



TAXATION AND BUDGET REFORM COMMISSION

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Staff Analysis and Economic Impact Statement

Measure: CP 33

REFERENCE:

ACTION:

Sponsor: Commissioner Lacasa

1. GPSC

Pre-meeting

2. FTC

Subject: Property Tax Exemption for
Municipal Property used for
Governmental Purposes

3.

Date: February 5, 2008

I. Summary:

This measure will make property owned by a municipality and leased to a for-profit entity exempt from taxation. The measure also permits the Legislature to exempt from ad valorem taxation all other property owned by a municipality or special district.

II. Present Situation:

Taxation of Municipal Property Leased to Private Parties

Article VII, section 4, Florida Constitution states, "[b]y general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation."

Property subject to taxation includes municipal property under certain circumstances.

Article VII, section 3(a), Florida Constitution states:

All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

The Florida Supreme Court held that "article VII, s. 3(a) does not permit municipal property leased to private entities for governmental-proprietary activities to be tax exempt; rather, article VII, section 4, requires property so used to be subject to ad valorem tax."¹ "Proprietary functions promote the comfort, convenience, safety and happiness of citizens, whereas government functions concern the administration of some phase of government."²

¹ *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001).

² *Id.* at note 2.

Sebring Airport Authority v. McIntyre

The issue of whether municipal property leased by a for-profit private entity is subject to ad valorem taxation was addressed by the Florida Supreme Court in *Sebring Airport Authority v. McIntyre*. In that case, a private, for-profit operator of a racetrack owned by a municipality sought an exemption from ad valorem taxation. The racetrack operator claimed that the racetrack served a “public purpose” as described in Article VII, section 3(a), Florida Constitution.

Based on the Supreme Court opinion, it appears that the racetrack operator asserted the following arguments in support of the claim for an exemption:

- The Legislature statutorily determined that sports facilities served a governmental, municipal, or public purpose or function; and
- The racetrack, consistent with the requirements to issue tax exempt bonds, promotes gainful employment, outside business interests and tourism, and a forum for educational, recreational, and entertainment purposes.

The county appears to have argued that:

- The drafters of the 1968 Constitution intended to restrict the availability of a tax exemption on municipal property which was available under the Constitution of 1885;
- There is no reason why property leased from a municipality by a private for-profit entity should be exempt from ad valorem taxation and a similar property not owned by a municipality be taxable;
- The holder of a lease of municipal property requires no less governmental services than the owner of similar real property;
- Legal precedent on point stated that an “exemption from ad valorem real estate taxation where none exists . . . would undoubtedly be discriminatory and violative of the equal protection provisions of the Florida and United States Constitutions;”³ and
- A newly created tax exemption will shift the burden of funding government to other taxpayers.

Prior Proposed Constitutional Amendments Relating to Leaseholds of Municipal Property

Revision 10 of the 1997-1998 Constitution Revision Commission contained the substance of CP 33 and several other provisions. The measure was defeated by a vote of 1,766,490 against to 1,754,747 votes in favor.

III. Effect of Proposed Changes:

³ *Id.* (quoting *Williams v. Jones*, 326 So. 2d 425, 432 (Fla. 1975)).

This measure will make property owned by a municipality and leased to a for-profit entity exempt from taxation. The measure also permits the Legislature to exempt from ad valorem taxation all other property owned by a municipality or special district.

If approved by the voters, this measure will take effect January 6, 2009, by operation of Article XI, subsection 5(e), Florida Constitution.

IV. Constitutional Issues:

The Florida Supreme Court in *Williams v. Jones*, 326 So. 2d 425, 432 (Fla. 1975) at least suggests that the type of property tax exemption authorized by this measure may violate the Equal Protection Clause of the U.S. Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The property tax exemption created by this measure will reduce ad valorem revenues unless millage rates are increased on non-exempt properties.

B. Private Sector Impact:

Private businesses may have lower costs when leasing property from a municipality. Such businesses may have a competitive advantage over businesses that must pay ad valorem taxes. Counties may increase millage rates on non-exempt properties to offset revenue losses caused by this measure.

C. Government Sector Impact:

Local governments may have an incentive to become landlords by being able to offer tax exempt properties to tenants. Local governments acting as landlords may have a competitive advantage over landlords whose properties are subject to ad valorem taxation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.