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IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC2025-1588
L.T. CASE NO.: 1D24-0471 / DOR 2024-04-FOI

FLORIDA DEPARTMENT OF REVENUE,

Petitioner,

vs.

ADN GLOBAL, LLC,

Respondent.

RESPONDENT'S JURISDICTIONAL BRIEF

ON DISCRETIONARY REVIEW FROM THE
FIRST DISTRICT COURT OF APPEAL
CASE NO. 1D24-0471

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STATEMENT OF THE ISSUES[1]

Whether ADN is entitled to an evidentiary hearing to resolve disputed issues of material fact over whether it was provided with a point of entry to challenge the Department's notice of decision. The First District Court of Appeal held that ADN is entitled to an evidentiary hearing, reversed the Department's final order of dismissal, and remanded for an evidentiary hearing.

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1. Petitioner, Florida Department of Revenue, is referred to as "Department"; Respondent, ADN Global, LLC, is referred to as "ADN"; the Department's Appendix is cited as "App. Page #"; the Department's Jurisdictional Brief is cited as "JB Page #"; the First District Court of Appeal's Opinion below is referred to as the "Decision."

STATEMENT OF THE CASE AND FACTS

Statement of the Case

The Department's jurisdictional brief ignores critical differences between the Decision and *American Heritage*. The Decision revolves around a fact dispute: whether the Department provided ADN with a due process point of entry to challenge a notice of decision. And the Decision held that ADN is entitled to an evidentiary hearing to resolve this dispute. *American Heritage* in no way touches on this factual or legal scenario. The cases therefore do not meet the strict standard for express and direct conflict.

The Department does not account for these distinctions and instead attempts to create conflict based on principles not addressed in or relevant to the Decision. This Court should reject the Department's reliance on facts and law that go beyond the four corners of the Decision. So too, the Decision does not create uncertainty in state tax administration, but rather, reaffirms that taxpayers are entitled to due process.

Statement of the Facts

The Department allegedly prepared a notice of decision (NOD) on March 16, 2022. App. 5. ADN had thirty days from that date to

seek reconsideration of the NOD. App. 5-6; Fla. Admin. Code R. 12-6.003(4)(a)1. ADN, however, asserted that it did not receive the NOD until July 11, 2022, which was beyond the thirty days to seek reconsideration of the NOD. App. 6.

After being told by the Department that any request for reconsideration would be deemed untimely, ADN filed a petition for an evidentiary hearing with the Department. App. 6. In the petition, ADN alleged that the Department did not provide a point of entry to the administrative process and requested an evidentiary hearing to resolve the dispute. App. 6.

Nine months later, the Department entered a final order dismissing the petition with prejudice, concluding ADN waived its right to seek reconsideration of the NOD. App. 6. Thus, no evidentiary hearing has been held—no evidence or testimony presented—to resolve whether ADN had a point of entry to the administrative process. App. 6. ADN appealed the final order to the First District Court of Appeal. App. 6.

The First DCA, in a one page per curiam Decision, reversed the final order. In so doing, the court noted ADN's fact disputes relating to due process and held that ADN is entitled to an evidentiary hearing

to resolve whether it had a point of entry to seek reconsideration of the NOD. App. 6.

The Department thereafter filed a motion for post-disposition relief, which the First DCA denied. Notably, the Department's motion did not include a request for conflict certification. Yet the Department now asks this Court to exercise its discretionary jurisdiction on the basis that the Decision expressly and directly conflicts with *American Heritage* on the same question of law.

ARGUMENT

I. The Decision does not expressly and directly conflict with *American Heritage* on the same question of law.

A. The Decision and *American Heritage* involve materially different facts and points of law.

In *Askew*, this Court discussed the strict standard for express and direct conflict: a district court of appeal must either announce a rule of law that conflicts with another court or apply a rule of law "in a manner that results in a conflicting outcome despite 'substantially the same controlling facts.'" *Askew v. Fla. Dep't of Child. & Families,* 385 So. 3d 1034, 1037 (Fla. 2024) quoting *Kartsonis v. State*, 319 So.

3d 622, 623 (Fla. 2021). Conflict does not exist when, like here, cases have materially different facts and questions of law. *Id.*

As detailed in the Decision, ADN disputes the validity of the NOD because it did not receive the NOD until beyond the thirty-day deadline to seek reconsideration under Florida Administrative Code Rule 12-6.003(4)(a)1. App. 6. The deadline under rule 12-6.003(4)(a)1., is not jurisdictional and is subject to being waived by the Department. Fla. Admin. Code R. 12-6.003(4)(b).

The First DCA held that ADN is entitled to an evidentiary hearing to determine whether a point of entry was provided to seek reconsideration of the NOD. App. 6. The Decision therefore stands for the principle that an evidentiary hearing is required when a taxpayer disputes receiving a due process point of entry to seek reconsideration of a notice of decision.

Unlike ADN, the taxpayer in *American Heritage* undeniably had a point of entry to challenge the assessment notice. *Am. Heritage Window Fashions, LLC v. Dep't of Revenue*, 191 So. 3d 516, 517-18 (Fla. 2d DCA 2016). Yet the taxpayer failed to timely challenge the notice, and the assessment became final. *Id.* at 518. *American Heritage* is therefore substantially different from the Decision

because the taxpayer had a point of entry to the administrative process; the taxpayer did not timely challenge the notice; and the assessment became final triggering the jurisdictional deadline.

After the assessment became final, the taxpayer filed a refund whereby it sought to challenge the already final assessment. *Id.* at 518. The Second District Court of Appeal held that the taxpayer could not use the refund process to challenge a final assessment. *Id.* at 519-523. Notably, unlike the Decision, the Second DCA did not rule on legal issues relating to point of entry or reconsideration as such issues were irrelevant to the case.

Ultimately, the Decision and *American Heritage* do not conflict. The Decision involves facts and law relating to whether a taxpayer had a due process point of entry to seek reconsideration of a notice of decision; conversely, *American Heritage* involves facts and law relating to whether a taxpayer can use the refund process to challenge an already final assessment. Because express and direct conflict does not exist, this Court should decline jurisdiction.

B. The Department seeks to create conflict based on facts and law not addressed in or relevant to the Decision.

Conflict between decisions "must appear within the four corners of the majority decision." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986); *see also*, *Persaud v. State*, 838 So. 2d 529, 532-33 (Fla. 2003). Conflict cannot be based on apparencies or implications. *Askew*, 385 So. 3d at 1037; *Kartsonis*, 319 So. 3d at 623 (denying petition for review based on "apparent conflict."); *Dep't of Health & Rehab. Servs. v. Nat'l Adoption Counseling Serv., Inc.*, 498 So. 2d 888, 889 (Fla. 1986) (denying petition for review based on "inherent" conflict).

The Department's jurisdictional argument is based on perceived inferences outside the four corners of the Decision, violating this standard. JB 1-12. To that end, the Department argues the Decision conflicts with *American Heritage* because *American Heritage* mentioned that the deadline to challenge final tax assessments under section 72.011(2)(a) is jurisdictional, and jurisdictional deadlines cannot be waived. JB 1-12.

But the Decision does not disturb the jurisdictional nature of section 72.011(2)(a). Rather, the First DCA analyzed the non-jurisdictional deadline under rule 12-6.003(4)(a)1., and held that

ADN is entitled to an evidentiary hearing to resolve whether it had a point of entry to seek reconsideration under this rule. And the First DCA discussed waiver as it relates to whether ADN had waived its right to seek reconsideration—it did not announce a rule of law that jurisdictional deadlines can be waived.

The Department fails to explain how the Decision conflicts with *American Heritage* given that the First DCA never questioned the jurisdictional nature of section 72.011(2)(a). Nor does any explanation exist. The First DCA addressed disputes over whether a taxpayer had a due process right to seek reconsideration of a notice of decision, not whether a taxpayer can challenge a final assessment beyond the jurisdictional deadline where proper notice was given. The Department's effort to create conflict based on points not addressed in the Decision should be rejected.

The Department also references purported facts that do not appear in the Decision. For example, the Department raises claims regarding where the NOD was sent, and whether waiver was discussed in the final order or briefs. JB 2-4. The Decision, however, did not address where the NOD was sent or whether the Department complied with its notice obligations. And as to waiver, the Decision

explicitly states that the Department concluded "ADN waived its right to seek reconsideration." App. 6.

Those facts relied on by the Department, which do not appear in the Decision, should be ignored. *Reaves*, 485 So. 2d at 830 n. 3 ("The only facts relevant to our decision to accept or reject such [jurisdictional] petitions are those facts contained within the four corners of the decisions allegedly in conflict."); *Lynch v. State*, 2019 WL 3249799 (Fla. 2019) ("[C]ounsel should not base its jurisdictional argument on facts contained in the record but 'not appearing in the decision below.'") quoting *Reaves*, 485 So. 3d at 830 n. 3.

II. The Decision reaffirms that taxpayers are entitled to due process.

The Decision reaffirms well-established due process rights: an agency must grant affected parties a clear point of entry to the administrative process and demonstrate waiver when arguing a party forfeited its right to challenge agency action. *Henry v. State Dep't of Admin., Div. of Ret.*, 431 So. 2d 677, 680 (Fla. 1st DCA 1983).

So too, the Decision recognized that when a taxpayer alleges a violation of these rights, an evidentiary is required. *Mr. Comfort Furniture Corp. v. Dep't of Revenue*, 335 So. 3d 193, 194 (Fla. 1st DCA

2022) (reversing for evidentiary hearing when a taxpayer alleged the Department did not provide a point of entry to challenge an assessment notice). The Decision's holding is therefore consistent with due process and precedent.

Yet the Department contends the Decision in some way "creates seismic contradictions in the administration of state tax in Florida." JB 10. The Department—again without addressing the specific due process concerns at issue in the Decision—claims the Decision will make it virtually impossible to reject untimely petitions and lead to all unchallenged tax assessments being questioned. JB 10-12.

But the Department's speculative policy concerns have no support. Rather, the First DCA simply recognized that when a taxpayer disputes receiving a point of entry to seek reconsideration of a notice of decision, an evidentiary hearing is required before any determination on finality can be made. Ensuring compliance with due process does not contradict *American Heritage* or any other Florida law.

And although the First DCA's holding was limited to a non-jurisdictional deadline, even jurisdictional deadlines must yield to due process. *Millinger v. Broward Cnty. Mental Health Div. & Risk*

Mgmt., 672 So. 2d 24, 27 (Fla. 1996) (explaining a due process violation would occur if a final order was entered but not provided to the litigants, and the deadline to timely file an appeal passed). Regardless of the jurisdictional nature of a deadline, due process thus requires proper notice before an assessment can become final.

In the end, the Decision does not disrupt settled law and, as confirmed by the First DCA through its denial of the Department's post-disposition motion, is not exceptionally important. The Department's unfounded policy concerns and disagreement with the Decision do not establish this Court's conflict jurisdiction. *See*, *Kartsonis*, 319 So. 3d at 623; *Mancini v. State*, 312 So. 2d 732, 733 (Fla. 1975) (explaining that conflict jurisdiction cannot be based on mere disagreement with a decision).

CONCLUSION

The Decision does not conflict with any other court on the same question of law, but rather, is faithful to precedent and due process. Nor is this Court's conflict jurisdiction triggered by apparent conflict or unfounded policy concerns. This Court should therefore determine that it lacks jurisdiction to hear the case.

Respectfully submitted this 17th of November 2025,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November 2025, a true and correct copy of the foregoing Brief on Jurisdiction was served by e-mail to the Department's counsel of record, William Folsom, Esq., at william.folsom@myfloridalegal.com, and Jacek P. Stramski, Esq., at jacek.stramski@floridarevenue.com.

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CERTIFICATE OF COMPLIANCE

I CERTIFY that the foregoing Brief on Jurisdiction complies with the applicable font requirements of Florida Rule of Appellate Procedure 9.045 and complies with the applicable word count limit requirements of Florida Rule of Appellate Procedure 9.210(a)(2), containing 1,915 words.

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