

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

BARNETT BANKS, INC.,

Appellant,

v.

DEPARTMENT OF REVENUE, an  
agency of the State of  
Florida,

Appellee,  
\_\_\_\_\_ /

NOT FINAL UNTIL TIME EXPIRES TO FILE  
MOTION FOR REHEARING AND DISPOSITION  
THEREOF IF FILED

CASE NO. 98-4104

DOAH Case Nos. 98-0040

98-0212

Opinion filed August 10, 1999.

An appeal from an order of the Department of Revenue.

David M. Wells, J. Riley Williams, and William W. Deem of  
McGuire, Woods, Battle & Boothe, L.L.P., Jacksonville, for  
appellant.

Robert A. Butterworth, Attorney General, and Jeffrey M. Dikman,  
Assistant Attorney General, Tallahassee, for appellee.

PER CURIAM.

This case involves a dispute over whether the Florida  
Department of Revenue ("Department") had the statutory authority  
to assess interest on additional state corporate income tax paid  
by appellant as a result of audit adjustments made in the amount  
of federal taxable income reported on its corporate income tax  
returns for the tax years 1986 through 1991. We conclude that  
the Department did not have the authority to assess interest  
under the circumstances of this case and reverse.

Appellant and a corporation known as First Florida Banks,  
Inc., which was later acquired by appellant through a corporate

In this case, appellant timely notified the Department of  
the federal audit adjustments in its reported taxable income for  
the tax years in question and remitted with its adjustment  
notifications all additional state corporate income tax due as a  
result of the adjustments. The Department did not assess any  
penalties against appellant in connection with the payment of the

additional tax, but did assess interest on the additional tax calculated from the due date of the original returns for each of the tax years in question. Appellant paid the interest under protest and initiated these administrative proceedings to obtain a refund of the interest.

The provision in the FITC governing the accrual of interest on state corporate income tax deficiencies states in pertinent part as follows:

If any amount of tax imposed by this chapter is not paid on or before the date, determined without regard to any extensions, prescribed for payment of such tax, interest shall be paid from such date to the date of payment.

See § 220.809, Fla. Stat. (1997) (emphasis added). There is only one provision in the FITC which prescribes the date for payment of taxes due and it reads in pertinent part as follows:

Every taxpayer required to file a return under this code or a notification under S. 220.23(2) shall, without assessment, notice, or demand, pay any tax due thereon to the department at the place fixed for filing...on or before the date fixed for filing such return, determined without regard to any extension of time for filing the return, or notification, pursuant to regulations prescribed by the department.

See § 220.31(1), Fla. Stat. (1997) (emphasis added). These statutes clearly and unambiguously designate the date prescribed for payment of a tax for purposes of assessing interest as either (1) the date fixed for filing the return, or (2) the date fixed for filing a federal taxable income adjustment notification under section 220.23(2), Florida Statutes.

"In statutory construction, case law clearly requires that legislative intent be determined primarily from the language of the statute." S.R.G. Corp. v. Department of Revenue, 365 So. 2d 687, 689 (Fla. 1978). "Where, as in this case, the legislative intent as evidenced by a statute is plain meaning of its terms. Department of Revenue v. American Tel. & Tel. Co., 431 So. 2d 1025, 1028 (Fla. 1st DCA 1983) (internal citations omitted).

The Department's interpretation of these statutes to support the assessment of interest in this case also impermissibly relies on a reading of the statutes in pari materia with section 220.13(2), Florida Statutes, which merely defines taxable income for purposes of the FITC. Sections 220.809 and 220.31(1), Florida Statutes, specifically cover the question at issue in this case. While section 220.13(2), Florida Statutes, could arguably be read to have some bearing on when a tax is due for

purposes of assessing interest absent a more specific statement to the contrary in the FITC, it is a basic tenet of statutory construction that "a specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms." McKendry v. State, 641 So. 2d 45, 46 (Fla. 1994); Hudson v. State, 711 So. 2d 244, 247 (Fla. 1st DCA 1998).

Because we conclude that the Department's assessment of interest in this case was based upon an erroneous interpretation of the applicable provisions of the FITC, we reverse the order denying appellant a refund of the interest it paid under protest and remand with directions that the Department issue a refund of that interest to appellant.

BOOTH and BENTON, JJ., and SMITH, LARRY G., Senior Judge, concur.