

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

BECKMAN COULTER, INC.,

Appellant,

v.

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

CASE NO. 1D06-0402

JAMES R. MITCHELL, TRUSTEE
OF THE CARDBECK MIAMI
TRUST and DEPARTMENT OF
REVENUE,

Appellees.

Opinion filed December 29, 2006.

An appeal from the Division of Administrative Hearings.
Claude B. Arrington, Administrative Law Judge.

Steven L. Brannock and Maegen P. Luka of Holland & Knight LLP, Tampa, and
Jerome W. Hoffman and Mark E. Holcomb of Holland & Knight LLP, Tallahassee,
for Appellant.

Charlie Crist, Attorney General, and J. Clifton Cox, Assistant Attorney General,
Revenue Litigation Section, Tallahassee, for Appellees.

PER CURIAM.

AFFIRMED. See Dillard & Assocs. Consulting Eng'rs v. Fla. Dep't of Env'tl.
Prot., 893 So. 2d 702 (Fla. 1st DCA 2005).

HAWKES and THOMAS, JJ., CONCUR; WOLF, J., CONCURS WITH OPINION.

WOLF, J., Concurring.

The Administrative Law Judge (ALJ) was mistaken in stating that the challenge to the original tax assessment was not raised by the original petition. This issue, however, is irrelevant as to appellant's right to intervene in light of this court's ruling in Dillard & Associates Consulting Engineers v. Florida Department of Environmental Protection, 893 So. 2d 702 (Fla. 1st DCA 2005).

Appellant will have an opportunity to raise the issue of its responsibility for the tax under the indemnity agreement in circuit court. If the Department of Revenue decided to directly assess appellant for the tax pursuant to chapter 212, Florida Statutes, appellant will be a party to that proceeding. Thus, our decision in Dillard is controlling, and we must affirm. If Dillard was not binding precedent, I would reverse the decision of the ALJ and hold that appellant's substantial interests are affected by this proceeding.