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.

PETITIONER'S INITIAL BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF CASES AND CITATIONS . . . . . ii, iii

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE AND FACTS 2

STATEMENT OF ARGUMENT 6

ARGUMENT 10

I. THE CONSTITUTIONALITY OF CHAPTER 80-368, LAWS OF FLORIDA, WAS NOT RAISED IN THE PROCEEDINGS BELOW, WAS NOT ADDRESSED BELOW AND SHOULD NOT BE AN ISSUE WITHIN THE CONTEXT OF THE CERTIFICATION TO THIS COURT. MOREOVER, NO RESPONDENT HAS STANDING TO RAISE THE CONSTITUTIONALITY OF CHAPTER 80-368 IN THIS PROCEEDING 10

II. SECTION 196.199, FLORIDA STATUTES, DOES NOT IMPOSE AD VALOREM REAL PROPERTY TAXES ON THE NONPOSSESSORY, RESIDUARY INTEREST OF A MUNICIPALITY IN REAL PROPERTY IT LEASED TO NON-EXEMPT PRIVATE PARTIES PRIOR TO APRIL 15, 1976 12

111. IF IT SHOULD BE DETERMINED THAT THE CITY'S RESIDUARY FEE INTEREST IS NOT EXEMPT, THIS INTEREST CANNOT BE LAWFULLY AND CONSTITUTIONALLY VALUED AND TAXED FOR REAL PROPERTY PURPOSES INDEPENDENTLY OF THE VALUE OF THE LEASEHOLD INTEREST SEPARATELY TAXED TO THE CLUB 24

CONCLUSION 31

CERTIFICATE OF SERVICE 33

TABLE OF CASES AND CITATIONS

CASES:

Williams v. Jones,
326 So.2d 425 (Fla. 1975) 7,10

Miller v. Higgs,
468 So.2d 371 (Fla. 1st DCA),
rev. denied, 471 So.2d 117 (1985) 7, 10, 11

Park-n-Shop, Inc. v. Sparkman,
99 So.2d 571, 574 (Fla. 1958) 14

Straughn v. Camp,
293 So.2d 689 (Fla. 1974) 15

Williams v. Jones,
326 So.2d 429 (Fla. 1975)
[see cite history pp. 10-11] 15, 16, 17

Williams v. Jones,
326 So.2d at 436 17

Valencia Center, Inc. v. Bystrom,
543 So.2d 214 (Fla. 1989) 26

Valencia Center, Inc. v. Publix Supermarkets, Inc.,
464 So.2d 1267 (Fla. 3d DCA),
rev. denied, 475 So.2d 696 (Fla. 1985) 26

Schultz v. Florida-Ohio Realty Ltd. Partnership,
16 F.L.W. 225 (Fla. March 28, 1991) 26

Dickinson v. Davis,
224 So.2d 262 (Fla. 1969) 26

City of Orlando v. Hausman,
534 So.2d 1183 (Fla. 5th DCA 1988) 29, 30

STATUTES AND OTHER AUTHORITIES:

Section 197.0138, Florida Statutes (1987) 3

Section 196.199,
Florida Statutes 8, 12, 15, 16, 17, 18, 19, 22, 29

Section 196.199(4), Florida Statutes 13. 30

Section 192.62, Florida Statutes (1961) 14

Section 196.012(5), Florida Statutes (1971) 15

Section 196.199(2)(a), (b). Fla. Stat. (1989) 16

Section 196.199(6), Florida Statutes) 17. 18

Section 196.199(3) 19

Section 196.199(7), Florida Statutes (1985) 24

Chapter 80-368, Laws of Florida . . . 3. 7. 8. 10. 11. 21. 23. 24

Chapter 80-386, Laws of Florida 11

Chapter 71-133, Laws of Florida 12, 15. 16. 17

Chapter 76-283, Laws of Florida 20

1968 Florida Constitution 14. 19

Article V. Section 3(b)(4), Florida Constitution 6

Art. VII. §3(a), Fla. Const. (1968) 15

Article VII. Section 4 of the Florida Constitution 25

Florida Rules of Appellate Procedure 9.630(a)(2)(A)(v) 6

PRELIMINARY STATEMENT

Petitioner, CAPITAL CITY COUNTRY CLUB, INC., shall be referred to as "Petitioner" or "Club".

Respondents, KATIE TUCKER, as Executive Director of the Florida Department of Revenue, and JOHN CHAFIN, as Tax Collector of Leon County, Florida, shall be referred to collectively as "Respondents" unless otherwise designated. The Respondent, DICK BRAND, as Property Appraiser of Leon County, Florida, shall be referred to as "Respondent Property Appraiser."

References to the Record on Appeal shall be designated by "R" followed by the appropriate page number, while references to Petitioner's Appendix will be designated by "Pet. App." followed by the appropriate page number in parentheses.

STATEMENT OF THE CASE AND FACTS

Petitioner, Capital City Country Club, Inc. ("Club") is a nonprofit corporation with offices in Tallahassee, Florida. The 192 acres which are subject of the taxes in this case were deeded by the Club's predecessor in interest, Tallahassee Country Club, to the City of Tallahassee (the "City") during the Great Depression on the condition that the City either maintain and operate the property as a golf course or consider leasing the property to Grantor's successor in interest. In 1956, the City exercised its option to lease the property. The Club's predecessor in interest entered into a 99-yeas lease as lessee of the property in question. This lease was assigned to the Club by its predecessor.

Under the terms of this lease, the Club pays nominal rent per year to the City and is responsible for all ad valorem taxes levied against the property by virtue of what is commonly referred to as a "pass through'' provision in the lease. The 192 acres comprising the golf course is virtually unimproved and is operated and maintained by the Club as a private golf course. The effect of the conditional fee grant to the City perpetually restricts the use of the subject property to golf course recreational use so long as it is owned by the City.

In 1988, the Club paid intangible personal property taxes on its leasehold interest in the subject property in the amount of $791.78. For the calendar year 1988, the Club was assessed ad valorem real property taxes for its interest in the property in the amount of $11,079.93. The Club paid these taxes under protest. In

addition to calendar year 1988, the Club has paid ad valorem real property taxes assessed against the property far each of the calendar years 1985, 1986 and 1987. The Club has requested a refund of such taxes pursuantto Section 197.0138, Florida Statutes (1987).

On March 23, 1989, the Club filed a complaint praying for a declaration of its rights, status and duties with respect to the matters set forth above and naming as defendants Dick Brand, as Property Appraiser of Leon County, Katie Tucker, as Executive Director of the Florida Department of Revenue, and John Chafin, as Tax Collector of Leon County. (R:1-27).

On or about November 1, 1989, the Club received from the City a tax notice issued by Respondent Property Appraiser to the City of Tallahassee to the effect that the 1989 ad valorem real property taxes assessed against the subject 192 acres were $30,186.65, if paid by November 1989. Until the 1989 ad valorem assessment, the Respondent Property Appraiser treated the Club as the owner of the property and ad valorem real property tax assessments were in the name of the Club and forwarded directly to the Club by the Property Appraiser. Even after the effective date of Chapter 80-368, Laws of Florida, when the law was changed to treat a leasehold of less than 100 years as intangible personal property instead of real property, the Respondent Property Appraiser ignored the change and continued to assess the Club as the owner of the 192 acres in issue. (Brand Dep. pg. 12, 16, 19, 20; R: 64, 68, 71, 72).

After the Club filed its complaint for a declaration of its rights, the Respondent Property Appraiser for the first time assessed the City as the owner of the subject **192** acres of golf course property. In **1989,** the City's ownership interest in the property was assessed for real property taxes in the amount of **$30,186.65,** compared to the 1988 assessment of **$11,079.93,** a 172 percent increase.

On November 30, 1989, the Club filed a three-count complaint in the Circuit Court of Leon County against Respondent Property Appraiser and the other Respondents challenging the 1989 ad valorem real property tax assessment for the golf course property. The above referenced complaints were consolidated on February 22, **1990.** **(R:48-49;** 205-240).

The Club filed a motion for summary judgment as to counts I and 111, and Respondent Property Appraiser filed a motion for partial summary judgment in his favor. (R:87-126). In denying the Club's motion for summary judgment and granting the Respondent Property Appraiser's motion for partial summary judgment, the court found that the Club "is a private membership club is [sic] not carrying on municipal or governmental functions on the property in issue." (R: 193). Therefore, the court found that the property **was** not entitled to an exemption from the **ad** valorem real property tax assessed by the Respondent Property Appraiser. Id.

The Club filed a motion for entry of final judgment and a notice of voluntary dismissal of Count II. (R:194-200). The trial court granted the motion and entered its final judgment dismissing

both counts with prejudice. (R:201-202). All parties treated the trial court's order as a final order even though it did not specifically address the declaration of rights sought in the initial complaint. Apparently, the trial court concluded that the Respondent Property Appraiser, who elected to tax the 192 acres as real property yet refused to subtract the value of the encumbering leasehold, had done nothing wrong.

On appeal, the First District sustained the trial court's final summary judgment, but certified to this Court that the following question is 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 PROPERTY USED FOR PRIVATE PURPOSES AS AN UNENCUMBERED FEE INTEREST, OR TO TAX THIS PROPERTY AS A DIVIDED INTEREST, EXCLUDING THE LESSEE'S INTEREST?**

SUMMARY OF ARGUMENT

The First District Court of Appeal certified to this Court, pursuant to Article V, Section 3(b)(4), Florida Constitution and Florida Rules of Appellate Procedure 9.630(a)(2)(A)(v), that the foregoing question[1] is a question of great public importance (Pet. App. A).

The above referenced question (even with the correction suggested by Respondent Property Appraiser) is inartfully framed. Respondent Property Appraiser may assert that the certified

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[1] The question, as certified, obviously contains a mistake which was addressed in a notice filed by Respondent Property Appraiser. The error in the certified question noted by Respondent was explained in the correction as follows:

> Unfortunately, in drafting and redrafting the proposed Question, several words were scrambled in a parenthetical statement, resulting in their having the opposite meaning of that intended, or which makes sense.
>
> IF IT IS CONSTITUTIONALLY PERMISSIBLE TO EXEMPT A NONGOVERNMENT LEASEHOLD (OTHERWISE 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 REGARDS TO THE GOVERNMENTAL LEASED FEE: TO TAX IT AS AN UNENCUMBERED FEE INTEREST, OR TO TAX IT AS A DIVIDED INTEREST, EXCLUDING THE LESSEE'S INTEREST?

(Emphasis added). The addition of the word "otherwise" has a substantial impact on the thrust of the Certified Question. In this case, the subject leasehold is being used for a taxable purpose.

question invites this Court to resolve two distinct issues compounded in a single question:

1. Whether, pursuant to Chapter 80-368, Laws of Florida, reclassification as intangible personal property of a private leasehold interest in government property is constitutional?

2. Whether the taxing scheme of this state mandates ad valorem real property taxation of a municipality's residuary, non-possessory ownership interest in land it has leased to private parties, and, if so, whether the valuation of the residuary interest is to be computed by deducting the assessed value of the leasehold from that of the total fee?

Petitioner submits that the first question is not properly before this Court. The constitutionality of Chapter 80-368, Laws of Florida, was never raised as an issue in the courts below and, thus, is not properly pastured as an issue for this Court to determine. Furthermore, for the reasons and analysis set forth in Williams v. Jones, 326 So.2d 425 (Fla. 1975), and Miller v. Higgs, 468 So.2d 371 (Fla. 1st DCA), rev. denied, 471 So.2d 117 (1985), the constitutionality of Chapter 80-368 is well-established in the case law of this state and does not need to be re-explored and re-examined at this juncture.

Moreover, the First District Court of Appeal undoubtedly realized that the certified question procedure does not bestow upon it the unbridled authority to invent constitutional questions completely foreign to the issues framed for determination by that

court. For this reason alone, the certified question in this case must be construed as not interposing a query as to the constitutionality of Chapter 80-368 in any form.

Thus, the central question of great public importance properly certified to this Court for determination focuses upon the issues framed in the second question stated above. Petitioner has never asserted that its private leasehold interest is entitled to a public use exemption. Indeed, use of the leased premises for a private golf course purpose is purely proprietary in nature. Rather, the critical issues in this case focus on the statutory and constitutional controls on the ad valorem tax assessment methodology. 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.

Petitioner maintains that the taxing scheme of this state, at least for a taxable private leasehold granted on municipal property prior to April 15, 1976 (or for that matter one granted prior to June 1, 1971), does not embrace the notion that a municipality's residuary, non-possessory interest in the property must be subject to ad valorem real property taxation. To the contrary, the applicable taxation framework, i.e., Section 196.199, Florida Statutes, effectively provides an exemption from ad valorem

taxation of a municipality's residuary fee interest which is subject to a taxable leasehold interest created prior to April 15, 1976. Since Petitioner's leasehold interest was created in 1956, application of the statutory taxing framework exempts the City's residuary fee interest from ad valorem taxation. Petitioner, accordingly, is entitled to the summary relief requested in the Circuit Court because the decision of the District Court of Appeal is legally incorrect.

Finally, if this state's taxing scheme does indeed impose ad valorem real property taxes against the City of Tallahassee's residuary ownership interest in the golf course property, the valuation of the nonpossessory, residuary interest of the City must reflect a credit or allowance for the value of the leasehold interest which is also subject to ad valorem taxation as intangible personal property. 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.

ARGUMENT

POINT I

THE CONSTITUTIONALITY OF CHAPTER 80-368, LAWS OF FLORIDA, WAS NOT RAISED IN THE PROCEEDINGS BELOW, WAS NOT ADDRESSED BELOW AND SHOULD NOT BE AN ISSUE WITHIN THE CONTEXT OF THE CERTIFICATION TO THIS COURT. MOREOVER, NO RESPONDENT HAS STANDING TO RAISE THE CONSTITUTIONALITY OF CHAPTER 80-368 IN THIS PROCEEDING.

No pleading before the trial court raised the constitutionality of Chapter 80-368, Laws of Florida. Likewise, the District Court below did not address the constitutionality of this particular statute. Indeed, had it done so, it would have been obligated by principles of stare decisis to give effect to its prior decision in Miller v. Higgs, 468 So.2d 371 (Fla. 1st DCA), rev. denied, 471 So.2d 117 (1985), which specifically held that Chapter 80-368, Laws of Florida, was constitutional. Miller v. Higgs clearly adopts the reasoning announced by this Court in Williams v. Jones, 326 So.2d 425 (Fla. 1975), where it was plainly noted that the Legislature was within its constitutional authority to classify a leasehold interest (generally regarded as personal property at common law) as real property. In Miller v. Higgs, the court observed:

> We hold that the legislature also has the power to reclassify some leasehold interests in public land as "intangible personal property" for ad valorem tax purposes, as it did in Chapter 80-368. Dicta found in Williams does not bind future legislatures from reclassifying governmental leaseholds for purposes of taxation, so long as the classification is not arbitrary or

> unreasonable and so long as it does not conflict with any constitutional provisions.

Id., 468 So.2d at 376.

Is Respondent Property Appraiser now suggesting that the "flip side" of this reasoning is flawed; that is, that it is unconstitutional for the Legislature to reclassify (as was done in Chapter 80-386, Laws of Florida) a leasehold interest as intangible personal property? Accordingly, any suggestion that the certified question before this Court interposes a query as to the constitutionality of Chapter 80-368, Laws of Florida, is simply misguided, and ignores the context of the question.

Furthermore, it is difficult to imagine that the same district court of appeal which spoke with such clarity in Miller v. Higgs, now invites this Court to reassess its reasoning. Moreover, it is illogical to assert that the same court which concluded that a property appraiser lacked standing to raise the constitutionality of Chapter 80-368, Laws of Florida, intended to certify the identical issue to this Court at the behest of a similarly situated property appraiser.

The essence of the certification in this case, therefore, focuses not on the constitutionality of Chapter 80-368, but on the tax assessment methodology employed by the Respondent Property Appraiser in this case.

POINT II

SECTION 196.199, FLORIDA STATUTES, DOES NOT IMPOSE AD VALOREM REAL PROPERTY TAXES ON THE NONPOSSESSORY, RESIDUARY INTEREST OF A MUNICIPALITY IN REAL PROPERTY IT LEASED TO NON-EXEMPT PRIVATE PARTIES PRIOR TO APRIL 15, 1976.

Any effort to fathom the intended tax methodology relating to government property which is subject to a private leasehold interest cannot ignore the history of the legislation itself and the case law forming a part of that history. Therefore, before assuming, as the certified question suggests, that both property interests are taxable, this Court must first resolve whether the City's nonpossessory residuary fee interest is taxable or exempt.

The question of taxation or exemption is resolved by the clear, unambiguous provision contained in Section 196.199, Florida Statutes (1989):

> (4) Property owned by any municipality, agency, authority, or other public body corporate of the state which becomes subject to a leasehold interest or other possessory interest of a nongovernmental lessee . . . after April 14, 1976, 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.

(emphasis added).

Section 196.199, Florida Statutes (1989), in its original form, was created by the enactment of Chapter 71-133, Laws of Florida (generally referred to as the "Tax Reform Act"). (Pet. App. B). In its present form, this section generally addresses when an interest in government property is subject to taxation.

The above referenced subsection (4), however, is unique in that it refers exclusively to the circumstances under which a municipality's fee interest in property encumbered by a taxable private leasehold is subject to ad valorem taxation. Under the plain wording of this single provision, if the municipality's ownership interest is encumbered by a taxable leasehold interest granted after April 14, 1976, the municipality's fee interest is subject to ad valorem taxation. The reciprocal or converse is equally clear. If the municipality's ownership interest is encumbered by a taxable private leasehold granted prior to April 15, 1976, the municipality's ownership and residuary interest is exempt from taxation, In both situations, the privately utilized leasehold is taxable.

Capital City Country Club's private leasehold interest originated in 1956. Hence, by the literal command of Section 196.199(4), Florida Statutes, the residuary fee interest of the City in the golf course property is not subject to ad valorem taxation. Accordingly, the Club is entitled to the relief sought in the consolidated actions in this proceeding.

This result is also consistent with the public policy of imposing a tax against government property commensurate with the private use of the leasehold, In such situations, the private user of the leasehold interest pays a tax commensurate with the value assigned to private use. The government's residuary fee interest

may or may not be taxable depending on when the private leasehold interest was created.[2]

The legal problems occasioned by efforts to impose taxes commensurate with the private use of government property have plagued this state for many years. Early attempts to seek judicial expansion of taxes to embrace the private use of a leasehold were rebuffed. As this Court noted in Park-n-Shop, Inc. v. Sparkman, 99 So.2d 571, 574 (Fla. 1958),

> 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 cold 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.

The Florida Legislature soon responded to this Court's suggestion in Park-n-Shop. It enacted Section 192.62, Florida Statutes (1961)[3], which imposed a tax on otherwise exempt real or personal property used in connection with a profit making venture. Consistently, the 1968 Florida Constitution mandated an exemption when property was owned and used exclusively by a municipality for

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[2] In any case, if the residuary fee interest of the municipality is taxable, the value of such interest must reflect the residual value left over after the value of the privately used leasehold is deducted from the total value of the property. See Section 111, infra.

[3] This section was later changed to 196.25 in 1969.

municipal or public purposes.[4] See Art. VII, §3(a), Fla. Const. (1968).

In 1971, the Legislature undertook a comprehensive approach to the task of taxing the private use of otherwise exempt real property. Sections 196.199 and 196.012(5), Florida Statutes (1971), generally known as the "Tax Reform Act," were passed treating a privately used leasehold interest in public land as real property for ad valorem tax purposes. See Chapter 71-133, Laws of Florida. (Pet. App. B). Use of the property was determined by this Court to be the controlling factor for tax purpose. See Straughn v. Camp, 293 So.2d 689 (Fla. 1974).

However, it was not until this Court's decision in Williams v. Jones, 326 So.2d 429 (Fla. 1975) [see cite history pp. 10-11], that all doubt was removed as to the ultimate constitutionality of the Legislature's reclassification of a leasehold interest as real property for ad valorem tax purposes, rather than intangible personal property as it had been viewed under common law.

Williams v. Jones was a watershed case addressing the constitutional power of the Florida Legislature to set up a taxing methodology relating to the private use of government property. However, the ultimate constitutional power of the Legislature to select the methodology for taxing the private use of government

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[4] The 1968 constitution does not prohibit the Legislature from creating other statutory exemptions as part of a comprehensive taxing methodology. In fact, such a methodology is represented by the evolution of Section 196.199, Florida Statutes, in its present form.

property is not in question here. Williams v. Jones and its progeny have settled that issue. Rather, the case at hand involves the determination of the correct methodology to be employed in ad valorem assessment.

As noted above, Section 196.199, Florida Statutes, was created by Chapter 71-133, Laws of Florida. This statute attempted to clarify the circumstances in which a leasehold interest in government property was exempt from ad valorem taxation. See §196.199(2)(a), (b), Fla. Stat. (1989). However, the operative portion of Section 196.199 in its original form was subsection (3), which provided:

> (3) 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 . . . 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.

5196.199, Fla. Stat. (1971) (emphasis added).

The emphasized portions of this subsection plainly provide that, under certain circumstances, both the government's fee interest and the lessee's leasehold interest, can be subject to ad valorem taxation. Thus, under the 1971 act, except in those cases where the leasehold interest was based on a lease for 99 years or more (where the owner of the leasehold interest was deemed to be the owner of the entire property interest, see Section 196.199(6),

Florida Statutes), and except for private leaseholds created prior to June 1, 1971, a question was presented as to allocation or apportionment of the total value of the property. This allocation of valuation was between that part assigned to the leasehold interest and that part assigned to the residuary fee interest of the government. Such valuation apportionment problems were alluded to in Williams, where the Court acknowledged that the leasehold valuation scheme was dependent upon the duration of the leasehold as it approached 99 years. At the 99-year interval, the owner of the leasehold was deemed to be the owner of the entire property (100 percent of the bundle of property rights). In this context, the Court observed:

> Leases for an initial term of less than 99 years are to be valued based on the economic value thereof taking into consideration, among other things, the duration of the unexpired term of the lease, while in the case of leases for an initial term of 99 years or more the lessee may be considered to be the owner "in fee simple" and the property subject to the lease shall be valued for tax purposes as all other property owned in fee simple. Since a lease for a term of 99 years or more is tantamount to ownership of the fee, we do not construe this to be an unreasonable classification by the Legislature.

Williams v. Jones, 326 So.2d at 436.

Under the format of original Section 196.199 (as enacted in Chapter 71-133, Laws of Florida), both the possessory leasehold interest and the government's nonpossessory, residuary fee interest were subject to ad valorem real property taxation. The value of the leasehold was dependent upon its duration. The residuary fee

interest obviously had a valuation equal to the residual of what remained after the value of the leasehold was deducted from the total value of the property. However, even under this original statute, it should be noted that the residuary fee interest of the City in the subject golf course property was not taxable since it was subject to a leasehold interest originated in **1956**, long before the June 1, **1971** date designated in that statute.[5]

Under the **1971** taxing scheme, the Club was treated as the owner of the subject golf course property under the **99-year** provision. See §196.199(6), Fla. Stat. Indeed, the Respondent Property Appraiser considered the Club to be the owner of this property until **1989**, well after the **1980** amendment changed the **99-**year period to a 100-year periad. After the **1980** change, the Club's 99-year lease no longer resulted in its being deemed the owner of the property for tax purposes, but this fact escaped the Respondent Property Appraiser until after this litigation was commenced.

Even disregarding the effect of the June **1, 1971** date designated in this original enactment of Section **196.199**, common

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[5] Why was June **1, 1971** chosen as the "grandfather" date in Chapter 71-133? The thrust of that legislation was to place the first tax on the private use of government property. The Legislature must have known that "pass-through" provisions in many of the then-existing leases of government lands could place on private lessees a new tax burden not bargained for and yet possibly costing more than the value of their leasehold interest. Because such property had historically been exempt from taxation, the Legislature may well have concluded that it would be unfair not to preserve the exemption for existing leases. For **leases** executed after Chapter **71-133** was enacted, both parties would be aware of the new tax consequences and could bargain accordingly.

sense analysis of this statute raises a key question. Under the 1971 act, what happened when both the residuary fee interest and the leasehold interest were separately taxed as real property? Absent allocation or apportionment of the valuation of the property as to each interest, a single piece of property could be taxed to a municipality at 100 percent of its value, while, at the same time, being taxed as real property to the leasehold user at some value up to 100 percent of its value. Thus, absent allocation or apportionment, the same property was exposed to ad valorem taxation much in excess of its just value, in violation of the Florida Constitution.[6]

Petitioner submits that Respondents must concede that, under the 1971 version of Section 196.199, valuation apportionment between the separately taxed interests was fundamentally and constitutionally required. What, if anything, subsequently happened with respect to the operative provisions of Section 196.199 to dispel the need for valuation apportionment? Again, a look at the evolution of the statute is illuminating.

In 1976, Section 196.199(3) was amended in three substantive ways. First, the reference to the taxability of the ownership interest of the United States and the state was eliminated.[7]

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[6] Section 4. Taxation; assessments.--By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation . . . . Art. VII, S4, Fla. Const. (emphasis added)

[7] The Legislature undoubtedly realized that property owned by the United States and the state were immune from taxation and that the existing reference implemented by Chapter 71-133 geared to taxing the residuary ownership fee interest of this kind of

Second, the Legislature struck the reference to "the leasehold interest of such lessee" set out in the 1971 act. See Chapter 76-283, Laws of Florida. (Pet. App. C). Thus, after the 1976 amendment, municipally owned property which was subject to a private leasehold (created after April 14, 1976) was subject to ad valorem taxation. If the leasehold was for a term of years less than 99, the municipality was subject to ad valorem taxation of its ownership interest. If the leasehold was for a term of 99 years or more, the owner of the leasehold was deemed to be the owner of the property. Finally, the 1976 amendment necessarily exempted from taxation any municipally owned residuary fee interest which became subject to a leasehold prior to April 15, 1976. See Chapter 76-283. [Literally, the statute authorized only ad valorem taxes against a fee interest which becomes subject to a taxable leasehold after April 14, 1976.][8] If a private leasehold was granted prior

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property was incorrect.

[8] The source and reason for the April 14, 1976, date is readily revealed by detailed analysis of the legislative action undertaken in 1976. The Legislature initially passed CS/HB 1759 (1975). This bill left intact the "June 1, 1971" date created by Chapter 71-133, Laws of Florida, but contained other provisions granting relief for 1972 and 1973 ad valorem taxes assessed against taxable interests. The relief was apparently deemed warranted because of the uncertainty attributable to final resolution of the constitutional questions raised in Straughn v. Camp, 293 So.2d 689 (Fla. 1974). See Staff of Fla. H.R. Comm. on Fin. and Taxation, HB 1759 (1975) Fiscal Note 1 (Undated) (on file at Dept. of State, Div. of Archives, Tallahassee, Florida) (Pet. App. D). In its final form, CS/HB 1759 was vetoed by the Governor, but this veto was overridden in the next session in Chapter 76-3, Laws of Florida. The override measure passed the Senate and became effective on June 14, 1976. The Legislature then adopted SB 895, which became Chapter 76-283, Laws of Florida. This bill specifically repealed Chapter 76-3, Laws of Florida, and extended its own provisions back to April 14, 1976, the effective date of

to April 15, 1976 (as was the Club's leasehold), the leasehold interest was subject to ad valorem taxation, but the residuary fee ownership interest of the municipality was not, since this interest was exempt by operation of the "grandfather" provision now extended to April 14, 1976. Thus, as a result of the 1976 act, the Legislature intended that the private leasehold user was to bear only those ad valorem taxes imposed as a result of the use of a taxable leasehold.

In 1980, the Legislature enacted Chapter 80-368, Laws of Florida, declaring that a private leasehold interest in government land was to be taxed as intangible personal property under certain circumstances. (Pet. App. E). This particular act, however, did not expressly restore the valuation apportionment scheme which was implicit in the 1971 act, but merely specified separate taxation of the interest of the municipality and the interest of the lessee. The 1980 act also provided that a lessee would be deemed to be the

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Chapter 76-3. The override passage date of Chapter 76-3 (April 14, 1976) became a new grandfather date in Chapter 76-283. Thus, the effect of Chapter 76-283 was to move the old grandfather date of June 1, 1971 to April 14, 1976, thereby imposing a legislative fix to the uncertainty of ad valorem taxation during the resolution of the overriding constitutional issue. The 1976 legislation, therefore, explicitly recognized and extended the existing exemption, and, in the words of the bill's sponsors, "grandfathered in everyone who is currently granted an exemption." Fla. H.R., tape recording of proceedings (June 3, 1976) (on file at Dept. of State, Div. of Archives, Tallahassee, Florida) (statement of Rep. Redmond).

owner of the property if its leasehold was originally for 100 years or more.[9]

As a result of the 1980 amendment, Section 196.199 provides that the leasehold interest of the Club was taxable as intangible personal property. Moreover, since the leasehold interest of the Club is for less than 100 years, the Club was not deemed to be the owner of the property for taxation purposes. Further, since the fee interest of the City of Tallahassee was subject to the leasehold interest of the Club prior to April 15, 1976, the residuary fee interest of the City was not subject to ad valorem taxation whatsoever.

From the foregoing, it is readily apparent that the April 14, 1976 time frame continues to emerge as a significant date governing the taxation methodology employed by the Legislature. As to a leasehold created prior to that date, the Legislature obviously intended that the tax on the leasehold, however it was classified, should represent the only ad valorem tax on the entire property interest.[10] As to a leasehold interest created after April 14, 1976, the Legislature may have concluded that the possessory

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[9] The effect of this single amendment meant that the Club was no longer deemed to be the owner of the subject property by virtue of its 99-year lease. See §199.196(7), Fla. Stat. Based on this change alone, which was ignored by the Property Appraiser, the Club should receive a refund of taxes it paid in the years 1985-1988.

[10] The residuary fee interest was, therefore, exempt just as it had been prior to the enactment of 71-133, Laws of Florida. No other conclusion logically emerges from the "grandfather" effect ascribed to this date.

leasehold interest and the nonpossessory ownership interest of the municipality should be subject to separate taxation. In any event, in this case, since the Petitioner's leasehold interest was created in 1956, the City's nonpossessory and residuary ownership fee interest is not subject to ad valorem taxation.

In this case, ad valorem real property taxes have been assessed against the City's residuary ownership interest and, through a provision in the lease, "passed through'' to Petitioner. Such taxes are invalid and unlawful. For tax years at issue prior to 1989 [specifically 1985, 1986, 1987 and 19881, to the extent that the Respondent Property Appraiser ignored the effect of Chapter 80-368 (the Club was not deemed to be the owner of the 192 acres since its lease was less than 100 years), the Club is also entitled to refund of real property taxes improperly assessed against it as owner of the subject 192 acres. Moreover, ad valorem real property taxes were never assessable against the City's residuary ownership interest since this interest was exempt.

POINT III

IF IT SHOULD BE DETERMINED THAT THE CITY'S RESIDUARY FEE INTEREST IS NOT EXEMPT, THIS INTEREST CANNOT BE LAWFULLY AND CONSTITUTIONALLY VALUED AND TAXED FOR REAL PROPERTY PURPOSES INDEPENDENTLY OF THE VALUE OF THE LEASEHOLD INTEREST SEPARATELY TAXED TO THE CLUB.

For the reasons set forth under Point 11, supra, this issue need not be reached in this case. However, if this Court determines that the City's residuary interest is not exempt from ad valorem taxation under the facts of this case, the question concerning allocation is presented for resolution.

Even if the residuary ownership interest of the City was not exempt from real property ad valorem taxation, the Respondent Property Appraiser did not attempt to assess the City's interest until tax year 1989. For tax years in issue prior to 1989, as noted above, the Club was unlawfully assessed as owner of the property in violation of Section 196.199(7), Florida Statutes (1985) [as amended by Chapter 80-368, Laws of Florida]. Therefor@, in any event, the Club is entitled to a refund of real property taxes improperly assessed against it for tax years 1985, 1986, 1987, and 1988.

For tax years 1989 and thereafter, the Respondent Property Appraiser has improperly assessed the City's nonpossessory, residuary fee interest in the golf course property as if the subject leasehold did not exist. This methodology is flawed where the leasehold interest in the same property is also subject to ad valorem taxation.

Under the 1980 law, just as under the 1971 law, two separate interests of the same total property (bundle of rights) are subject to taxation, i.e. 1) the nonpossessory and residuary fee interest and 2) the possessory leasehold interest. Under the 1971 act, allocation or apportionment of the total valuation of the entire property interest (100 percent of the bundle of rights) was obviously required with respect to the separately taxed interests since both interests were taxed directly as real property. The combined value of both interests could not exceed the just value of the entire fee.

Under the 1980 act, there has been no fundamental change in the taxing scheme or methodology which would suggest that the combined value of the separately taxed interests can now be ignored. Under the 1980 act, the residuary interest of the municipality can be (if not exempt) subject to taxation as real property, while the private leasehold interest is taxed as intangible personal property. However, both interests are subject to ad valorem taxation. This mandates that the combined value of both interests cannot exceed the just value of the entire 100 percent of the bundle of rights. Otherwise, the valuation process would violate Article VII, Section 4 of the Florida Constitution.

Moreover, failure to apportion the ad valorem assessed value among the taxed interests would lead to absurd results. Every time the Legislature identified a new taxable interest in real property, the ad valorem taxes would multiply beyond 100 percent of value.

Thus, as each ad valorem interest becomes subject to taxation, the taxable ad valorem assessment could exceed 100 percent of value.

Petitioner anticipates that Respondents will rely on Valencia Center, Inc. v. Bystrom, 543 So.2d 214 (Fla. 1989), Valencia Center, Inc. v. Publix Supermarkets, Inc., 464 So.2d 1267 (Fla. 3d DCA), rev. denied, 475 So.2d 696 (Fla. 1985), and Schultz v. Florida-Ohio Realty Ltd. Partnership, 16 F.L.W. 225 (Fla. March 28, 1991). These cases are inapposite as they all deal with a single taxpayer and a single tax on a piece of real property owned by a private entity. The instant case, in contrast, involves two taxpayers and two interests in a single property, which is subject (unless the City's interest is exempt) to two ad valorem taxes as municipal property. Therefore, where the Legislature taxes separate taxpayers' interests in a single property, the ad valorem assessment must take both of these interests into account. See generally Dickinson v. Davis, 224 So.2d 262 (Fla. 1969).

In this case, the Respondent Property Appraiser assessed and valued the nonpossessory interest of the City as if the separately taxed leasehold interest of the Club did not exist. In this respect, the Property Appraiser observed in his deposition:

> Q [Petitioner's Attorney] Let's deal first of all with municipally-owned property which is subject to a private lease. Now, that is not exempt, by your prior testimony?
>
> A [Property Appraiser Brand] That's correct.
>
> Q And so we're honing in on the city or the municipally-owned interest

and reaching a just valuation of that interest.

And you've indicated that you would not consider the nature of the lease or the duration of the lease or the amount of money of the lease that was derived from this lease that was entered into by the municipality; is that correct?

A That's true. We assess it as fee simple, unencumbered.

* * *

Q Okay. Now, I'm asking you **do** you back out of your ad valorem tax against the city's interest the value of the leasehold that's taxed by the Department of Revenue?

A That's handled by the Department of Revenue is my understanding. I do not handle those intangible taxes. It's my understanding it's the state **and** the individual owners or the lessee, their responsibility. It's not mine.

Q But you don't deduct the value of the leasehold interest --

A **No.**

Q -- in arriving at just value, a just valuation of the city's interest do you? Is that correct?

A **No.**

* * *

Q Has anyone raised with you or asked you to consider the fact that there could be a double taxation problem, or I don't know if double taxation is the correct word, but over taxation that emanates from the taxation of the leasehold as well as the taxation of the fee interests of the City?

A No.

Q Have you thought about it at all?

A Well, would you have both after it's assessed as real property? Would you still have the intangible tax? That's a question I have. But that's not my responsibility. I feel it should be assessed as real praperty, fee simple, unencumbered, but does that not nullify the intangible tax? That's a question, not an answer.

* * *

Q Well, what about the legal point of you considering that since the possessory interest is going to be subject to a leasehold tax the non-possessory governmental interest should be assessed by taking into consideration the value of the possessory leasehold interest in terms of deducting that from a 100 percent so that there would be a left over value for the non-possessory?

A I'm so glad that for the past 35 years that we have assessed all properties, 'we,' being John P. Brown who I worked for since 1956, has assessed all property fee simple, unencumbered. And you don't have to deal with those things. Let the court decide if we're wrong, but we're going on fee simple, unencumbered interest in an appraisal.

(R: 64, 68, 71, 72).[11]

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[11] This case does not present arguments as to whether the taxing methodology employed by the Respondent Property Appraiser is offensive to due process rights so as to be violative of Section 1983 of the Civil Rights Act. It is respectfully suggested, however, that similar issues and questions could easily be postured where the aggrieved leasehold owner qualifies as a person and, by operation of a "pass-through" provision in a lease,

The Respondents will also undoubtedly argue that the holding in City of Orlando v. Hausman, 534 So.2d 1183 (Fla. 5th DCA 1988), supports its position. City of Orlando addressed the question of whether a real property assessment of municipal land which was subject to a private leasehold was exempt by application of Section 196.199.[12] In noting that the residuary interest of the City was not exempt, the court acknowledged that "some interesting constitutional questions" were presented by the Legislature's reclassification of a leasehold interest as intangible personal property.[13] However, the court concluded that such questions were not germane to its holding in that case since, "there is no evidence that the property appraiser included the leasehold interests of the tenants in his assessment." Id. at 1185.

In the present case, the exact opposite is true. Here, the Property Appraiser testified that his valuation of the City's residuary fee interest was determined without apportioning any value of the leasehold interest taxable to the Club. Obviously, therefore, the assessment of the Property Appraiser embraced the value of the leasehold interest in calculating he values taxable to the Club. Unless some form of apportionment or allocation of the separately taxed ad valorem interests is applied, the

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is subjected to ad valorem taxation in excess of the just value of the property taxed.

[12] In that case, there was no issue as to whether the lease came under the "grandfather" provisions of Section 196.199.

[13] Presumably, the court had in mind constitutional questions raised by ad valorem taxation in excess of the just value of the total property interest taxed, i.e., multiple taxation.

constitutional questions regarding multiple taxation are raised in this case.

Because the exemption embraced in Section 196.199(4), Florida Statutes, is applicable to the residuary interest of the City in this case, this Court need not determine the constitutional questions referenced in City of Orlando. However, if the exemption does not apply, and if Mr. Brand and other property appraisers continue to pursue a methodology by which the sum of the separately taxed ad valorem interests exceeds the just value of the property as a whole, taxpayers such as Petitioners are clearly entitled to relief prohibiting such unfair and unconstitutional taxation.

CONCLUSION

The taxing authority in this case ignored the statutory changes whfch caused the Club to no longer be considered the owner of the golf course property. Real property taxes paid by the Club for the year 1985-1988 should be refunded. In addition, the "grandfather" exemption applies in this case to preclude taxation of the City's residuary interest in the leased property. Alternatively, if that exemption does not apply, the taxing authority must, nevertheless, fairly apportion the ad valorem taxes between the leasehold and fee interest so that no more than the **100** percent of the property's value is taxed between these two taxable interests.

Accordingly, this Court should reverse the decision of the District Court, and remand to the District Court with direction to remand to the trial court which should be directed to enter summary judgment in favor of the Club, declaring that the Club is entitled to refunds for the tax years **1985-1989** and thereafter for any taxes paid on the City's residuary interest, consistent with this Court's opinion. Alternatively, if the City's interest is not exempt, the case should be remanded with directions to enter judgment directing that the ad valorem taxes imposed against the Club's interest and the City's interest must coincidentally consider these interests

and fairly apportion value so as not to exceed the fair value of the property.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by U.S. Mail to JEAN R. WILSON, Assistant Attorney General, Department of Legal Affairs, Tax Section, Capitol Building, Tallahassee, Florida 32399; BENJAMIN K. PHIPPS, Post Office Box 1351, Tallahassee, Florida 32302; PETER GUARISCO, 2003 Apalachee Parkway, Suite 101, Tallahassee, Florida 32301; and S. L. WILLIAMS, 150 South Palmetto Avenue, Box A, Daytona Beach, Florida 32114, on this 26th day of August, 1991.

Attorney