

CHAPTER 98-426

Senate Bill No. 18

An act relating to the Department of Revenue; providing for the relief of Ray Construction of Okaloosa County, Ltd.; providing an appropriation to compensate Ray Construction of Okaloosa County, Ltd., for documentary stamp tax assessments paid to the Department of Revenue and for attorney's fees and court costs; providing an effective date.

WHEREAS, on December 6, 1994, the Circuit Court of the First Judicial Circuit in and for Okaloosa County entered a final judgment (Case No. 94-501-CA) pursuant to a complaint by Ray Construction of Okaloosa County, Ltd., which sought a declaratory judgment against the State of Florida, Department of Revenue, relative to the legality of four contested documentary stamp tax assessments made by the Department of Revenue against Ray Construction, and relative to a refund sought by Ray Construction against the Department of Revenue for a tax warrant issued pursuant to an assessment which Ray Construction contended was illegal and improper, and

WHEREAS, Ray Construction also sought a declaratory judgment to determine its documentary stamp tax liability with respect to other land transactions similar to those giving rise to the contested assessments but not yet subjected to audit and tax assessments by the department, and

WHEREAS, the Circuit Court ruled in favor of Ray Construction and against the Department of Revenue, finding that Ray Construction did not owe the department for the four contested documentary stamp tax assessments or the contested tax warrant, and that numerous other similar land transactions by Ray Construction were not subject to audit and tax assessments by the department, and

WHEREAS, the Department of Revenue appealed the Circuit Court's decision in this matter (Case No. 95-228), and

WHEREAS, in its opinion filed January 30, 1996, the First District Court of Appeal found that the Department of Revenue's notice of the contested assessments to Ray Construction was sufficient and disagreed with Ray Construction's assertion that the Department of Revenue's failure to adopt a rule setting out specific procedure for delivery of notice of proposed tax assessment voids such notices, and

WHEREAS, the First District Court of Appeal found that, because Ray Construction's challenge to the four disputed assessments was untimely, the Circuit Court lacked subject-matter jurisdiction to entertain a challenge to the assessments and subsequently reversed that portion of the trial court's final judgment, and

WHEREAS, the First District Court of Appeal upheld that portion of the final judgment awarding a declaratory judgment in favor of Ray Construction in which the court declared that the Department of Revenue had no

right to impose an assessment of additional documentary stamp taxes with respect to similar land conveyances not yet subjected to audit and assessment by the Department of Revenue, and

WHEREAS, given the First District Court of Appeal's affirmative ruling on that portion of the trial court's final judgment, Ray Construction would have prevailed with regard to a challenge to the four contested assessments if its challenge had been timely filed, and

WHEREAS, Ray Construction of Okaloosa County, Ltd., seeks to recover \$2,479.96 for four documentary stamp tax assessments paid to the Department of Revenue and \$15,750.50 in attorney's fees and court costs, and

WHEREAS, the total amount of the claim against the Department of Revenue is \$18,230.46, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Executive Office of the Governor is directed to transfer existing spending authority or establish spending authority from the General Revenue Fund in the State Treasury in the amount of \$18,230.46 to a new category titled "Relief - Ray Construction of Okaloosa County, Ltd." as relief for damages sustained.

Section 3. The Comptroller is directed to draw his warrant in favor of Ray Construction of Okaloosa County, Ltd., in the sum of \$18,230.46 upon funds in the State Treasury and the State Treasurer is directed to pay the same out of such funds in the State Treasury.

Section 4. No additional attorney fees shall be payable pursuant to section 57.111, Florida Statutes.

Section 5. This act shall take effect July 1, 1998.

Became a law without the Governor's approval April 10, 1998.

Filed in Office Secretary of State April 9, 1998.