fla. 2012); *Hect v. Dade County*, 234 So. 2d 709 (Fla. 1970); *Tilton v. Gardner*, 52 So. 3d 771 (Fla. 2010).

17. The Appellant believes this Court's decision is contrary to and in conflict with *Container Corp. of Am. v. Long*, 274 So. 2d 571, 573 (Fla. 1<sup>st</sup> DCA 1973); *Fla. Dep't. of Revenue v. Howard*, 916 So. 2d 640 (Fla. 2005); *Fla. Dep't. of Revenue v. Howard*, 859 So. 2d 619 (Fla. 1<sup>st</sup> DCA 2003); *Page v. City of Fernandia Beach*, 714 So. 2d 1070 (Fla. 1998); *Davis v. Macedonia Hous. Auth.* 641 So. 2d 131 (Fla. 1994); *Spencer Estates of Fla., LLC v. Havill*, 125 So. 3d 795 (Fla. 2012); *Hect v. Dade County*, 234 So. 2d 709 (Fla. 1970); *Tilton v. Gardner*, 52 So. 3d 771 (Fla. 2010). This Court's decision impacts the administrative and judicial process of taxpayers and taxing officials challenging assessments.

18. As such, the Appellant suggests that the appropriate course of action for this Court would be to certify the decision as one passing on a question of great public importance.

WHEREFORE, the Appellate respectfully suggests that this Court certify its decision for review by the Florida Supreme Court.





## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to: Paul A. Donnelly, Esquire and Jung Yoon, Esquire, Donnelly & Gross, P.A., 2421 NW 41<sup>st</sup> Street, Suite A-1, Gainesville, Florida 32606, at [paul@donnellygross.com](mailto:paul@donnellygross.com), [jung@donnellygross.com](mailto:jung@donnellygross.com) and [elecdocs@donnellygross.com](mailto:elecdocs@donnellygross.com) on this 14<sup>th</sup> day of September, 2018.

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