

IN THE SUPREME COURT OF FLORIDA

CASE No.: SC2025-1588
L.T. CASE No.: 1D2024-0471

STATE OF FLORIDA, DEPARTMENT OF REVENUE,

PETITIONER,

v.

ADN GLOBAL, LLC,

RESPONDENT.

**DEPARTMENT OF REVENUE'S
AMENDED JURISDICTIONAL BRIEF**

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STATEMENT OF THE ISSUES

In 1984, the Florida Legislature made clear that the time for taxpayers to challenge a tax assessment is a jurisdictional requirement. See §§ 72.011(5), 120.80(14)(b)3.b., Fla. Stat. That means, in plain terms, that a party cannot waive that threshold.

The First District disagreed. In *ADN Global, LLC v. Department of Revenue*, the First District held that the Florida Department of Revenue cannot dismiss a tax assessment challenge as untimely unless the Department first “clearly establishe[s]” that the taxpayer “waived its right” to challenge the assessment. No. 1D2024-0471 (Fla. 1st DCA July 9, 2025), *rehearing denied*, September 9, 2025 (“Opinion”). App. 5-7. That holding is untenable and in conflict with other district courts that have followed this Court’s admonitions about jurisdictional requirements in statutes. See *Am. Heritage Window Fashions, LLC v. Dep’t of Rev.*, 191 So. 3d 516, 522 (Fla. 2d DCA 2016) (citing *May v. Ill. Nat’l Ins. Co.*, 771 So. 2d 1143, 1157 (Fla. 2000)). The issues are:

- 1.** Whether the timeliness of an assessment petition is a jurisdictional requirement under Section 72.011, Florida Statutes.

2. Whether waiver is relevant to a determination that an assessment petition must be dismissed as untimely.

STATEMENT OF THE CASE AND FACTS

This case started when Petitioner, the Department, audited Respondent, ADN Global, LLC (“ADN”), for sales and use tax compliance and assessed a deficiency. The Department issued a Notice of Decision (“NOD”) sustaining the assessment on March 16, 2022. App. 5.

Section 72.011(2)(a), Florida Statutes, provides in relevant part that “An [administrative or circuit court] action may not be brought to contest an assessment . . . more than 60 days after the date the assessment becomes final.” This requirement is jurisdictional. §§ 72.011(5) and 120.80(14)(b)3.b., Fla. Stat.

The 60-day period to challenge the assessment expired on May 16, 2022. ADN alleged that it received the NOD on July 11, 2022, beyond the 60 days to challenge it.¹ App. 6.

¹ *ADN Global, LLC v. Dep’t of Revenue*, Case No. 2024-014-FOI (DOR Jan. 31, 2024)
https://www.doah.state.fl.us/FLAID/Rev/2024/Rev_DOR%202024-014-FOI%20_02232024_102521.pdf.

ADN filed a petition challenging the assessment on April 28, 2023. ADN claimed the NOD was sent to the wrong address, that this is why it “never received the NOD,” and that it “cannot be held to account for the [Department’s] misstep.” According to the attachments to ADN’s Petition, the NOD was addressed to the address provided by ADN to the Department.

The Department dismissed the petition with prejudice, noting that it was “received beyond the statutory jurisdictional deadline,” that “missing the deadline bars the hearing of the matter,” and that this was true even if the jurisdictional time were “to run from the date of receipt,” i.e., July 11, 2022. Waiver was not addressed in the dismissal. *See supra* note 1.

ADN appealed the dismissal to the First District Court of Appeal. Neither party argued “waiver” in their briefs.

The First District denied ADN’s request for oral argument and reversed the dismissal. That court held that the Department “conclude[ed] that ADN waived its right” to a hearing, that “[w]aiver is not a concept favored in the law, and must be clearly established by the agency claiming the benefit . . . Based on this record, it cannot be said that the Department met its burden.” App. 6. The

opinion concludes that “an evidentiary hearing must be held to determine whether the NOD was indeed received.”² App. 6.

The Department filed a motion for rehearing, rehearing en banc, certification, or clarification, which was denied.

SUMMARY OF ARGUMENT

The First District’s decision expressly and directly conflicts with the decision of the Second District Court of Appeal in *American Heritage Window Fashions, LLC v. Department of Revenue*, 191 So. 3d 516 (Fla. 2d DCA 2016). That decision held that the time-bar to taxpayer contest proceedings in section 72.011(2)(a) is a “jurisdictional statute of nonclaim,” that it “automatically bars untimely claims and is not subject to waiver or extension,” and that it operates as a divestiture of jurisdiction to hear a claim. 191 So. 3d 521-22, citing *Markham v. Neptune Hollywood Beach Club*, 527 So. 2d 814, 816 (Fla. 1988); *May v. Ill. Nat’l Ins. Co.*, 771 So. 2d 1143, 1157 (Fla. 2000); and *Taylor v. City of Lake Worth*, 964 So. 2d 243, 244 (Fla. 4th DCA 2007).

² The dismissal accepted ADN’s allegation that the Notice of Decision was received July 11, 2022, nine months before ADN’s petition was filed.

This Court should exercise its discretionary jurisdiction over this case because it presents critical questions of tax administration. By creating a district split and imposing an evidentiary burden on the Department to show “waiver” before an untimely administrative challenge to an assessment can be dismissed, the opinion jeopardizes the finality of all state tax assessments that have not been challenged and creates significant uncertainty in state tax administration.

ARGUMENT FOR JURISDICTION

I. The First District’s opinion expressly and directly conflicts with the Second District’s holdings on waiver and timeliness in taxpayer proceedings.

This Court may review a district court decision that “expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.” Art. V, § 3(b)(3), Fla. Const. An express and direct conflict “requires either the announcement of a conflicting rule of law or the application of a rule of law in a manner that results in a conflicting outcome despite ‘substantially the same controlling facts.’” *Kartsonis v. State*, 319 So. 3d 622, 623 (Fla. 2021) (quoting *Nielsen v. City of Sarasota*, 117 So. 2d 731, 734 (Fla. 1960)).

That test is met here. The First District below announced a rule of law that is irreconcilable with those in the Second and of this Court. The Legislature has long provided that the time to challenge a tax assessment is jurisdictional. Ch. 84-170, § 1, Laws of Fla.; *Dep't of Revenue v. Rudd*, 545 So. 2d 369, 371 (Fla. 1st DCA 1989) (“the legislature amended . . . section 72.011 in 1984 and 1985 to make the time limit [in taxpayer proceedings] jurisdictional”). As this Court stated, “subject matter jurisdiction is universally acknowledged to never be waivable.” *Page v. Deutsche Bank Tr. Co. Ams.*, 308 So. 3d 953, 960 (Fla. 2020). Such requirements go to the courts’ very “power to adjudicate the case.” *Steel Co. v. Citizens for Better Env’t*, 523 U.S. 83, 89 (1998).

The relevant time limits for a taxpayer to challenge an assessment “are jurisdictional.” § 72.011(5), Fla. Stat. A challenge to an assessment—including an administrative challenge under chapter 120, Florida Statutes—can only be commenced within 60 days of the assessment’s finality. §§ 72.011(2)(a); 72.011(5); and 120.80(14)(b)3.b., Fla. Stat. The Legislature has directed the Department to define by rule when an assessment is final. § 72.011(2)(b)1., Fla. Stat. In the context of the Notice of Decision,

the assessment is final “as of the date of issuance on the [Notice].” Fla. Admin. Code R. 12-6.003(3)(b).

The Second District correctly interpreted the plain text of that statute. In *American Heritage Window Fashions, LLC v. Department of Revenue*, 191 So. 3d 516, 522 (Fla. 2d DCA 2016), the Second District considered the jurisdictional nature of the time to challenge an assessment. In that case, a taxpayer was assessed tax in 2010. The taxpayer did not challenge the assessment within the 60 days provided by statute. *Id.* at 517. After the Department levied assets of the taxpayer, the taxpayer demanded a refund of the monies seized. After the refund demand was denied, the taxpayer filed a chapter 120 petition to review the denial and claimed that the Department was “assessing tax on transactions in which no tax is due.” *Id.* at 518. The Second District held that the refund claim was an attempt to contest the tax assessment. *Id.* at 517.

The Second District considered the time limit to challenge a state tax assessment, and held that

the legislature has not merely specified a time limit within which actions brought to contest tax assessments must be brought; it has stated that the time limit is jurisdictional. § 72.011(5). This is the language of a jurisdictional statute of nonclaim. . . See *Markham v.*

Neptune Hollywood Beach Club, 527 So. 2d 814, 816 (Fla. 1988). . . Such a statute ‘automatically bars untimely claims and is not subject to waiver or extension,’ *May v. Ill. Nat’l Ins. Co.*, 771 So. 2d 1143, 1157 (Fla. 2000), and operates as a divestiture of jurisdiction to hear a claim, *Taylor v. City of Lake Worth*, 964 So. 2d 243, 244 (Fla. 4th DCA 2007). In section 72.011(2)(a), then, the legislature established an absolute rule that assessment contests must be brought within sixty days of finality.

Id. at 522.

The Second District and the Legislature could not have been clearer—the time limit to bring an administrative action to challenge an assessment is jurisdictional. Waiver is not relevant to the jurisdictional analysis. There is an “absolute rule” that “assessment contests must be brought within sixty days of finality.”

Id. This is precisely what the Legislature established in 1984.³

In stark contrast to the Second District, the First District bled requirements from general administrative law to the taxpayer

³ While certain constitutional limits might apply, the First District never addressed those. *See Dusenbery v. United States*, 534 U.S. 161, 162 (2002) (noting due process requires “that a State must attempt to provide actual notice, not that it must provide actual notice”) (emphasis in original) (citations omitted). The Legislature has directed that the Department “may send notices electronically, by postal mail, or both.” § 213.0537(1), Fla. Stat. “The legislature stopped short of requiring actual notice to all taxpayers.” *Chihocky v. Crapo*, 632 So. 2d 230, 233 (Fla. 1st DCA 1994) (addressing property tax).

context. The court below not only held that waiver is relevant to considerations of timeliness in taxpayer contest proceedings, it required the Department to “clearly demonstrate” a taxpayer did not “waive” a hearing before an untimely petition can be dismissed. App. at 6.

That turns the jurisdictional time limits on tax assessment contests upside down. While a late request for an administrative hearing before most agencies on most issues is not a jurisdictional defect, *see, e.g., Cann v. Dep’t of Child. & Fam. Servs.*, 813 So. 2d 237, 239 (Fla. 2d DCA 2002), that is not true for taxpayer assessment and refund suits. *Am. Heritage Window*, 191 So. 3d at 522. In this arena, the Legislature has made it clear that time limits “are jurisdictional.” *Id.* at 519; *see also* §§ 72.011(2), 72.011(5), 120.80(14)(b)3.b., Fla. Stat. The First District thus erred by applying notions of “waiver” and the standards governing challenges to agency action that are generally applicable in administrative proceedings. *See* App. at 6.

The First District’s demand that the Department “clearly establish[]” a taxpayer’s “waiver” before dismissing an untimely petition is irreconcilable with the Second District in *American*

Heritage Window. Those “conflicting rule[s] of law” suffice for this Court’s discretionary review. *Kartsonis*, 319 So. 3d at 623.

II. This Court should exercise its discretion to address the critical problems created by the First District’s opinion.

The First District’s erroneous opinion creates seismic contradictions in the administration of state tax in Florida. As the Legislature made clear, the time limits for tax assessment and refund suits “are jurisdictional.” § 72.011(5), Fla. Stat.

Far from being mundane, the First District’s decision makes it nearly impossible for the Department to ever reject untimely petitions. The requirement that the Department must affirmatively and “clearly” demonstrate “waiver” before an untimely petition may be dismissed for failure to satisfy the statutory jurisdictional requirements makes no sense. That completely rewrites the statutory requirements the Legislature wrote clearly and expressly. *See Dep’t of Revenue v. Miami Nat’l Bank*, 374 So. 2d 1, 3 (Fla. 1979) (courts may not “vary the clear legislative intent expressed in these provisions”). That is why other jurisdictions, like Florida, reject such a requirement. *See, e.g., Castellano v. Kosydar*, 326 N.E. 2d 686, 689 (Ohio 1975) (a “requirement of actual notice would

permit a taxpayer to evade service and not be liable upon the assessment until such time as the Tax Commissioner could show the requisite notice and passage of the 30-day period. In that situation, the ability of the commissioner to prove actual receipt on a particular day would be elusive at best.”). Indeed, if the Department could not consider this petition untimely—one that was filed more than 60 after a notice was received, let alone when the Department issued the that notice—then it is hard to conceive any untimely petition would not clear the timeliness threshold.

The First District opinion’s waiver analysis also threatens chaos in tax administration more generally. It conflicts with established law throughout the State and the Second District. Those conflicting rules of law subject taxpayers to differing standards of timeliness depending on where in the State they commence tax contest proceedings, and whether these are commenced in court or in an administrative forum. From this day forward, untimely petitions will find only one home: in the First District. That type of forum shopping is precisely the kind of situation that conflict jurisdiction was meant to address. See *Sroczyk v. Fritz*, 220 So. 2d 908, 911 (Fla. 1969).

Consider too how the First District’s opinion calls into question the finality of nearly all outstanding and unchallenged tax assessments. Principles of “stability and finality” are two of the “most important to the proper administration of justice in the courts.” *See Budd v. Tison*, 47 So. 2d 12, 12 (Fla. 1950) (discussing “decrees and the eventual termination of litigation”). Unless the Department can meet the First District’s new evidentiary burden of showing waiver, those assessments are now in open season. The opinion below should be reviewed and corrected to hold that any review of the timeliness of an action commencing a tax contest proceeding must be analyzed through a strict jurisdictional framework, not a waiver framework, as the Legislature intended.

CONCLUSION

The Florida Department of Revenue respectfully requests that this Court exercise its jurisdiction to review the First District Court of Appeal’s decision in *ADN Global, LLC, v. Department of Revenue*, and to resolve the conflict in Florida law created by that decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this October 28, 2025, a true and correct copy of the foregoing has been furnished by e-mail through the Florida Courts E-Filing Portal to all parties registered for service in this matter and emailed to:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the requirements of Florida Rules of Appellate Procedure 9.045(e), 9.210(a)(2)(A) and 9.210(f). This brief uses Bookman Old Style 14-point font and is within the word count limit requirements, containing approximately 2,498 words.

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