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 REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS i

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

INTRODUCTION 1

POINT I 1

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 1

POINT II 3

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 PRIVATE PARTIES PRIOR TO APRIL 15, 1976 3

POINT III 8

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 8

CONCLUSION 14

CERTIFICATE OF SERVICE 15

TABLE OF CASES AND CITATIONS

Cases:

Campbell v. McLaurin Investment Co., 1917, 74 Fla. 501, 77 So. 277 11

Flowers v. Atlantic Coast Line Railway Co., 1939, 140 Fla. 805, 192 So. 321 11

Lykes Brothers, Inc. v. City of Plant City, 354 So.2d 878 (Fla. 1978) 4

Mikos v. Parker, 571 So.2d 8 (Fla. 2d DCA 1990) 11

Miller v. Higgs, 468 So.2d 371 (Fla. 1st DCA), rev. denied, 479 So.2d 117 (Fla. 1985) 1, 2, 10

Overstreet v. Indian Creek Village, 248 So.2d 2 (Fla. 1971), approving, 239 So.2d 149 (Fla. 3d DCA 1970) 3

Park-n-Shop v. Sparkman, 99 So.2d 571 (Fla. 1957) 6

Valencia Center, Inc. v. Bystrom, 543 So.2d 214 (Fla. 1989) 10

Williams v. Jones, 326 So.2d 425 (Fla. 1975) 2, 5, 10, 11, 12

Statutes and Other Authorities:

§ 197.182(1)(c) 11

Article VII, § 3 5

Article VII, § 3(a) 5

TABLE OF CASES AND CITATIONS (Continued)

Article VII, Section 3 6

Chapter 197 11

Chapter 71-133 . . . . . 3, 11, 12

Chapter 80-368 . . . . . 1, 2, 12

Rule 12D-3.002(4) 8

Rule 12D-3.003 8

Section 194.171(2) 11

Section 196.199 1

Section 196.199(4) 3, 4, 6, 7

INTRODUCTION

Solely for the sake of clarity and brevity, the arguments raised by Respondents and the various Amici will be collected and considered under the same issues framed in Petitioner's Initial Brief.

POINT 1

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.

Only Respondent Brand, as Property Appraiser of Leon County, suggests that Chapter 80-368, Laws of Florida, is unconstitutional to the extent it replaces an ad valorem real property taxing scheme with an ad valorem intangible personal property taxing methodology for private leasehold interests in government property. *See* Respondent Brand's Brief at 8, 9. However, as pointed out by Petitioner and by Amicus International Speedway Corporation in their Initial Briefs, this issue was fully addressed in Miller v. Higgs, 468 So.2d 371 (Fla. 1st DCA), rev. denied, 479 So.2d 117 (Fla. 1985). Curiously, Respondent Brand offers no guidance to this Court in terms of resolving the myriad problems presented by the application of Section 196.199, Florida Statutes, to the facts of this case.

Moreover, there are a host of procedural infirmities, including standing, which prevent Respondent Brand's challenge that this statute is constitutionally flawed. If the Legislature had the power to classify a private leasehold interest in government property as real property for ad valorem tax purposes, Williams v. Jones, 326 So.2d 425 (Fla. 1975), then likewise, it had the power to reclassify such property as intangible personal property for ad valorem tax purposes. Higgs, 468 So.2d at 377. Unless this Court desires to revisit the reasoning adopted in Williams and Higgs, Respondent Brand's challenge should be summarily rejected.

Accordingly, both Petitioner and Amicus International Speedway Authority urge this Court to ignore Respondent Brand's invitation to construe the certified question as embracing the issue of the constitutionality of Chapter 80-368, Laws of Florida. Rather, the certified question invites this Court to fashion meaningful parameters governing the application of this particular statute. Contrary to the myopic assertions of Respondents Department of Revenue [DOR] and Amici Property Appraisers, a search for such guidelines involves much more than a simple inquiry as to whether the Club's private use of its leasehold is exempt. Rather, what is needed is a careful and thoughtful review and analysis of the methodology implemented by the taxing schemes embraced by Chapters 71-133 and 80-368, Laws of Florida.

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 PRIVATE PARTIES PRIOR TO APRIL 15, 1976.

Respondents DOR and Amici Property Appraisers urge that Section 196.199(4), Florida Statutes, should not be construed to embrace a grandfather exemption for municipal property which is subjected to a private leasehold prior to April 15, 1976 (June 1, 1971 under Chapter 71-133, Laws of Florida). Respondents first contend that the exemption language must be strictly construed against a claimant and in favor of the taxing authority. Respondents, therefore, suggest that this statute should be interpreted to disregard the exemption urged by Petitioner. This argument fails to realize that the grandfather exemption here urged runs only in favor of a municipality. Under such circumstances, this Court is not required to strictly construe the grandfather exemption which works in favor of the City of Tallahassee. See Overstreet v. Indian Creek Village, 248 So.2d 2 (Fla. 1971) (strict construction may not be invoked against municipality asserting tax exemptions), approving, 239 So.2d 149 (Fla. 3d DCA 1970).

Here, Petitioner asserts that the City of Tallahassee's residuary interest in the subject property falls squarely within the grandfather exemption contained in Section 196.199(4), Florida Statutes. Thus, Petitioner's interest in claiming the exemption is merely derivative of the interest of the City of Tallahassee.

Thus, the exemption should not be strictly construed against the City's interest.

Second, DOR and the Property Appraisers urge that if Section 196.199(4) is construed to embrace a grandfather exemption for certain municipal residuary fee interests, the statute would be unconstitutional under the implicit reasoning in Lykes Bros., Inc. v. City of Plant City, **354** So.2d ***878*** (Fla. 1978). This argument, while plausible on its face, falls wide of the mark when carefully analyzed. In Lykes, this Court suggested in dicta that the Florida Constitution of 1968 required the taxation of all private leaseholds in government property used for non-public purposes. Hence, the Legislature was without power to exempt from taxation any private leaseholds used for non-public purposes.

In the present case, unlike the situation in Lykes, no leasehold exemption is involved or asserted. Here, the entire leasehold interest of the Club is clearly taxable, and there is no assertion to the contrary. Therefore, the private use of public property is unquestionably taxed, satisfying any constitutional concern. Rather, the question in this case focuses on whether the residuary fee interest of the City of Tallahassee in its property is taxable. Respondents' reliance upon Lykes is, thus, misplaced. Here, unlike the situation in Lykes, the goal of the taxing scheme, which is aimed at imposing taxes measured by the private use of government property, has been fully realized.

This Court in Lykes certainly did not suggest that a comprehensive taxing scheme which implements a uniform taxation of

leaseholds of public property used for non-public purposes is somehow flawed by the recognition of a grandfather exemption for the municipal, residuary fee interest. The residuary interest of the City is nothing more than an expectancy in favor of the City to repossess and use its real property upon expiration of the outstanding leasehold. In Williams v. Jones, this Court observed that so long as the private use of the property was taxed even indirectly through some tax on the leasehold, the Constitution was satisfied. *See* ~~id.~~ at 433. In the present case, since the private use of the property incurs a tax burden, the constitutional mandate is satisfied.

Further, the very words in Article VII, § 3 of the Constitution strongly suggest that the City's residuary interest should be exempt from taxation. The Constitution provides in relevant part:

> (a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation.

Article VII, § 3(a), Fla. Const. The residuary interest of the City of Tallahassee is certainly owned by the City of Tallahassee and hardly can be said to be used for purposes other than municipal or public purposes. The City's residuary interest is similar to a vacant piece of land owned by the City of Tallahassee. Although that vacant property may not be actively used to further a specific municipal purpose, the land remains a part of the property inventory of the City which is exempt from taxation. The same

holds true with respect to the residuary interest of the City of Tallahassee. Although this residuary interest is not being actively used to further municipal purposes, just like a vacant piece of property, the residuary property interest is being held in the City's existing inventory of public property. Hence, not only does the Constitution not mandate the taxation of the City's residuary interest, it strongly suggests that this interest should be exempt from taxation.

The present case, however, does not involve the difficult issue of whether all existing residuary interests of a municipality which are subject to private leaseholds and used for non-public purposes are exempt from taxation by operation of Article VII, Section 3. Instead, by the adoption of the grandfather feature contained in Section 196.199(4), the Legislature has provided a very limited exemption which follows the Constitution. The Legislature has allowed only those municipal, residuary interests which were subject to a private leasehold created before April 1, 1976 to escape ad valorem real property taxation. Since the leasehold in this case arose before 1976, this limited exemption applies to the City's residuary interest.

Ever since this Court's holding in Park-n-Shop v. Sparkman, 99 So.2d 571 (Fla. 1957), the Legislature has striven to enact a methodology for the taxation of government property used for private purposes. When it implemented its tax scheme, the Legislature realized that the imposition of ad valorem real property taxation on the existing residuary interests of

municipalities, in addition to the taxation of the leasehold interests, could be problematic for the affected municipalities. The burden of taxation imposed upon a municipality's residuary interest which was subject to a pre-existing leasehold would become a burden on the municipality, not the private leaseholder. Understandably, the Legislature offered some flexibility to municipalities to contract with leaseholders to shift the obligation to pay such new taxes imposed upon residuary interests. The grandfather exemption contained in Section 196.199(4) secures this flexibility. When this law was passed, a tax was not imposed on the residuary fee interests of municipalities subject to previously existing private leases. As for leaseholds entered into after the new law, the residuary interest of the municipality was taxable, and the municipality and leasehold user could contract as to who would bear the burden of this new tax.

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.

Respondent DOR and Amici Property Appraisers maintain that it is not incumbent upon property appraisers to apportion the value of a taxable leasehold as a part of the process of assigning an ad valorem value to the residuary fee interest of the City. Although the "unencumbered fee" rationale may be appropriate where the total value of the property is assessed to a single taxpayer, as in the case of privately-owned residuary fee interests, that is not the situation in this case. Here, the leasehold is separately assessable and taxable. That one ad valorem tax is already paid on the full ad valorem assessment (even if at a different tax rate for intangible taxes)[1] cannot be ignored when imposing a second ad

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[1] One Property Appraiser argues that nominal payments of rent are insufficient to create a bona fide leasehold interest to justify intangible tax classification. This Amicus has overlooked the Department of Revenue's own rule establishing the contrary, Rule 12D-3.003, Florida Administrative Code:

> Assessment and Taxation of Interests of Non-governmental Lessees in Governmentally Owned Property Which Are Subject to Ad Valorem Taxation.
>
> . . . .
>
> (3) Interests described in Rule 12D-3.002(4) upon which rental

valorem tax on the full bundle of property rights. And certainly this apportionment does not result in taxing the property at less than full value (as argued by Amici Property Appraisers) merely because a different tax rate is imposed. Rather, the failure to apportion value between ad valorem taxes results in property being taxed at greater than the fair assessment.

A logical maxim provides that "the whole is equal to the sum of the parts." Yet, Respondents suggest that this logic is inapplicable when the task at hand entails assessment of property values. The value of the whole of any property is equal to the sum of the values assigned to the possessory and nonpossessory components of the property. In the case of real property subject to a lease, the component parts are the possessory leasehold interest and the non-possessory residuary fee interest. By way of illustration, if the whole property is valued at $100 and the leasehold is valued at $80, it does not entail speculation to reason that the non-possessory reversionary interest must be valued at $20.

The Constitution requires ad valorem assessment and taxation of property based on "just value." Returning to the foregoing

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> payments are due pursuant to the agreement creating said interest shall be taxed as intangible property pursuant to Subsection 199.032(1), Florida Statutes. Nominal payments shall be deemed rental payments for purposes of determining the method of taxation but not for determining valuation of the interest. (emphasis added).

hypothetical, all ad valorem assessments of the component parts of a "whole" property interest should not exceed (or be less than) $100, the value of the "whole" property. Therefore, if one of the component parts of a property interest, i.e. a leasehold, is valued and taxed at $80, the value of whatever component interest remains cannot logically or constitutionally exceed $20.[2]

Amazingly, the Department of Revenue and Amici Property Appraisers reject this simple logic. They maintain that the leasehold interest of a particular property is not a component part of the whole property. Since the leasehold interest is classified as intangible property for tax purposes, Respondent DOR argues that this classification removes the leasehold as a component ingredient of the whole property.[3] This reasoning, however, was rejected by this Court in Williams v. Jones:

> "Turning to the law on the subject of ownership interest by a lessee, we find that, in the law of real property, it is well

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[2] Contrary to Respondents' suggestions, this case does not involve issues of **below-market** leases **or** whether **the** profitability of a lease affects the value of real property. Cf. Valencia Center, Inc. v. Bystrom, 543 So.2d 214 (Fla. 1989).

[3] On the other hand, Amici Property Appraisers inconsistently argue that the State would effectively be imposing an unconstitutional tax on real estate if an apportionment of value was effected between the City's residuary interest and Club's leasehold interest. Yet, the tax imposed by the State is an intangible property tax, not a real property tax. Allocation of ad valorem assessed values between these interests **does** not somehow transform an intangible tax into a real property tax. Once the Legislature made the decision to preempt the taxes on private leaseholds of public property to the State by changing the tax from real property to intangible, the counties lost this revenue source. See Miller v. Higgs.

> established that a valid lease for a term of years is a conveyance of an interest in land, Flowers v. Atlantic Coast Line Railway Co., 1939, 140 Fla. 805, 192 So. 321; Campbell v. McLaurin Investment Co., 1917, 74 Fla. 501, 77 So. 277. A lessee's interest in a leasehold estate is thus stated: 'During the life of a lease, the lessee holds an outstanding leasehold estate in the premises, which for all practical purposes is equivalent to absolute ownership. The estate of the lessor during such time is limited to his reversionary interest, which ripens into perfect title at the expiration of the lease.'"

Williams v Jones, 326 So.2d at 433 (quoting State Road Dept. v. White, 148 So.2d 32 (Fla. 2d DCA 1962) (emphasis added). Thus, a leasehold is fundamentally different from a mortgage or stock (which DOR uses as its examples), as the leasehold is an interest in the land which comprises part of the entire bundle of property rights.

The fallacy in DOR's reasoning is also easily exposed by an examination of the assessment methodology of Chapter 71-133, Laws of Florida.[4] Under that law, the taxable leasehold was treated and assessed as real property. Thus, if the total property was

[4] DOR is also mistaken in its assertion that the 60-day period of Section 194.171(2), Florida Statutes, applies to this action. The Club alleged in its complaint that it timely and fully paid the property taxes for 1985-1987, and has requested refund pursuant to Chapter 197, Florida Statutes (1987). It is well established that refund actions are not subject to the 60-day filing period prescribed for deficiency action. Refund actions may be filed within four years of January 1 of the tax year for which the taxes were paid. See § 197.182(1)(c), Fla. Stat.; Mikos v. Parker, 571 So.2d 8 (Fla. 2d DCA 1990).

assessed at **$100** and the leasehold was assessed at **$80**, could the property appraiser condone a valuation system which permitted a single property to be valued at **$180**, where its recognized and admitted just value was only **$1001** Clearly, the applicable methodology under Chapter **71-133** had to apportion ad valorem valuation between component parts of the total property interest at issue, as directed by this Court in Williams v. Jones:

> 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.

Id. at 436.

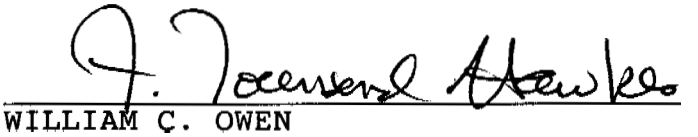
Nothing has changed with the enactment of Chapter 80-368 to alter this need for allocation or apportionment. The leasehold interest must still be assessed and valued as a component part of the whole property interest. Merely because **a** leasehold interest is now denoted an intangible property interest for tax purposes does nothing to remove it as a component feature of the "whole" real property interest at issue. The privately used leasehold interest was a component part of the total property interest under Chapter **71-133** and it remains so today under Chapter 80-368. No

fundamental change in the medieval principles of real property law has occurred to justify ignoring this reality.

DOR's interpretation of this taxing scheme also violates a basic public policy which strives to avoid discriminatory taxation. The Legislature cannot be presumed to have intended to enact a taxing scheme on the private use of government property which would operate to exacerbate discrimination between city and county leases to private parties. Under the interpretation advanced by the Department of Revenue, however, this is exactly what will happen. In the case of municipal land, the private leasehold triggers not only an ad valorem tax on the leasehold itself, but also an ad valorem real property tax against the residuary fee interest of the municipality, imposed as if the leasehold did not exist. Thus, under the DOR's view, the private use of municipal property results in a significantly greater tax burden than the private use of county land. As a result, private leaseholds of county land have a significant, discriminatory tax advantage over competing private leaseholds of municipal property, which is increased to an even a greater degree by DOR's position. Such an interpretation should be avoided based on a public policy favoring non-discriminatory imposition of taxes.

CONCLUSION

The tax scheme imposed by the Legislature contemplated exempting municipal residuary fee interests subject to private use leaseholds which were created before the new tax laws took effect, Since the leasehold here involved arose before these new laws, the municipal residuary interest was exempted. Alternatively, because there is only one "whole" taxable bundle of property rights and privileges which supports ad valorem taxation, when **two** ad valorem taxes are imposed on the one set of privileges, these taxes must be apportioned so that no more than the "full value" of the privileges is taxed. Accordingly, the decision of the lower court should be reversed, and judgment entered in favor of Petitioner.



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CERTIFICATE OF SERVICE

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