

9-18-03

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

DEPARTMENT OF REVENUE,

Petitioner,

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

v.

CASE NO. 1D03-3933

SHERATON BAL HARBOUR
ASSOCIATION, LTD.,

03-2441RX

Respondent.

CA-C used

03 DEC 19 AM 11:45
FILED
DISTRICT COURT OF APPEALS
FIRST DISTRICT
TALLAHASSEE, FLORIDA

Opinion filed December 18, 2003.

Petition for Writ of Prohibition -- Original Jurisdiction.

Charlie Crist, Attorney General, and Martha F. Barrera, Assistant Attorney General,
Tallahassee, for petitioner.

Rex D. Ware and Elizabeth C. Daley of Steel, Hector & Davis, LLP, Tallahassee, for
respondent.

PER CURIAM.

The Department of Revenue seeks a writ of prohibition to prevent the Division
of Administrative Hearings ("DOAH") from proceeding with Sheraton's rule

challenge to a repealed rule. The Department contends that section 120.56, Florida Statutes does not authorize a rule challenge to a rule that is no longer in existence, and therefore, DOAH is acting in excess of its jurisdiction. We agree and grant the petition. Because the court is confident that DOAH will promptly comply with this opinion, the court withholds formal issuance of the writ.

BARFIELD, ALLEN and DAVIS, JJ., concur.