IN THE SUPREME COURT OF FLORIDA

CAPITAL CITY COUNTRY CLUB, INC., a corporation not for profit,

Petitioner,

vs. CASE NO. 78,201

KATIE TUCKER, Executive Director of the Florida Department of Revenue, DICK BRAND, as Property Appraiser of Leon County, Florida, and JOHN CHAFIN, as Tax Collector of Leon County, Florida,

Respondents.

_____/

RESPONDENT, EXECUTIVE DIFWCTOR, FLORIDA DEPARTMENT OF REVENUE'S ANSWER BRIEF

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JOSEPH C. MELLICHAMP, III
SENIOR ASSISTANT ATTORNEY GENERAL
FLA. BAR NO. 133249

Department of Legal Affairs
The Capitol - Tax Section
Tallahassee, FL 32399-1050
(904) 487-2142

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PRELIMINARY STATEMENT

The Executive Director of the Department of Revenue will be referred to as the "Department". The Honorable C. C. "Dick" Brand, Leon County Property Appraiser will be referred to as the "Appraiser". The Taxpayer, Capital City Country Club, Inc., will be referred to herein as the "Club". The Property Appraisers' Association of Florida and the Honorable Robert Burgess, as President of the Property Appraisers' Association of Florida, and the Property Appraiser of Santa Rosa County as Amicus will be referred to as the "Appraisers' Association", and any other parties will be referred to by name.

References to the Record of Appeal shall be designated by "R-" followed by the appropriate page number.

STATEMENT OF THE FACTS AND OF THE CASE

This case arose in Second Judicial Circuit Court in and for Leon County (herein after referred to as the "trial court") upon suit being filed by the Club against the Appraiser, the Department and the Tax Collector. The complaint challenged the assessment of ad valorem real property taxes for tax year 1988. The taxes in the amount of $11,079.93, have been paid under protest by the Club. The relief sought was declaratory in nature pursuant to Ch. 86, Fla. Stat. **(R-1-27).**

The Club also filed a separate complaint challenging the assessment for tax year 1989. Both cases were subsequently consolidated. **(R-48-49;** 205-240).

This case was decided on cross motion for summary judgment filed by the parties with the trial court finding that the property was not entitled to an exemption from the ad valorem real property tax assessed by the Appraiser. **(R-193).** Thereafter the Club filed a motion for entry of final judgment and a notice of voluntary dismissal of Count II, both which was granted by the trial court. (R-194-200; 201-202).

The real property which the trial court found to be taxable consist of 192 acres comprising a golf course. The golf course is operated and maintained by the Club as a private golf course, pursuant to a 99-year lease with the City of Tallahassee. This property was assessed by the Appraiser based on its fee simple value as unencumbered land. The Appraiser did not appraise or assess the leasehold interest of the Club.

On appeal, the First District Court of Appeal upheld the trial court's judgment but on motion for rehearing certified to this Court the following question as a question of great importance:

> IF IT IS CONSTITUTIONALLY PERMISSIBLE TO EXEMPT A NONGOVERNMENT LEASEHOLD (BEING USED FOR OTHER THAN TAXABLE PURPOSES) FROM AD VALOREM TAXATION (BY RECLASSIFYING IT AS AN INTANGIBLE), WHICH AD VALOREM TAX TREATMENT IS CONSTITUTIONALLY CORRECT WITH REGARD TO THE GOVERNMENTAL LEASED FEE: TO TAX THE MUNICIPAL UNENCUMBERED FEE INTEREST, OR TO TAX THIS PROPERTY AS A DIVIDED INTEREST, EXCLUDING THE LESSEE'S INTEREST?

Capital City Country Club v. Tucker, 580 So.2d 789, 790 (Fla. 1st DCA 1991).

SUMMARY OF ARGUMENT

Because the Appraiser filed with the District Court an incorrectly worded question, containing a draftsmanship error, the question as certified by the District Court is canfusing as drafted. The proper question is:

> WHERE REAL PROPERTY IS OWNED BY A GOVERNMENTAL UNIT AND LEASED BY IT TO A PRIVATE COMMERCIAL ENTITY WHICH USES SAID REAL PROPERTY FOR PRIVATE NONGOVERNMENTAL PURPOSES, DOES FLORIDA LAW PERMIT A PROPERTY APPRAISER TO EITHER REDUCE THE VALUE OF THE REAL PROPERTY BY VIRTUE OF THE EXISTENCE OF SAID LEASE, OR TO DIVIDE THE VALUE OF THE REAL PROPERTY BETWEEN THE GOVERNMENTAL LESSOR AND THE NONGOVERNMENTAL LESSEE?

The answer to this question is no. There can be little doubt but that the certified question attempts to suggest that dire constitutional implications surround the issue. However, there are no such constitutional implications that necessarily arise or are implicit in the decision of the trial court that the real property is taxable as real property and that the assessment of said real property by the Appraiser was proper.

The Appraiser assessed the property itself, he made no attempt to assess a leasehold interest in the property. The leasehold interest is a separate and distinct form af property taxed as an intangible by the State pursuant to Ch. 199, Fla. Stat. Under Florida law, property appraisers are required to assess real property as defined in §192.001(12), Fla. Stat. That is exactly what the Appraiser did. He assessed the real property <u>without</u> taking inta consideration any leasehold interest, mortgage, hunting leases or licenses, or any other liens which

might appear of record against the property. Under Florida law, that is precisely what a property appraiser is required to do. See, Schultz v. TM Florida-Ohio Realty Ltd., 577 So.2d 573 (Fla. 1991).

It is without question that except in the case of subsurface rights under 5193.481, Fla. Stat., a property appraiser has no authority to consider the existence or nonexistence of a lease in the subject property in arriving at the value of real property. Land and any improvements thereon have a value separate and apart from any value which may or may not exist in any leasehold rights held by a lessee which may or may not have value. The contention made by the Club that the value of the real property, that is the thing itself, is divided between a lessor and a lessee when a lease exists in the real property has no basis in law. It is from this contention the Club then argues that what had previously been real property has somehow now been converted to intangible personal property so as to be subject only to intangible tax. Such a contention by the Club is without basis, the value of the real property has nothing to do with value of the leasehold.

The history of the statutes and case law demonstrates that at one time a leasehold interest in real property was not subjected to any form of taxation whatsoever. It was not taxed as real property, personal property, or intangible personal property. See, Park-N-Shop, Inc. v. Sparkman, 99 So.2d 571 (Fla. 1958). Through various statutory changes beginning in the early

1960's, the Legislature dealt with situations where governmentally-owned property was rented or used by private entities and commercial undertakings. Then in 1971, through the enactment of Ch. 71-133, Laws of Fla., began to tax the leasehold interest in real property as a specie of real property, focusing directly on those leaseholds which existed in Florida which had an original duration of 99 years or more. This election by the Legislature was no accident, since all of the leases on Santa Rosa Island, as well as others, no doubt were known to be of a 99-year duration. In such leases, the Legislature commanded that the property would be taxed as if owned by the lessee, and this was held to be a standard of valuation in the case of Williams v. Jones, 326 So.2d 425 (Fla. 1975).

In 1980, the Legislature enacted Ch. 80-368, Laws of Fla., which again changed the taxation af certain leaseholds and declared that these leaseholds would be assessed as intangibles instead of real property. Miller v. Higgs, 468 So.2d 371 (Fla. 1st DCA 1985), rev. den., 479 So.2d 117 (Fla. 1985). However, the 1980 law change did not affect or change a property appraiser's duties with regard to assessing real property which might be subject to lease and did not affect the taxable status of the property itself.

It should be remembered that prior to 1958, there was no statute in Florida which taxed a leasehold interest in real property. It was not taxed as personal property, real property, or intangible personal property. If the Legislature today chose

to amend Ch. 199, Fla. Stat., and not tax any leasehold interest, the value of real property in which such leaseholds existed would not be changed. Thus, if the Legislature amended §199.023(1)(c) and (d), Fla. Stat., and deleted both (c) and (d), both of which pertain to leaseholds, such leaseholds would no longer be taxed at all. Thus land leases and condominium and apartment leases of recreational facilities and leases of other commonly used facilities, would no longer be subject to intangible tax. The same is true of leasehold and other possessory interest of property owned by a governmental unit. If this were to occur the value of the condominium or cooperative apartment would remain unchanged and the same is true for the property of a governmental unit.

The constitutional issues which are proposed by the Club only arise if the Club's original premise is correct. Since that premise is obviously incorrect, the constitutional issues which the Club refers to simply do not exist.

The proper method of valuing real property owned by a governmental entity but used by a private entity for commercial profit-making purposes would be any method permitted by §193.011, Fla. Stat., so as to arrive at a just value of said property. When real property ceases to be used for appropriate governmental, municipal, or public purposes as provided for in §196.199(1), Fla. Stat., such property becomes taxable just the same as real property in private ownership used identically. See, Lykes Brothers, Inc. v. City of Plant City, 354 So.2d 878 (Fla. 1978).

ARGUMENT

POINT I

WHERE REAL PROPERTY IS OWNED BY A GOVERNMENTAL UNIT AND LEASED BY IT TO A PRIVATE COMMERCIAL ENTITY WHICH USES SAID REAL PROPERTY FOR PRIVATE NONGOVERNMENTAL PURPOSES, FLORIDA LAW DOES NOT PERMIT A PROPERTY APPRAISER TO EITHER REDUCE THE VALUE OF THE REAL PROPERTY BY VIRTUE OF THE EXISTENCE OF SAID LEASE, OR TO DIVIDE THE VALUE OF THE REAL PROPERTY BETWEEN THE GOVERNMENTAL LESSOR AND THE NONGOVERNMENTAL LESSEE?

The basic premise underlying the Club's argument is that in the situation where a governmental unit owns real property and leases it to a private commercial entity, which uses it for private nongovernmental purposes, the property appraiser has a duty to reduce the value of the real property by some amount which is determined to be the value of the leasehold interest of the lessee in such real property. This contention by the Club that a property appraiser is required by law to take the total value of the real property and divide such value between the lessor and the lessee is incorrect under Florida law.

First it must be remembered that property appraisers are required by law to perform two essential functions: (1)appraise real and personal property, and (2)administer exemptions. Property appraisers have neither the duty nor the authority to appraise nor assess intangible rights in real property.

A lease is a document which gives to the lessee certain rights secured by the lease in and to the real praperty. This is not the same as the property itself. Intangibles consist of

money, including certificates of deposit, cashier and certified checks, bills of exchange, drafts, the cash equivalent of annuities and life insurance policies, stocks, accounts receivables, unsecured promissory notes, promissory notes secured by real property such as mortgages, bonds and other obligations for the payment of money, condominium and cooperative apartment leases of recreational facilities, land leases, and lease of other commonly used facilities, and leasehold or other possessory interests in real property owned by governmental entities. See, 8199.023, Fla. Stat.

Generally, "intangible personal property" means all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents. §§199.023(1) and 192.001(11)(b), Fla. Stat. A leasehold interest in real property easily fits within this definition. It should be noted that not only leasehold or possessory interests in governmentally-owned property, but also land leases, condominium and cooperative apartment lease of recreational facilities, and leases of other commonly used facilities are also classified as intangible personal property. §199.023(1)(c), Fla. Stat. Thus, those things within the definition of intangible personal property to be taxed accordingly, are the rights secured by such documents, not the thing itself. For instance, stocks held by individuals could represent ownership interest in incorporated or unincorporated companies but this certainly would not mean that the cash and other securities held by such corporate companies

would not also be taxable, and no double taxation would exist in such case. Similarly, the fact that a promissory note may be secured by a mortgage representing a secured interest in real property would not mean that the real property itself would not also be taxable or that the real property itself should have a value reduced by any outstanding indebtedness for which it stood as security. See, Lamar v. Palmer, 18 Fla. 147 (1881). The Club's premise is false. The value of the intangible lease has nothing to do with the value of the real property for ad valorem tax purposes.

The following examples should demonstrate this clearly. Assume the existence of a five-acre parcel of property with land worth $10,000.00 and a home on it worth 90,000.00, for a total value of the parcel of $100,000.00. Assume, however, that a third party, John Doe, held a promissory note and mortgage in this property executed by the owner and secured by the property in the amount of $125,000.00. The pramissory note would be an intangible which would be subject to intangible tax based on the face value of the note of $125,000.00, even though the value of the property securing the note is only $100,000.00. The nonrecurring tax imposed under §199.133, Fla. Stat., of two mills would be imposed on the just valuation of the note, and the valuation of same would be the face amount of the note as set forth in §199.155, Fla. Stat. Intangible tax would be due an a value of $125,000.00, even though the value of the real property was only $100,000.00. Applying this fact situation to the Club's

theory, the real property value, for ad valorem tax purpose, would necessarily have a negative value of $25,000.00.

In the case of a lease, a lessee's interest in a lease may or may not have value, depending on whether or not the contract sent is greater or less than the market or economic rent. To illustrate, if a Tallahassee businessman had entered into a 20-year lease for office space at a fixed rental of $5.00 per square foot, but now the office space was now worth $20.00 per square foot, and assuming further that only 10 years of the 20-year period had expired, this businessman could sublease that office space to another tenant for $20.00 per square foot and realize as a profit the difference between the $5.00 per square foot which he was obligated to pay to the lessor/landlord, and the $20.00 per square foot which he would be realizing from the lessee. In that situation, the contract rent would be less than the true market or economic rent for office space in downtown Tallahassee and thus, the lessee would have a valuable intangible interest in that part of the building which he had leased.

However, this value of the lessee's interest has nothing to do with value of the building itself and the land on which it was located. In fact, this Court recently considered a situation very similar to the example in the case of Valencia Center, Inc. v. Bystrom, 543 So.2d 214 (Fla. 1989). In Valencia Center the landlord had entered into a fixed rental lease which became sub-market over a period of some 20 years and since the lease did not provide that the ad valorem taxes would be passed on to the

lessee, the lessor had to pay the taxes, thus further reducing his income from the lease. This Court, citing Department of Revenue v. Morganwoods Greentree, Inc., 341 So.2d 756 (Fla. 1977), held that a statute which purported to classify such leases and treat them differently for ad valorem property valuation purposes, was unconstitutional. Most recently this Court in overturning and reversing the decision of the Second District Court of Appeal in Schultz v. TM Florida-Ohio Realty, Ltd., supra, held that the property appraiser's duty was to assess the unencumbered fee of the property without regard to the existence or nonexistence of leases thereon.

Thus, the basic premise of the Club is inconsistent with Valencia, Morganwoods, and Schultz. The Club's premise attempts to divide the valuation of a parcel of real praperty between a landlord and tenant by virtue of a lease and then to require that part of the value of the real property not allocated to the lessor, be considered an intangible, and allocated to the lessee. No statutory authorization exists that allows the property appraiser to allocate the value of a parcel of real property between a lessor and a lessee.

It is well settled in Florida law that in appraising a parcel of real property, the property appraiser is required by law to appraise the thing itself without regard to the existence or nonexistence of leases, easements, mortgages, or any other encumbrances on ok to said real property. See, Wolfson v. Heins, 149 Fla. 499, 6 So.2d 858 (1942); Dickinson v. Davis, 224 So.2d

262 (Fla. 1969); Homer v. Dadeland Shopping Center, Inc., 229 So.2d 834 (Fla. 1970); and Valls v. Arnold Industries, Inc., 328 So.2d 471 (Fla. 2nd DCA 1976). The premises of these cases were reaffirmed in the case of Day v. High Point Condominium Resorts, Ltd., 521 So.2d 1064 (Fla. 1988), wherein this Court reversed the Fifth District Court of Appeal pointing out that no authority existed in Florida law to divide, separate, or "break-out" the interest of each undivided time-share owner in a single condominium apartment. Id. at 1066.

In that case, condominiums had been converted to time-share and a week's worth of occupancy was sold to various individuals who each received an undivided 1/51st interest in the property. The time-share holders and the time-share developments contended that each time-share week holder should be entitled to receive a separate bill for his divided 1/51st interest in the single parcel and that failure to so provide constitute a violation of due process and equal protection. This Court rejected this argument recognizing that in Florida, it is the parcel of property which is assessed not the various individual ownership interest in same. Id.

The argument of the Club is based upon the basic erroneous premise that the value of the total fee property must be somehow divided between the lessor and the lessee. This erroneous premise is set forth on page 8 of the Club's brief where it states:

> The threshold question is whether taxes may be assessed against the interests of both the

> municipal lessor and the private lessee. Second, this Court must determine whether the value of these two components of the total fee may be compounded to yield a total assessed value in excess of the true market value, or whether the overall value of the property must be apportioned between the component interests. (e.s.).

This basic premise is erroneous. The issue before this Court is not that as stated by the Club. The valuation of an intangible lease is totally separate and has nothing to do with the valuation of the property. There are two separate and distinct species of property which are subjected to tax in this case, the real property of the city and the intangible property of the Club. See, Higgs, supra at 376.

Real property is defined in §192.001(12), Fla. Stat., as follows:

> (12) "Real property" means land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably.

Intangible personal property has been previously defined. It is without serious question that the two are totally different.[1]

The Club is attempting to establish a premise for this Court which does not exist from which it can argue that the value of the real property must then be apportioned between the county and the Club. No apportionment exists because the species of property are separate and distinct,

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[1] The taxes imposed are imposed by different taxing units. Art. VII, §1 and §9, Fla. Const.

At page 9, the Club continues, based on a erroneous premise, its conclusion:

> Failure to require apportionment or allocation of the total property valuation between the two taxable interests exposes the bundle of rights comprising the entire property to multiple ad valorem taxation in violation of the basic constitutional privileges and entitlements. (e.s.).

Here again the Club's erroneous premise is used to support an erroneous conclusion. No potential violation of constitutional privileges occurs in this case for the simple reason that the rights afforded by the lease (the intangible) are just that, an intangible, deriving their chief value from that which they represent as opposed to the thing itself. The thing itself, the real property, is assessed as real property. No double taxation exists.

Before any further discussion of the Club's contentions can be made, it is felt that a general review of the history of the taxation of leaseholds must be done.

In the case of Park-N-Shop, Inc. v. Sparkman, supra, this Court was confranted with a question of whether or not a leasehold was taxable under Florida law and in holding that it was not taxable as either tangible or intangible personal property the Court stated at page 574:

> In our examination of the tax statutes, we have not found provisions for the specific assessment of the lessees' interest and we have been referred to none, although we are not conscious of any reason why the legislature could not set up machinery for that purpose in situations such as that presented in this case, but we are satisfied

> that the interests of lessees are neither tangible nor intangible personal property as presently defined. (e.s.).

The statement by the Court merely recognizes that the Legislature has the power to provide for the taxation of leaseholds. In point of fact, the Legislature did react to the Supreme Court's decision in Sparkman, by enacting 8192.62, Fla. Stat. (1961), which provided for the taxation of any real or personal property which for any reason is exempt or immune from taxation when it was being used for profit-making purposes by any person, firm, corporation, partnership, or organization. See also, Lykes Bros., Inc., supra.

The question of whether or not the leasehold should be assessed as a specie of real property or as intangible property was decided in Williams v. Jones, 326 So.2d 425 (Fla. 1975). The Court held in that case that the Legislature had intended that the leasehold interest be assessed as real property. This holding is significant and is precisely that which was recognized in the case of City of Orlando v. Hausman, 534 So.2d 1183 (Fla. 5 DCA 1988), rev. den., 544 So.2d 199 (Fla. 1989), wherein that court recognized the difference between the assessment of a leasehold and the assessment of real property.

This Court pointed out in Sparkman, that at that time, 1957, no statute existed in Florida law which subjected to taxation a leasehold. 99 So.2d at 574, This meant that the Legislature had the option of either leaving it untaxed, taxing it as real property, or of taxing it as intangible property. The Williams

case held that the legislative intent, at that time, was that the leasehold be taxed as real property. After Williams in 1980, the Legislature enacted Ch. 80-368, Laws of Fla., which taxed certain leaseholds as intangible but this did not affect the taxable status of real property as distinguished from a leasehold interest in real property. See, Miller v. Higgs, 468 So.2d 371 (Fla. 1st DCA 1985), rev. denied, 479 So.2d 117 (Fla. 1985).[2]

A3 recognized in Hausman, the valuation of a leasehold is separate and apart from the valuation of the property itself and the taxation of the one is not dependent upon the taxation or exemption of the other. In Hausman, at page 1185, the Fifth District Court stated:

> The city claims that the leasehold interests of its tenants are subject only to intangible personal property taxation. Although the reclassification of leasehold interests as intangible personal property presents some interesting constitutional questions, we need not decide those issues. There is no evidence that the property appraiser included the leasehold interests af the tenants in his assessment. Since the leasehold interests were not included, section 196.199(2)(b) simply has no application here. (e.s.).

The contention of the City of Orlando in Hausman is set forth in part at page 1183 as follows:

> In December 1986, the City of Orlando, a municipal corporation, the Greater Orlando Aviation Authority, an agency of the city, and ten tenants of property leased from either the city or the authority, filed an

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The question of the constitutionality of Ch. 80-368, Laws of Fla., reclassifying as intangible personal property the private leasehold interest in government property was well-established in Higgs, supra.

> action to contest real property assessments made by Ford Hausman, the property appraiser of Orange County. The plaintiffs contended that the properties in question were exempt from ad valorem taxation. Specifically, the plaintiffs argued that the tenants' "leasehold interests" were subject only to intangible personal property taxation and that the city's "reversion interest" was exempt from ad valorem taxation. After the plaintiffs conceded that the tenants' use of the property was not for a municipal or public purpose, the trial court entered summary final judgment in favor of the property appraiser. We affirm. (e.s.).

In addressing the use of the property made by the tenants at page 1185 and concluding that the assessment was valid, the Court stated:

> Here the tenants' use of the properties is private and commercial and not for a municipal or public purpose. Since the properties were **being** used for private purposes, there was no exemption from ad valorem taxation and the trial court was correct in upholding the assessment of taxes against the city. (e.s.).

The Court had previously quoted from parts of §196.199(1) Fla. Stat., which contains the basis for exemption of property owned by a governmental unit. Section 196.199(1)(c), Fla. Stat., provides:

> (1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions:
>
> * * * * *
>
> (c) All property of the several political subdivisions and municipalities of this state or of entities created by general or special law and composed entirely of governmental agencies, or property conveyed to a nonprofit corporation which would revert to the governmental agency, which is used for

> governmental, municipal, or public purposes shall be exempt from ad valorem taxation, except as otherwise provided by law. (e.s.).

Since the use made of the property in Hausman was commercial and for profit the property did not qualify for the exemption and as the Court pointed out the property appraiser had assessed the property, not the leasehold.

In Hausman, the Court squarely considered the question of whether or not the property, which included the land and the improvements thereon, was exempt from taxation if not used for a legitimate public or governmental purpose. Id. at 1184. The Court held that it was not exempt even though owned by a governmental unit, in that case, a municipality.[3]

There is considerable difference in the appraisal of a leasehold and the appraisal of real property consisting of land and buildings. Hausman recognizes this and correctly follows the law of the State of Florida with regard to use of property owned by a governmental entity.

The Club concedes that its use of the property is not for a public purpose. This is entirely consistent with the Supreme Court's pronouncement in the Williams case which held that the exemptions contemplated by §196.012(5), Fla. **Stat.**:

> . . . relate to "governmental-governmental" functions as opposed to "governmental-proprietary'' functions. With the exemption

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[3] Section 196.199(1)(c), Fla. Stat., includes not only municipalities but political subdivisions and other governmental entities created by general or special law and mandates that such property owned by such governmental units is only exempt if it is used ". . .for governmental, municipal, or public purposes."

> being so interpreted all property used by private persons and commercial enterprises is subject to taxation either directly or indirectly through taxation on the leasehold. Thus all privately use property bears a tax burden in some manner and this is what the Constitution mandates, supra at 433. (e.s. by the Court).

Municipalities often engage generally in proprietary activities which are for the benefit of the public good, but are not governmental/governmental so as to be entitled to tax exemption. See, Chardkoff Junk Co. v. City of Tampa, 135 So. 457 (Fla. 1931); Walden v. Hertz Corp., 320 So.2d 385 (Fla. 1975); St. Johns Associates v. Mallard, 366 So.2d 34 (Fla. 1st DCA 1978), writ dis., 373 So.2d 912 (Fla. 1979); Mallard v. R. G. Hobelmann & Co., Inc., 363 So.2d 1176 (Fla. 1st DCA 1978), writ dis., 378 So.2d 280 (Fla. 1980); Volusia County v. Daytona Beach Racing and Recreational Facilities Dist., 341 So.2d 498 (Fla. 1976), app. dis., 434 U.S. 804 (1977).

The Club's contention that the reversionary interest of the City either affects the value of the property or the property's taxable status is without basis. Such a contention was made in Tre-O-Ripe Groves, Inc., v. Mills, 266 So.2d 120 (Fla. 1st DCA 1972) wherein the First District Court addressed the following situation:

> Appellant is the lessee in a contract with the National Aeronautics & Space Administration. The contract covers certain citrus groves in Volusia County to which the National Aeronautics & Space Administration holds fee title and which appellant rents for $49,000 per year which entitles it to use the land for cultivation and harvesting of citrus fruits. Appellant contends that assessment

> and collection of the tangible personal property tax is illegal because it is a direct imposition of tax on property of the United States of America which is immune for such tax.

The Court held:

> It is well established beyond the need for citation of cases that when Federal property is placed in the hands of private enterprise for gain by that enterprise, the immunity from taxation of the property is lost. We do not feel that appellant has sufficiently alleged facts in its petitions which would give rise to an exemption to this rule. The utilization of the property as a predominately public or private purpose, not the character or nature of its owner, is the major criteria in determining liability for taxes. There can be no doubt in the present case that the purposes to which the citrus groves are utilized are essentially private to the appellant, rather than public.

The suggested constitutional issues alluded to by the Club are transparent when the issues are viewed from the proper premise. The taxation of intangible personal property has nothing to do and cannot alter, change or modify the taxation and assessment of real property. The two are two distinct species of property both of which may be subjected to taxation and no double taxation exists therefrom. Miller v. Higgs, supra.

In that context, the imposition of the ad valorem real property tax on the city and the imposition of the intangible personal property tax on CCCC constitute two separate taxes on two separate species of property by two separate taxing entities on two separate taxpayers and does not constitute double taxation.

Clearly, by statute, there are two separate taxpayers in this case. The city (owner of the land) is charged with paying the real property tax. The lessee, the Club, is charged with paying the intangible personal property tax.[4]

This Court has specifically addressed unconstitutional double taxgtion and has specifically stated, "[N]o unconstitutional double taxation occurs where there are two taxpayers and two separate taxable transactions or privileges." See, In Re Advisory Opinion to the Governor, 509 So.2d 292, 310 (Fla. 1987); Ryder Truck Rental, Inc. v. Bryant, 170 So.2d 822 (Fla. 1964). The same language can be found in American Video Corp. v. Lewis, 389 So.2d 1059, 1061 (Fla. 1st DCA 1980).[5]

Therefore, the only question is whether there are two separate interests or incidences. The real property tax is a tax on the land and is assessed against the owner. However, the intangible personal property tax is on the intangible asset, here the lease. These are both separate interests and taxes.

Distinct interests in the same property, owned by different persons, actually represent different properties. Taxation of each is not double taxation. The same person or property interest is not taxed twice.

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[4] It is only by contract with the City of Tallahassee that Capital City Country Club has obligated itself to also pay the real property tax.

[5] It is proper to tax a debt and the property which secures it, both at full value. Lamar v. Palmer, supra.

No double taxation exists and no question of constitutional dimension arises because the intangible personal property is a separate and distinct form of property from the real property. Taxation of the one does not preclude taxation of the other and as recognized in Sparkman, failure to tax the one (intangible leasehold) would certainly not preclude the taxation of the real property attendant to such leasehold. Thus, the correct methodology to be employed in valuing real property owned by a governmental unit which is the subject of a leasehold held by a private entity used for private purposes would be the same method of valuation used by the property appraiser in valuing any other real property encumbered by mortgages, leaseholds or whatever. That is, the Property Appraiser should follow the criteria set fort in §193.011, Fla. Stat. Schultz v. TM Florida-Ohio, supra.

Under §196.199(1)(c), Fla. Stat., if a governmental unit in the State of Florida does both own and use the property it would be exempt. Conversely, if a governmental unit as delineated in the statute, continues to own but decides to lease such property and it is used for a private purpose, the property ceases to be exempt and is subjected to real property taxation. That which is being assessed is the real property itself. In such situations the governmental unit would no doubt include in its lease a provision requiring that any ad valorem taxes to become due with regard to the property would be paid by the lessee as part of the rent. In this manner all property used for private purposes is subjected to taxation and no private commercial entities are

discriminated against. Additionally, the governmental unit is requiring payment of all taxes due pursuant to the lease and if the lessee fails to comply with the terms of the lease in this regard the governmental unit has two remedies available which are to sue on the lease and also to sue the lessee directly in debt as provided in §196.199(8)(a), Fla. Stat.

POINT II

THAT SECTION 196.199(4), FLORIDA STATUTES DOES NOT PREVENT TAXATION OF THE MUNICIPAL GOLF COURSE LEASED TO THE CAPITAL CITY COUNTRY CLUB

The Club relies on §196.199(4), Fla. Stat. and contends that since its lease was entered into prior ta April 15, 1976, that the golf course property should not be subject to tax.[6] The Club argues that this constituted a grandfather clause to prevent taxation of property where leases were in existence prior to the stated date. As originally enacted §§196.199(3) and (4), Fla. Stat. (1971), provided:

> (3) Nathing herein or in §196.001 shall require a governmental unit or authority to impose taxes upon a leasehold estate created prior to December 31, 1971 if the lease agreement creating such leasehold estate contains a covenant on the part of such governmental unit or authority as lessor to refrain from imposing taxes on the leasehold estate during the term of the leasehold estate, but any such covenant shall not prevent taxation of a leasehold estate by any

[6] The Club also claims a refund of taxes for the tax years 1985, 1986 and 1987. However, having never challenged the assessments for those tax years in a timely fashion, the Club has forfeited that opportunity. §194.171, Fla. Stat.; Markham V. Neptune Hollywood Beach Club, 527 So.2d 814 (Fla. 1988); Bystrom v. Diaz, 514 So.2d 1072 (Fla. 1987).

> taxing unit or authority other than the unit or authority making such covenant.
>
> (4) Property owned by the United States, by the state, or by any political subdivision, municipality, agency, authority or other public body corporate of the state which becomes subject to a leasehold interest of a nongovernmental lessee other than that described in subsection (2)(a) above on or after June 1, 1971, and the leasehold interest of such a lessee, shall be subject to ad valorem taxation unless the lessee is an organization which uses the property exclusively for literary, scientific, religious or charitable purposes. (e.s.).

Both sections were subsequently amended and the dates change from December 31, 1971 in subsection (3) to April 15, 1976, and from June 1, 1971 to April 14, 1976 in subsection (4). See Ch. 76-283, §1, Laws of Fla.

In the case of Lykes Bros., Inc. v. City of Plant City, supra, this Court was faced with a contention virtually identical to that made by the Club in the instant case. In the Lykes Brothers case, the lessee contended that §196.199(3), Fla. Stat., applied to a contract which it had with the City of Plant City which was a pre-1972 contract and that §196.199(3), Fla. Stat., grandfathered in its lease agreement so as to prevent taxation of its property. This Court disagreed stating at page 881:

> Our last inquiry, then, is whether this savings clause for pre-1972 contracts benefits Lykes. In ruling that it does not, the trial judge stated that the statute would be constitutionally infirm if applied to Lykes. He referred to Straughn v. Camp, 293 So.2d 689 (Fla. 1974), Hillsborough Aviation Authority v. Walden, 210 So.2d 193 (Fla. 1968), and City of Bartow v. Roden, 286 So.2d 228 (Fla. 2nd DCA 1973), from which we conclude he meant that Florida's 1968

> Constitution requires the taxation of private leaseholds in government-owned property used for non-public purposes. We agree that the Constitution requires taxation of these leaseholds, but we find it unnecessary to reach the constitutional question on which the trial judge ruled. (e.s.).

Continuing this Court stated:

> Lykes' contention with respect to the application and validity of Section 196.199(3)--that an ultra vires municipal contract can be legislatively ratified if it could have been authorized initially--is generally correct, but it neglects an additional requirement. The legislative attempt at ratification must itself be consistent with the Constitution. At the time Section 196.199(3) was enacted, the Legislature no longer possessed the constitutianal power to authorize tax exoneration of property owned by a municipality and used by a private lessee predominantly for non-public purposes. Moreover, we do not read into the language of Section 196.199(3) a legislative attempt to exceed this constitutional limitation by giving legal effect to otherwise invalid pre-1972 contracts, and thereby creating a new category of tax exemption. (e.s.).

This Court in Lykes had before it a **lease** agreement entered into between Lykes Brothers and the City of Plant City which clearly exempted property of Lykes Brothers if such property were ever annexed into the city. This Court held that the contract was ultra vires and void. Although the lease agreement in the case at bar does not contain such a provision, it should be noted that the statute relied upon by the Club does not specifically provide that property owned by any municipality, agency, authority or other public body corporate of the state which is the subject of a leasehold interest entered into prior to **April** 14, 1976, is exempt.

The Club is attempting to imply an exemption because of the use of the date set forth therein.[7] If the statute is construed as suggested by the City it would clearly unconstitutionally exempt property otherwise taxable under §196.199(1)(c), Fla. Stat. It is also significant to note that the statute specifically in clear unequivocal terms requires taxation of the property itself owned by any municipality, agency, authority or other public body corporate of the state subject to a leasehold interest or other possessory interest of a nongovernmental lessee. As this Court recognized, exemptions from taxation should not be implied and the burden is on the claimant to show clearly any entitlement to the tax exemption. Volusia County v. Daytona Beach Racing and Recreational Facilities District, 341 So.2d 498 (Fla. 1976). Thus, the Club's contentions in this regard are without merit.

Pursuant to Art. VII, §3(a), Fla. Const. (1968), only municipal property ". . . used exclusively by it for municipal or public purposes shall be exempt from taxation." (e.s.). The Club freely admits that the city's property is not exempt, and, therefore, pursuant to Art. VII, §4, Fla. Const. (1968), the property must be addressed at its just value. This Court has repeatedly and consistently stated that just value includes all interests in the land and the property appraiser need not separately appraise any leasehold interests. Consistent with the

[7] All property is subject to taxation unless expressly exempt and such exemptions are strictly construed against the party claiming them. Williams Jones, supra at 435.

Constitution and the holdings of this Court, the appraiser has assessed this nonexempt property at its just value.

Ordinarily, the assessment would be against the city and it is only by contract that the Club has obligated itself to pay the assessment. Since the real property tax is against the land and assessed against the owner, and the intangible personal property tax is against the lease and assessed against the lessee, there is no illegal double taxation.

CONCLUSION

The Department respectfully submits that since there are no constitutional issues involved in this case, which this Court has not already ruled on in other decisions, that it should uphold the actions and assessment of the Appraiser.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JOSEPH C. MELLICHAMP, III
SENIOR ASSISTANT ATTORNEY GENERAL
FLA. BAR NO. 133249

Department of Legal Affairs
The Capitol - Tax Section
Tallahassee, FL 32399-1050
(904) 487-2142

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail to **William C. Owen** and **F.** Townsend Hawkes, **Esqs.**, Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., Post Office Drawer 190, Tallahassee, FL 32302; **Benjamin K. Phipps**, Esq., Post **Office** Box 1351, Tallahassee, FL **32302**; Peter **Guarisco, 2003** Apalachee Parkway, Suite **101**, Tallahassee, FL **32301**; and **S. L. Williams, Esq., 150** South Palmetto Avenue, Box **A**, Daytona Beach, FL 32114; **Larry** E. **Levy, Esq., Post Office Box 10583, Tallahassee, FL** 32302; **Thomas** Logue, Esq., **Suite** 2810, Metro-Dade Center, Miami, FL **33128; Gaylord A. Wood, Jr.,** Esq., **304 S.W.** 12th Street, Fort Lauderdale, FL **33315; B. Norris Rickey,** Esq., 315 Court Street, Clearwater, FL **34616**; and **William Barr,** Esq., Post **Office Box 65**, Ormond Beach, FL 32175; on this 30th day of September, **1991.**

Joseph C. Mellichamp, III
Senior Assistant Attorney General