IN THE SUPREME COURT OF FLORIDA

CANAVERAL PORT AUTHORITY,
a political subdivision
of the State of Florida,

Petitioner

vs. CASE NO. 84,743

FLORIDA DEPARTMENT OF REVENUE,
JIM FORD, as Brevard County
Property Appraiser, and **ROD**
NORTHCUTT, as Brevard County
Tax Collector,

Respondents.
_____/

RESPONDENTS' ANSWER BRIEF

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PRELIMINARY STATEMENT

The Court below was the Eighteenth Judicial Circuit Court in and for Brevard County, Florida. It will be referred to in the Respondents' Answer Brief as "the trial court".

References to the Record on Appeal will be prefixed with the letter R followed by the appropriate page numbers, e.g. R-1-14. References to the transcript of the February 10, 1993, Hearing and the transcript of the July 30, 1993, Non-Jury Trial will be prefixed with the letters TR followed by the appropriate page numbers, e.g. TR-1-62.

References to the Plaintiff's exhibits submitted into evidence at the Non-Jury Trial will be identified by the letters Pl. Ex. followed by the appropriate exhibit number and description, e.g. Pl. Ex. #1, Canaveral Harbor Booklet. References to the Defendants' exhibits submitted into evidence at the Non-Jury Trial will be identified by the letters Df. Ex. followed by the appropriates exhibit number and description, e.g. Df. Ex. #3, Comp Copies Lease Agreements.

STATEMENT OF THE CASE

The Petitioner, Canaveral Port Authority, ("the Authority"), originally filed this action in Circuit Court against the Respondents, Jim Ford, Brevard County Property Appraiser, ("the Property Appraiser"), Rod Northcutt, Brevard County Tax Collector, ("the Tax Collector") and the Florida Department of Revenue, ("the Department"), contesting the assessment of ad valorem taxes on the fee interest of certain of its real property by the Property Appraiser pursuant to Ch. 196, Fla. Stat. R-1-14. The property in question is leased to non-governmental lessees, who were not performing a governmental or other exempt function for the tax year 1992. R-209-220; 312.

The Authority contends that it is a political subdivision of the State of Florida and that it is an independent special district pursuant to § 189.403, Fla. Stat., and in that capacity the real property owned and leased by it to non-governmental lessees is either immune or exempt from ad valorem taxation by virtue of the Florida Constitution, § 196.122, Fla. Stat. (sic.), and § 315.11, Fla. Stat.[1] R-3. The trial court entered Final Judgment on September 10, 1993, holding that the fee interest in the real property owned by the Authority is not taxable, in that the Authority is immune from ad valorem taxation of real property which it owns. R-311-324. It was this Final Judgment that the

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[1] A review of the Amici Briefs filed in support of the Authority are merely cumulative of the arguments set forth in the Authority's Initial Brief, and thus, will not be independently addressed outside this response to the Petitioner's Brief.

Respondents sought review of in the 5th District Court of Appeal ("District Court"). R-335-351.

Relying upon Hillsborough County Aviation Authority v. Walden, 210 So. 2d 193 (Fla. 1968), and Broward County Port Authority v. Arundel, 206 F. 2d 220 (5th Cir. 1953), the District Court in this case, found that the Authority was not created as a "political subdivision" of the state and thus was not immune from taxation and reversed the trial court. Id., 642 So. 2d at 1101. The District Court likewise distinguished the instant case from Sarasota-Manatee Airport Authority v. Mikos, 605 So. 2d 132 (Fla. 2d DCA 1992), rev. denied, 617 So. 2d 320 (Fla. 1993), (hereinafter "SMAA"), by concluding that the Legislature, with the passage of Ch. 91-358, § 18, Laws of Fla., had designated the Sarasota-Manatee Airport Authority as a "political subdivision" within the meaning of government property tax exemptions pursuant to § 196.199, Fla. Stat. In this case, the District Court found that the Legislature had not labeled the Authority a "political subdivision". Id., 642 So. 2d at 1099 and 1100.

The Authority contends that conflict exists between the decisions in SMAA and Florida, Department of Revenue, et al. v. Canaveral Port Authority, 642 So. 2d 1097 (Fla. 5th DCA 1994). In both cases, the Authorities were created by a Special Act of the Florida Legislature. Both Authorities were designated as a public body corporate.[2] In both cases, the Authorities' real property had become subject to a leasehold interest of a

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[2] Compare, Ch. 31263, Laws of Fla. (1955), as amended, and as revised and consolidated in Ch. 91-358, Laws of Fla. (Sarasota), *with* Ch. 28922, Laws of Fla. (1953)(Canaveral).

nongovernmental lessees. Finally, in both cases, the lessees were not performing a governmental or other exempt function pursuant to §§ 192.012(6), 196.199(2)(a) and 196.199(4), Fla. Stat.

In SMAA, the Second District Court of Appeal reversed the trial court and held that the Sarasota-Manatee Airport was a political subdivision of the State and therefore immune from taxation. See 605 So. 2d at 133. In the instant case, the Fifth District Court of Appeal reversed the trial court and held that the Authority was not a political subdivision and therefore not immune from taxation. See 642 So. 2d at 1102.

STATEMENT OF THE FACTS

[The Petitioner has a statement of the case and facts in its brief. However, the only facts that are relevant to this case are set forth below.]

The instant case concerns the taxation of the real property and the improvements ("the property") which are owned by the Authority but leased to non-governmental lessees and used for non-public or non-governmental purposes. R-312. The property is not used either for a governmental, municipal or public purpose or for a literary, scientific, religious or charitable purpose, pursuant to § 196.199(4), Fla. Stat. The Property Appraiser, pursuant to §§ 192.011 and 196.001, Fla. Stat., assessed ad valorem taxes for the tax year 1992 on the fee interest of the property owned by the Authority and leased to non-governmental lessees. The Property Appraiser determined that the subject lessees were not performing a governmental or exempt purpose,

pursuant to statute and, thus, the fee interest of such leased property was subject to ad valorem taxation. Section 196.199(4), Fla. Stat. The Property Appraiser did not assess the property of the Authority which was being used for governmental-governmental functions. R-209-220.

The Authority was created by a Special Act of the Florida Legislature as a public body corporate. See, Ch. 28922, Art. III, § 1, Laws of Fla. (1953). Its purpose was to operate Port Canaveral. The Authority may, pursuant to that special act, enter into leases. See, Ch. 28922, Art. IV, §§ 1 and 16, Laws of Fla. (1953). Testimony also showed that the Authority considered itself to be in the nature of a municipality and held itself out to the public as such. TR-135-136; Pl. Ex. #4, Original Annual Finance Report, p. xvi.

As the stipulated evidence shows, the Authority has entered into more than a hundred leases. TR-156; TR-161-168. All of the leases have provisions making the tenant liable for any ad valorem taxes. TR-155. Some of the leases provide that any improvements made by the tenant during the term of the lease may be removed by the tenant upon termination while other leases state that upon termination of the lease, any improvements belong to the Authority. See, Df. Ex. #3 and 4 Comp. Copies of Lease Agreements.

The real property in question was owned by the Authority and had become or was subject to a leasehold interest of a non-governmental lessee. R-210. The non-governmental lessees were not performing a governmental or other exempt function pursuant

to §§ 192.012(6), 196.199(2)(a) and 196.199(4), Fla. Stat. R-312. The trial court found that the lessees were not preforming a governmental or exempt purpose. R-312.

SUMMARY OF ARGUMENT

The underpinning of the Authority's position is that the Legislature lacks the power to permit taxation of the Authority's property, when such property is leased to private parties and used for private purposes. This position is in absolute express and direct conflict with Dickinson, Alford, Williams and Capital City Country Club, infra.

The actual use of the property determines its taxable status. The real property and improvements, owned by the Authority and which are leased to a nongovernmental lessee, are taxable because such property and improvements do not serve a statutorily recognized governmental, municipal or public purpose, and they are not used exclusively for literary, scientific, religious, or charitable purposes. Such property is taxable as real property subject to ad valorem taxation because it is not used for governmental-governmental purposes and is not exempt under § 196.199(4), Fla. Stat.

The Authority is an entity in the nature of municipality which is only entitled to an exemption from ad valorem taxation for its properties which qualify for an exemption under § 196.199(4), Fla. Stat. The uses as established by the activities of the lessees do not qualify the property for an exemption under § 196.199(4), Fla. Stat.

Both Dickinson and Alford held that immunity from taxation of the state and its political subdivisions could be waived by a proper legislative enactment. The Authority's position in the instant case begs the question - if § 196.199(4), Fla. Stat., did not waive any immunity the Authority may have had, then what did it do?

Section 196.199(4), Fla. Stat., provides for taxation of property owned by any municipality, agency, authority or other public body corporate of this state which becomes subject to a leasehold interest or other possessory interest of a nongovernmental lessee. This section does not have reference to the taxation of a leasehold interest but refers to the taxation of the referenced governmental unit and the property it owns. The statute also provides for an exemption if property owned by any municipality, agency, authority, or other public body corporate which is subject to a lease and the lessee is an organization which uses the property for a governmental purpose or exclusively for literary, scientific, religious or charitable purposes.

The Legislature obviously saw fit to treat all government property owned by the entities listed in § 196.199(4), Fla. Stat., leased to private persons the same. The Authority's position would tax municipal and the other listed entities property leased to private entities and used for private purposes, but impose no financial burden on private lessees of Authority owned property, in spite of the fact that the Legislature clearly intended that both Authority and municipal

lessees be treated identically. Capital City Country Club, infra.

Finally, the Authority places weight on being an "independent special district", by virtue of Ch. 189, Fla. Stat., specifically §§ 189.403(2) and (3), Fla. Stat. The Authority strings together the position that its regional impact makes it more in the nature of a county and thus immune from taxation. Such a claim has no basis in fact or law. Chapter 189, Fla. Stat., has nothing to do with immunity from ad valorem taxes. This statutory scheme does not grant any new powers or immunity to an authority. The purpose of the Act was accountability and uniformity in the future, pursuant to § 189.402, Fla. Stat., and to ensure that counties do not exceed the 10 mill cap provided for in Art. VII, § 9(b), Fla. Const.

ARGUMENT

I.A. THE TAXABLE STATUS OF THE PROPERTY LEASED BY THE AUTHORITY TO NONGOVERNMENTAL ENTITIES

The issue in this case is the use of the property, not its ownership. Florida Law requires taxation, unless expressly exempt, of all real and personal property in this state, personal property belonging to persons residing in this state, and leasehold interests in property of the federal, state, and local governments.[3] Property is taxed as either real property, tangible personal property, or intangible personal property.[4] Real and tangible personal property is taxed by local governments. Intangible personal property tax is a state tax which is shared with counties and school boards. Sections 199.292(3) and 199.292(1), Fla. Stat., respectively.

Whether the Authority is labeled "immune," or whether the Authority is an entity "in the nature of municipality," or an authority or a public body corporate, is not the issue. Whether, as argued by the Petitioner, the Authority has a "role in the general administration of the policy of the state" misses the point. The Petitioner is an authority and the Legislature addresses the taxable status of authorities' leased properties in § 196.199(4), Fla. Stat. The issue is whether the lessees of the

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[3] Section 196.001, Fla. Stat., and AM FI Inv. Corp. v. Kinney, 360 So. 2d 415, 416 (Fla. 1978).

[4] Real property is defined as "land, buildings, fixtures, and all other improvements to land. The terms 'land', 'real estate', 'realty', and 'real property' may be used interchangeably." Section 192.001(12), Fla. Stat.

Authority's leased property are using the property for a governmental-governmental function. They are not.

The Authority is only entitled to an exemption from ad valorem taxation for those properties which so qualify under Ch. 196, Fla. Stat. In this case, the uses and purposes to which the property is being put, as established by the activities of lessees, do not qualify the property for an exemption under Ch. 196, Fla. Stat. R-312. Volusia County v. Daytona Beach Racing and Recreational Facilities Dist., 341 So. 2d 498, 502 (Fla. 1977), appeal dismissed, 434 U.S. 804 (1978). The only relevant fact in this case is the use to which the Authority puts its property.

The real property and improvements are owned by the Authority and leased to nongovernmental lessees. These lessees are not performing a governmental or exempt purpose. The lessees are not using the property and improvements for a statutorily recognized governmental, municipal or public purpose, and they are not using the property and improvements exclusively for literary, scientific, religious, or charitable purposes. Thus, the property is taxable as real property because it is not used for governmental-governmental purposes and is not exempt under § 196.199(4), Fla. Stat.[5]

The 1968 Constitution mandates that all privately used property bear its fair share of the tax burden. Straughn v. Camp, 293 So. 2d 689 (Fla. 1974); Williams v. Jones, 326 So. 2d

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[5] Sebring Airport Authority v. McIntyre, 642 So. 2d 1072 (Fla. 1994).

425 (Fla. 1975); and, Volusia County v. Daytona Beach Racing & Recreational Facilities District, supra. Indeed, each time the Legislature has attempted to exempt governmentally owned property being used for a private purpose from all forms of ad valorem taxation, the courts of this state have stricken these attempts. Archer v. Marshall, 355 So. 2d 781 (Fla. 1978); AM FI Investment Corp. v. Kinney, 360 So. 2d 415 (Fla. 1978); and, Mallard v. R.G. Hobelman & Company, Inc., 363 So. 2d 1176 (Fla. 1st DCA 1978).

The taxation of all property, is determined first by reference to § 196.001, Fla. Stat. That section provides that, unless expressly exempt from taxation, all real and personal property and all leasehold interests in government owned property are subject to taxation.

When one analyzes §§ 196.001 and 196.199, Fla. Stat.,[6] these sections demonstrate the legislative intent that unless expressly exempted, all property, including that property owned by an Authority, shall bear the same tax burden as private property owners who devote their land to the same use.[7] Just as the Legislature had responded to this Court's observations in Park-N-Shop, Inc. v. Sparkman, 99 So. 2d 571 (Fla. 1957) -- making leaseholds in governmental property subject to ad valorem taxation, the Legislature, enacted a series of statutes (§ 192.62 (1961); § 196.125 (1969); § 196.001(2); and § 196.199 (1971)), and provided for the taxation of lands of the several political subdivisions, municipalities or entities created by

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[6] See, Ch. 71-133, §§ 11 and 16, Laws of Fla.

[7] Williams v. Jones, 326 So. 2d at 430, 433.

special law under certain circumstances. See, Ch. 71-133, § 16, Laws of Fla.[8]

However, despite all of these legislative enactments, the Authority claims that as a port authority its property is exempt from taxation under § 315.11, Fla. Stat.[9] Even though the 1959 Legislature chose to give the port authorities what appears to be a tax exemption from ad valorem taxation, a subsequent Legislature has the authority to repeal prior tax exemptions.[10] See, Straughn v. Camp, 293 So. 2d 689, 694 (Fla. 1974).

In 1971, the Legislature repealed the port authorities' exemptions contained in the special acts[11] creating them, by enacting Ch. 71-133, § 14, Laws of Fla., which states:

> All special and local acts or general acts of local application granting specific exemption from property taxation are hereby repealed to the extent that such exemption is granted...

The 1971 Legislature, in the same act which repealed those special act exemptions, enacted § 196.199(4), Fla. Stat., [originally § 196.199(3), Fla. Stat. (1971)], which provides for taxation of property owned by any municipality, agency, authority

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[8] See, Williams v. Jones, 326 So. 2d at 435; Chapter 71-133, § 14, Laws of Fla., repealed all special and local acts or general acts of local application granting specific exemption for property taxation. Article III, § 11(a)(2), Fla. Const., prevents such exemptions from occurring in the future.

[9] Ch. 315, Fla. Stat., was enacted in 1959, pursuant to Ch. 59-411, Laws of Fla. (1959).

[10] The 1973 amendment to § 315.11, Fla. Stat., addressed the inapplicability of Ch. 220, Fla. Stat., taxes to § 315.11. Furthermore, the 1973 amendment did not seek to reimpose any blanket exemption from ad valorem taxes to the port authorities.

[11] The Authority had been given an exemption from taxation in the Ch. 28922, Art. XII, § 1, Laws of Fla. (1953).

or other public body corporate, such as the Authority in this case, if the property of any of the listed governmental unit becomes subject to a leasehold interest or other possessory interest of a nongovernmental lessee. This section does not reference the taxation of a leasehold interest but refers to the taxation of the referenced governmental unit and the property it owns. Capital City Country Club v. Tucker, 613 So. 2d 448, 451 (Fla. 1992). Any general blanket exemption enjoyed by the Authority in § 315.11, Fla. Stat., was modified by the provisions of § 196.199(4), Fla. Stat.

The Legislature provided for exemptions for property owned by government units under certain circumstances stating in § 196.199, Fla. Stat., that:

> **196.199 Exemptions for property owned by governmental units.--**
>
> (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 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.)

The Legislature further provided in subsection 4 of § 196.199, Fla. Stat., that:

> Property owned by any municipality, agency, authority, or other public body corporate of the state which becomes which becomes subject to a leasehold interest or other possessory interest of a nongovernmental lessee other than described

> in paragraph (2)(a), after April 14, 1976, shall be subject to ad valorem taxation unless lessee is an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes. (e.s.)

The Property Appraiser in the instant case has assessed certain leaseholds of the property of the Authority as of January 1, 1992. At the time of the assessment, the property was devoted to non-public or "non-governmental-governmental" purposes as interpreted by decisions of this Court. See, e.g., Williams v. Jones, 326 So. 2d 425 (Fla. 1975); and, Walden v. Hillsborough County Aviation Authority, 375 So. 2d 283 (Fla. 1979)(the second Walden case). These cases delineate between "governmental-governmental" and "governmental-proprietary" uses, purposes or functions.

B. THE PROPERTY IS NOT BEING USED BY THE AUTHORITY FOR A GOVERNMENTAL-GOVERNMENTAL PURPOSE SO AS TO ENTITLE IT TO EXEMPTION

When real property ceases to be used for appropriate governmental, municipal, or public purposes as provided for in § 196.199(1)(c) and (4), Fla. Stat., such property becomes taxable just the same as real property in private ownership used identically. Capital City Country Club, supra; See also, Lykes Brothers, Inc. v. City of Plant City, 354 So. 2d 878 (Fla. 1978). In the second Walden case, this Court recognized that § 196.199, Fla. Stat., waived any immunity from taxation which any government property may have possessed. The property leased by the Authority to non-governmental lessees falls squarely within this category.[12] The actual use of the property determines its

[12] See, Volusia County v. Daytona Beach Racing and Recreational

taxable status. See, Dade County Taxing Authorities v. Cedars of Lebanon Hospital, 375 So. 2d 1202, 1204 (Fla. 1978). The Property Appraiser in the instant case is not purporting to determine or tax the leasehold interests. He has assessed the Authority as a property owner which has devoted its property to non-public or "non-governmental-governmental" purposes.

The real property and improvements, owned by the Authority and which are leased to a nongovernmental lessee, are taxable because such property and improvements do not serve a statutorily recognized governmental, municipal or public purpose, and they are not used exclusively for literary, scientific, religious, or charitable purposes.[13] Such property is taxable as real property subject to ad valorem taxation because it is not used for governmental-governmental purposes and is not exempt under § 196.199(4), Fla. Stat. See, Capital City Country Club, supra.

Any time governmentally-owned real property is leased to a private entity such property is taxable unless the lessee uses the property for a governmental-governmental function. Section 196.199(4), Fla. Stat. Numerous authorities have addressed the issue of the difference between a proprietary function of a public body and a governmental or sovereign function of a public body. Section 196.012(6), Fla. Stat.[14]

Facilities District, supra; City of Orlando v. Hausman, 534 So. 2d 1183 (Fla. 5th DCA 1988), rev. denied, 544 So. 2d 199 (Fla. 1989).

[13] Ocean Highway and Port Authority, 609 So. 2d at 86.

[14] Williams v. Jones, supra; Straughn v. Camp, supra.

The distinction between governmental and proprietary functions is a matter of law requiring an examination into the nature of the function to see if the function is one which partakes of sovereignty and can only be performed by the sovereign. Generally, if a function can be performed by a private entity as well as a municipality or county, then it cannot be a sovereign function but is instead a proprietary function. The distinction was recognized and stated by the First District Court in the case of St. John's Associates v. Mallard, 366 So. 2d 34 (Fla. 1st DCA 1978), at page 35:

> Legislative declarations such as those in Ch. 63-1447 do not necessarily make the function a commercial lessee performs governmental. It is rather the actual use made of the leased property which determines whether it is taxable under the constitution. *Cf. Straughn v. Camp, supra*. Governmental functions or duties relate to administration of government or some element of sovereignty, *Daly v. Stokell*, 63 So. 2d 644 (Fla. 1953), while proprietary functions are those undertaken for public benefit and involve no exercise of sovereignty. *City of Miami v. Oates*, 152 Fla. 21, 10 So. 2d 721 (1942). If the function is in fact proprietary--it matters not what statutory authorization is given the governmental unit--the leased property does not obtain its tax exempt benefit. (e.s.)

The distinction between a sovereign governmental function and a proprietary function is a question of law which the court must determine based on examination of the function being performed. If the function being performed is a function which can, through contract, be performed by someone other than the governmental entity, then the function is proprietary. This Court recognized this in Daly v. Stokell, 63 So. 2d 644 (Fla. 1953), wherein it considered a contract between the City

Commission of Fort Lauderdale and the operator of a wrecking and towing business, which, pursuant to said contract, agreed to keep the streets cleared of wrecks, derelicts and other impediments to freely moving traffic. In considering the contract, this Court stated, at page 645:

> We understand the test of a proprietary power to be determined by whether or not the agents of the city act and contract for the benefit and welfare of its people; any contract, in other words, that redounds to the public or individual advantage and welfare of the city or its people is proprietary, while a governmental function, as the term implies, has to do with the administration of some phase of government, that is to say, dispensing or exercising some element of sovereignty. *Illinois Trust & savings Bank v. City of Arkansas City*, 8 Cir., 76 F. 271, 34 L.R.A. 518; *Tuttle Bros. & Bruce v. City of Cedar Rapids, Iowa*, 8 Cir., 176 F. 86. (e.s.)

Similarly, in the case of City of Miami v. Oates, 152 Fla. 21, 10 So. 2d 721 (1942), this Court held that the maintenance of a hospital was not a governmental duty, but was instead a proprietary or corporate duty. See also, Chardkoff Junk Co. v. City of Tampa, 102 Fla. 501, 135 So. 457 (1931). In the case at bar, the decision to operate the facilities themselves or to lease them and permit them to be operated by private enterprise was a corporate decision made by the Authority in its corporate capacity.

Generally, proprietary functions can be distinguished from governmental functions in that a proprietary function may be performed by a private non-public entity just as easily as being performed by a municipal corporation. However, sovereign governmental powers may not be delegated. Thus, a proprietary

activity such as garbage collection, the operation of an incinerator, the operation of a racetrack or electric company may be performed by a public body if duly authorized, or they may be franchised and thus delegated through contract. See, Chardkoff Junk Co. v. City of Tampa, supra; Walden v. Hertz Corp., 320 So. 2d 385 (Fla. 1975); St. Johns Associates v. Mallard, supra; and, Volusia County v. Daytona Beach Racing, supra. See also, Sebring Airport Authority v. McIntyre, 642 So. 2d 1072, 1073-1074 (Fla. 1994), wherein this Court cautioned against equating "serving the public" with "public purpose." See Saunders v. City of Jacksonville, 157 Fla. 240, 25 So. 2d 648 (1946)

The "proprietary" nature of a port authority was also discussed by the Fifth Circuit in Broward County Port Authority v. Arundel Corp., 206 F.2d 220, 223 (5th Cir. 1953), wherein that Court stated:

> While the Port Authority has broad general powers, in some respects similar to those of a governmental subdivision, they are all directed and authorized to be exercised to the ultimate end of the development, maintenance and operation of a port, a business of a restricted nature, and it does not possess the usual incidents and powers of a governmental subdivision of the state. It is in effect a business corporation and the discharge of its functions, though amply authorized, is in the forwarding or carrying on of a proprietary function.

Similarly, in Volusia County v. Daytona Beach Racing and Recreational Facilities Dist., supra, this Court held that the operation of a racing facility was purely proprietary and for profit and did not serve a governmental purpose. 341 So. 2d at 502.

The Williams v. Jones case, decided under the 1968 Constitution, construed Ch. 71-133, Laws of Fla., as permitting exemption for government-owned property leased to private entities only when the lessee performed a governmental-governmental purpose. The decision of this Court had the effect of overruling and retreating from prior decisions arising under the 1885 Constitution which had applied a test of "predominant public use" to determine the right to exemption. See, Volusia County, supra, 341 So. 2d at 501, n.4.

In St. John's Associates v. Mallard, supra, the First District Court recognized this and held that the "predominant public use" test which was applied by the courts to the statutes that existed prior to the enactment of Ch. 71-133, Laws of Fla., in such cases as Dade County v. Pan American World Airways, Inc., 275 So. 2d 505 (Fla. 1973), and Orlando Utilities Comm. v. Milligan, 229 So. 2d 262 (Fla. 4th DCA 1970), cert. denied, 237 So. 2d 539 (Fla. 1970), no longer had any legal efficacy.[15] In St. John's, at page 37, that Court stated:

> We conclude that a more recent line of cases militates against St. John's argument that an exemption exists. *E.g., Straughn v. Camp*, 293 So. 2d 689 (Fla. 1974); *Williams v. Jones*, 326 So. 2d 425 (Fla. 1975); *Volusia County v. Daytona Beach Racing, etc.*, 341 So. 2d 498 (Fla. 1976). Therefore the test formerly applied in those cases relied upon by St. John's i.e., predominant public use, no longer has continuing efficacy and we must look instead to the use actually made of the property leased

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[15] See, Volusia County, supra, 341 So. 2d at 501, n.5, wherein this Court noted that § 196.001, Fla. Stat. (1975), supersede the statutory provisions considered by this Court in Dade County v. Pan American World Airways, Inc., supra.

to determine its tax exempt status.

In Tre-O-Ripe Groves, Inc. v. Mills, 266 So. 2d 120 (Fla. 1st DCA 1972), 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 rent rents for $49,000.00 per year which entitles it to use the land for cultivation and harvesting of citrus fruit.

Thereafter the Court stated:

> We are of the opinion that the trial court correctly dismissed the second amended petition for the reason that the same failed to state a cause of action. It is well established beyond the need for citation of cases that when Federal property is placed in the hands of private enterprises 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. (e.s.)

See also, Bancroft Inv. Corp. v. City of Jacksonville, 157 Fla. 546, 27 So. 2d 162 (1946); U.S. v. Brown, 41 F. Supp. 838 (S.D. Fla. 1941). If federally-owned property leased to a private lessee who uses same in the cultivation and harvesting of citrus is taxable, then certainly a lessee of the Port Authority's property using same for proprietary purposes is entitled to no different treatment.

In City of Bartow v. Roden, 286 So. 2d 228 (Fla. 2d DCA 1973), the Second District Court of Appeal considered the question of whether certain property located within a municipally-owned airport complex and leased by private enterprises or held out for lease by the City was subject to ad valorem taxes and held that it was. In discussing the import of the Airport Authority Law[16] that Court stated, at page 230:

> Yet, we do not believe that when the Legislature stated that the use of properly acquired for an airport was for a public purpose, it was determining that those portions of the airport property which might be leased to private enterprise for non-aeronautical activities would be tax exempt.
>
> For example, a municipality might property acquire vast acreage for the purpose of building a large airport and later find that much of the property was not required for use in connection with the maintenance of the airport. Under those circumstances, having originally acquired the property for the airport, the municipality would be authorized under Section 332.08 to lease it to private interests, but it would be an anomaly to permit such property to remain off the tax rolls. This would either have the effect of giving a preference to a lessee of airport property over his competitors or of permitting the municipality to charge more rent than the ordinary landlord because the lessee would not have to pay taxes. (e.s.)

Although City of Bartow was decided before the enactment of Ch. 71-133, Laws of Fla., now codified in the ad valorem tax laws,[17] and before the Williams decision establishing the "governmental-governmental use" test which replaced the

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[16] Section 332.03, Fla. Stat., which dealt with airports and was known as the Airport Law of 1945, stated that ". . . the exercise of any other powers therein granted to municipalities, are hereby declared to be public, governmental and municipal functions, exercised for a public purpose, and matters of public necessity."

[17] See, Ch. 196, Fla. Stat.

"predominant public use" test, it recognized that private use of governmentally owned property renders such property taxable.

The lessees in the instant case include warehouses, fuel stations, deli restaurants, fish markets, charter boat ships, offices and other private commercial businesses. R-312. It is uncontested that the lessees in this case were not performing a governmental or exempt function.

II. A. THE REAL PROPERTY OWNED BY THE AUTHORITY, LEASED TO NON-GOVERNMENTAL LESSEES, WHO WERE NOT PERFORMING A GOVERNMENTAL OR OTHER EXEMPT FUNCTION PURSUANT TO § 196.199(4), FLA. STAT., IS SUBJECT TO AD VALOREM TAXATION.

While Florida case law has established that the State and its political subdivisions are immune from taxation, such immunity can be waived by the Legislature, and thus the state and its political subdivisions, as well as all entities created by general or special law, can be made subject to taxation. The Authority is merely an entity created by the Legislature by special law, and any powers, duties, responsibilities or exemptions it possesses are derived from the legislation establishing it. It is the Respondents' position that the Authority is not a political subdivision; is not more in the nature of a county; and is not immune from ad valorem taxation on its property leased to non-governmental lessees who are not performing a governmental or other exempt function.

However, it does not matter whether the Authority is in the nature of a county, political subdivision, or a municipality, because if the Legislature, as it has done in this case, subjects the property of the Authority to taxation, the property is

subject to taxation unless an exemption is also provided by the Legislature.[18]

The power to tax resides in the Legislature, Cheney v. Jones, 14 Fla. 587, 610 (1874); Hunter v. Owens, 80 Fla. 812, 86 So. 839 (1920), and that power can be exercised by the Legislature except as limited by the Constitution. There is no limitation in the Constitution on the exercise of the legislative power to subject the property of the Authority to ad valorem taxation.

No express provision in the Florida Constitution creates immunity from taxation for the State, its political subdivisions, or any statutory created entities such as the Authority. Florida case law has established that the State and its political subdivisions (i.e., counties) are immune from taxation. Park-N-Shop, Inc. v. Sparkman, 99 So. 2d 571, 573-74 (Fla. 1958). However, the discussion cannot stop at this point. Neither the Second District Court of Appeal in SMAA, nor the Authority in the instant case, addressed whether this "immunity" can be waived by the Legislature and if so, had the Legislature done so in the instant case? Without addressing these questions, both ignored

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[18] Notwithstanding the dicta in the instant decision, First Union National Bank of Florida v. Ford, 636 So. 2d 523, 524 (Fla. 5th DCA 1993), or Orange County, Florida v. Florida Department of Revenue, 605 So. 2d 1333 (Fla. 5th DCA 1992), immunity from taxation enjoyed by the State and its political subdivision can be waived by the Legislature. Such a waiver need not be contained in the Constitution. State ex rel. Charlotte County v. Alford, 107 So. 2d 27 (Fla. 1958).

the entire controversy and arrived at a conclusion which is incomplete and legally incorrect.[19]

B. IMMUNITY DOES NOT PRECLUDE LEGISLATIVE WAIVER

Assuming arguendo that the Authority was originally immune from taxation, then § 196.199(4), Fla. Stat., is a legislative waiver of any immunity from ad valorem taxation that the Authority might otherwise enjoy. In Dickinson v. City of Tallahassee, 325 So. 2d 1 (Fla. 1975), this Court addressed the question of whether § 166.231, Fla. Stat., constituted a legislative waiver of state immunity from city imposed utility taxes. At page 3, this Court stated: "The crux of this case, as it was in Alford, is whether the State has waived its immunity from city taxation in either the 1968 Constitution or the applicable tax statutes." (e.s.)

This Court in the case of State ex rel. Charlotte County v. Alford, 107 So. 2d 27 (Fla. 1958), cited in Dickinson, was faced with the question of the taxable status of land owned by the Game and Fish Commission, a constitutional state agency. At page 29, this Court stated:

> That, within constitutional limits, the Legislature may provide for the taxation of lands or other property of the State, is readily conceded. The question arises, however, whether the subject act actually does so provide. (e.s.)

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[19] In Andrews v. Pal-Mar Water Control Dist., 388 So. 2d 4 (Fla. 4th DCA 1980), rev. denied, 392 So. 2d 1371 (1980), the Fourth District Court of Appeal ruled that the district is a political subdivision of the state, and therefore immune from taxation. 388 So. 2d at 5. This decision does not address district property leased to private interests for non-public purposes.

The thrust of §§ 196.001 and 196.199, Fla. Stat., is to permit taxation of government-owned property. Unlike the general act in Dickinson, and the special act in Alford, the legislative waiver in § 196.199(4), Fla. Stat., is clear and unequivocal.

Section 196.199(4) provides in pertinent part:

> 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 other than that described in paragraph (2)(a), ... 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.)[20]

Section 196.199(4), Fla. Stat., provides for taxation of property owned by any municipality, agency, authority or other public body corporate of this state which becomes subject to a leasehold interest or other possessory interest of a nongovernmental lessee. This section does not have reference to the taxation of a leasehold interest but refers to the taxation of the referenced governmental unit and the property it owns. The statute also provides for an exemption if property owned by any municipality, agency, authority, or other public body corporate which is subject to a lease and the lessee is an organization which uses the property governmental purpose or exclusively for literary, scientific, religious or charitable purposes. Capital City Country Club, 613 So. 2d at 450-451. See also, Op. Att'y Gen. Fla. 92-32 (1992).

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[20] Section 196.199(4), Fla. Stat., is constitutional. See, Capital City Country Club, supra.

Section 196.199(4), Fla. Stat., is squarely consistent with § 196.199(1), Fla. Stat., which requires both ownership and use by the named government bodies, expressly including political subdivisions and municipalities for tax exemption to inure. This Court has previously recognized this principle. Williams v. Jones, supra. See also, Ocean Highway and Port Authority v. Page, 609 So. 2d 84 (Fla. 1st DCA 1992)(Port Authority, which argued that it was a tax exempt entity, failed to show that it was entitled to an ad valorem tax exemption as to the improvements it constructed on the privately owned land it leased.) Cf., Mastroianni v. Memorial Medical Center, 606 So. 2d 759 (Fla. 1st DCA 1992)(Taxpayers who held legal title to property which was leased to a nonprofit corporation that provided direct medical services to patients in a nonprofit hospital were not entitled to ad valorem tax exemptions when the taxpayers themselves were not exempt entities.)

Both Dickinson and Alford held that immunity could be waived by a proper legislative enactment. The Authority's position in the instant case begs the question - if § 196.199(4), Fla. Stat., did not waive any immunity the public bodies named may have had, then what did it do?

The Legislature obviously saw fit to treat all government property owned by the entities listed in § 196.199(4), Fla. Stat., leased to private persons the same. The Authority's position would tax municipal and other listed entities as property leased to private entities and used for private purposes, but impose no financial burden on private lessees of

Authority owned property, in spite of the fact that the Legislature clearly intended that both Authority and municipal lessees be treated identically. Capital City Country Club, supra.

The underpinning of the Authority's position is that the Legislature lacks the power to permit taxation of such property used for private purposes. This is in absolute express and direct conflict with Dickinson, Alford, Williams and Capital City Country Club, supra.

C. THE AUTHORITY IS NOT A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA AND IS NOT IMMUNE FROM AD VALOREM TAXATION

In the present case, the Authority contends and the trial court held that the Authority is a political subdivision of the State and more in the nature of a county, therefore, immune from taxation. R-323. While the trial court relied in part on Andrews v. Pal-Mar Water Control District, supra, and SMAA neither is supportive of its ruling. The trial court's reliance on this Court's holding in Hillsborough County Aviation Authority v. Walden, 210 So. 2d 193 (Fla. 1968),[21] (the first Walden case), is misplaced. R-312. This Court in the first Walden case determined that the Hillsborough County Aviation Authority, created by Special Act in 1945, as amended, was entitled to claim exemption only, not immunity, from ad valorem taxation.[22] The Authority does not deal with this.

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[21] While this Court in the first Walden case made the general statement that the property owned by a county was immune, 210 So. 2d at 195, this Court was not asked and did not address the question of whether the immunity could and was waived.

In the first Walden case, the Airport Authority argued that it was a political subdivision of the State and, therefore, immune from taxation. This Court agreed with and adopted the trial court's findings in that case that the real property owned by the Aviation Authority was exempt, not immune, from taxation.

This Court stated that:

> Such property is not immune from taxation, however, since the Aviation Authority, unlike a county, is not a political subdivision of the state. *E.g., Broward County Port Authority vs. Arundel Corp.*, 206 F.2d 220 (5th Cir. 1953); *Aerovias Interamericanas De Panama vs. Board of County Commissioners of Dade County*, 197 F. Supp. 230 (S.D. Fla. 1961). Hence, the decision in *Park-N-Shop, Inc., vs. Sparkman*, 99 So. 2d 571 (Fla. 1957), holding county property to be immune from taxation (as opposed to exempt) does not apply to the properties in question. . . .

Walden, 210 So. 2d, at 194-195.

Comparing the Special Act in the first Walden case to the Special Act in the present case shows that both of the Special Acts creating these Authorities designate them as a body politic.[23] Both of the Special Acts creating the Authorities exempted property acquired by them from taxation. Compare Ch. 24579, § 5, Laws of Fla. (1947), with Ch. 28922, Art. XII, § 1, Laws of Fla. (1953).

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[22] The same theory of exemption, not immunity, was applied in the case of City of Orlando v. Hausman, 534 So. 2d 1183 (Fla. 5th DCA 1988), review denied, 544 So. 2d 199 (Fla. 1989), which involved the City of Orlando and the Orlando Airport Authority. See also, Ocean Highway and Port Authority, supra.

[23] Compare Ch. 23339, § 3, Laws of Fla. (1945), with Ch. 28922, Art. III, § 1, Laws of Fla. (1953).

The two acts are so similar, it is without question that if the Airport Authority was not a political subdivision of the state, the Authority in the present case is likewise not a political subdivision of the state.

1. THE AUTHORITY IS NOT IMMUNE FROM TAXATION

The Authority's position is that it is a political subdivision of the State of Florida and, more in the nature of a county and is thus immune from ad valorem taxation. This position is incorrect. The Authority was created by Special Act of the Legislature in 1953. The Authority owns property encompassing what is known as Port Canaveral. The enabling legislation which set up the Authority created it as a body politic and corporate. The Authority is not such an entity as is immune from local taxation. The Authority was not created by either the Florida Constitution or the Federal Constitution. Both the special act creating the authority and § 315.11, Fla. Stat., were legislative acts granting exemption from ad valorem taxation to the authority.

The Authority's view of these acts of the Legislature is necessarily that both granted useless exemptions. Why would the Legislature go through all the trouble of exempting the Authority in the act that created the Authority, and subsequently in Ch. 315, Fla. Stat., which addresses port authorities in general, if they were already immune? The Legislature knew that the Authority was not immune and thus, the Legislature gave port authorities a general exemption from taxation. The Legislature subsequently limited this general exemption with the enactment of § 196.199(4), Fla. Stat.

2. THE AUTHORITY IS NOT IN THE NATURE OF A COUNTY

The Authority's contention, that the it is 'more in the nature of a county' and thus its property is immune under the decision in SMAA in without basis.

Article VIII, § 1(a), Fla. Const., provides:

> POLITICAL SUBDIVISIONS. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment or apportionment of the public debt.

By defining political subdivisions of the state as counties the framers of the constitution precluded legislative creation of public bodies within counties attaining the character of a "county."[24]

The corporate "nature" of the port authorities was discussed in Broward County Port Authority v. Arundel Corporation, 206 F.2d 220 (5th Cir. 1953),[25] wherein the Fifth Circuit stated:

> The Port Authority is created by the Legislature and its future rights, privileges and obligations are subject to change by that body. It is designated by the Legislature as a body politic and corporate and its existence and powers are at all times subject to the will of its creator, the Legislature. The Port Authority is not exactly similar to a municipal corporation such as a city or town, but it certainly ranks no higher in the scale of exemption from interest upon the payment of its obligations.

Broward County Port Authority, 206 F.2d at 223, footnote omitted.

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[24] Expressed or implied provisions of the Constitution cannot be altered, contracted or enlarged by legislative enactment. Sparkman v. State, 58 So. 2d 431, 432 (Fla. 1952).

[25] Cited as authority by this Court in the first Walden case, 210 So. 2d at 194-195.

The Authority is a body politic and corporate, created by special act. It is not, by any stretch of the imagination, a political subdivision in the nature of a county as suggested by the Authority. The nature of the Authority is no different from the port authority in Ocean Highway and Port Authority, supra, which was discussed by the First District Court, 609 So. 2d at 85:

> The Port Authority is a "body politic" created by the legislature in 1947 for the purpose of benefiting the public by operating a port or harbor in Nassau County. Ch. 21418, §§ 4, 5, & 12, Sp. Acts (1941); Ch. 24733, §§ 4 & 5, Sp. Acts (1947); Ch. 26048, § 1, Sp. Acts (1949); Ch. 67-1739, § 1 Sp. Acts (1967); Ch. 69-1328, § 1, Sp. Acts (1969). The legislature, by special act, exempted all property, real or personal, owned by the Port Authority, and the revenues and income derived from its services and facilities from all taxation by the state. Ch. 26048, § 3, Sp. Acts (1949).

While Ch. 28922, Art. XII § 1, Laws of Fla. (1953), originally provided for the exemption of the Authority's property from taxation, such an exemption was repealed in Ch. 71-133, Laws of Fla., as recognized by the Florida Supreme Court in Straughn v. Camp, supra, and Williams v. Jones, supra. See, Ch. 71-133, § 14, Laws of Fla. More recently this repeal was recognized in Ocean Highway and Port Authority, 609 So. 2d at 86, in which that Court stated:

> Although the Port Authority was tax exempt by virtue of legislative special act in chapter 26048 when it was created, the legislature repealed that exemption when it enacted Chapter 71-133, Section 14, Laws of Florida. *See Straughn v. Camp*, 293 So. 2d 689 (Fla.) (chapter 71-133 repealed exemption afforded taxpayer under special act), *appeal dismissed*, 419 U.S. 891, 95 S.Ct. 168, 42 L.Ed.2d 135 (1974). *Accord Williams v.*

> *Jones*, 326 So. 2d 425 (Fla. 1974), *appeal dismissed*, 429 U.S. 803, 97 S.Ct. 34 50 L.Ed.2d 63 (1976). Therefore, before the Port Authority can claim an exemption, it must show that it meets the requirements of some other exemption in Chapter 196, Florida Statutes. (footnotes omitted).

In Ocean Highway and Port Authority, as here, the port authority involved claimed an exemption from taxation. There, an exemption was claimed under § 196.192, Fla. Stat. (1989). In rejecting that contention, the First District Court of Appeal, further stated, at page 86:

> The Port Authority argues that it is a tax exempt entity and that it owns the improvements construed on the leased premises. Moreover, it is using the improvements exclusively for exempt purposes, that is, operating the port, which was declared a public purpose under chapter 21418. Thus, the Port Authority claims that its "property," the improvements, should be declared tax exempt.
>
> We cannot agree. While section 196.192, as it existed when the Port Authority entered into the leases in 1986 allowed for a tax exemption for "[a]ll property used exclusively for exempt purposes." Section 196.192 was amended in 1988 to require that the property be "owned by an exempt entity and used exclusively for exempt purposes" before an ad valorem tax exemption would be allowed. *See* Ch. 88-102, § 2, Laws of Fla.; § 196.192, Fla. Stat. (Supp. 1988). Thus, under the plain language of section 196.192, an ad valorem tax exemption is only permitted when the property in question is both owned and used by the tax-exempt entity. *See Mastroianni v. Memorial Medical Ctr. of Jacksonville, Inc.*, 606 So. 2d 759 (Fla. 1st DCA 1992) (nonprofit hospital corporation was not entitled to ad valorem tax exemption on property it sold to for-profit corporations but then leased back for hospital use, because it did not have legal title to property). It is undisputed in the instant case that the Port Authority does not own the real property; therefore, it is not entitled to a tax exemption under section 196.192. (e.s.)(footnote omitted).

In the instant case, while the Authority owns the property it is not using it for an exempt purpose. Section 196.199(4), Fla. Stat.

Florida law applicable to municipally-owned and governmentally-owned property leased to persons who use the property for private, commercial purposes is set forth in § 196.199(4), Fla. Stat. The Authority is an entity which is only entitled to an exemption from ad valorem taxation for its properties which qualify for an exemption under § 196.199(4), Fla. Stat. The uses and purposes as established by the lessees do not qualify for an exemption under § 196.199(4), Fla. Stat.

III. THE AUTHORITY'S CLASSIFICATION AS A DEPENDENT OR INDEPENDENT SPECIAL DISTRICT HAS NO BEARING ON THE TAXABLE STATUS OF THE LEASED PROPERTY

Finally, the Authority places weight on being an "independent special district", by virtue of Ch. 189, Fla. Stat., specifically §§ 189.403(2) and (3), Fla. Stat. The Authority strings together the position that its regional impact makes it more in the nature of a county and thus immune from taxation. Such a claim has no basis in fact or law. Chapter 189, Fla. Stat., has nothing to do with immunity from ad valorem taxes.

Special districts have been classified as dependent and independent since 1982. Beginning in that year, a special district was deemed independent if it had an independent governing head and its budget was established independently of the local governing authority. Conversely, a district was deemed dependent if its governing head was the governing body of a county or municipality, ex officio, or otherwise, or if its

budget was established by the local government authority. Chapter 82-154, § 13, Laws of Fla. Compare Ch. 82-154, § 13, Laws of Fla., with § 200.001(8)(d), Fla. Stat. The effect and purpose of classifying a district "dependent" was the same in 1982 as it is today:

> Dependent special district millage, when added to the millage of the governing body to which it is dependent, shall not exceed the maximum, millage applicable to said governing body.

In 1989, the Legislature enacted the "The Uniform Special District Accountability Act," § 189.401, Fla. Stat., et seq. ("the Act"). One of the stated purposes of the Act was to clarify special district definitions and ensure consistent application of those definitions across all levels of government. Section 189.402(2) and (3), Fla. Stat.

The Act required the Department of Community Affairs, pursuant to § 189.4035, Fla. Stat., to compile an official list of special districts indicating the dependent or independent status of each using the criteria contained in § 189.403(2), Fla. Stat. If the district does not meet any of the criteria stated therein, or if the district includes more than one county, it is an "independent" district. Section 189.403(3), Fla. Stat. By clarifying the definition of "dependent" and "independent" special districts and requiring the Department of Community Affairs to compile an official list indicating the status of each, the Act accomplishes its purpose of ensuring that such definitions will be consistently applied across all levels of government.

A second and related purpose of the Act is to help ensure that special districts are accountable to the public, the state, and to the appropriate local general-purpose governments. Sections 189.402(2) and (6), Fla. Stat. The classification scheme is central to the issue of accountability. The classification scheme is reasonably related to the subject of Ch. 200, Fla. Stat. Chapter 200, Fla. Stat., is a general law concerning millage determinations for all units of local government: counties, municipalities, and special districts. Article VII, § 9 (b), Fla. Const., limits the amount of ad valorem taxes which may be levied for "all county purposes" to 10 mills. See, Board of County Commissioners, Hernando County v. Florida Department of Community Affairs, 626 So. 2d 1330 (Fla. 1993). See also, Florida, Department of Education v. Glasser, 622 So. 2d 944 (Fla. 1993).

As defined by § 189.402(2), Fla. Stat., a dependent special district is a district which a county or municipality controls either through board makeup or budget approval. In determining which millage rates should be assigned to each unit of government, the Legislature quite reasonably concluded that the millage for dependant special districts should be included in the millage of the entity which controls it. Thus "county dependent special district millage" is one of the four categories of county millages. Section 200.011, Fla. Stat.

This statutory scheme does not grant any new powers or immunity to the Authority. The purpose of the Act was accountability and uniformity in the future, pursuant to

§ 189.402, Fla. Stat., and to ensure that counties do not exceed the 10 mill cap provided for in Art. VII, § 9(b), Fla. Const. Board of County Commissioners, Hernando County, supra, 626 So. 2d at 1332.

The Act does not grant to the Authority any new or expanded authority, responsibility, or immunity from ad valorem taxation. The Act does not deal with the taxable status of property owned by the Authority and any designation by the Department of Community Affairs does not confer tax immunity or status on the Authority or its property which has been leased to non-governmental lessees using the property for profit-making commercial uses.[26]

CONCLUSION

WHEREFORE, the Respondents move this honorable Court, based upon the arguments and authorities contained herein, to affirm the result in the decision of the District Court in this case finding that the Authority's property is subject to ad valorem taxation and reaffirm the principles of law contained in this Court's decisions of Dade County Taxing Authorities v. Cedars of Lebanon Hospital, Williams v. Jones, State ex rel. Charlotte County v. Alford, Dickinson v. City of Tallahassee, Sebring Airport Authority v. McIntyre, and Capital City Country Club v. Tucker as they apply to this case. Further, the Respondents request this Court to overrule the decision of the Second

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[26] Likewise, the claim by the Petitioner and Amici that Chapters 311 and 187, Fla. Stat., grant them immunity is without basis. Neither statutory scheme has anything to do with the exemption or immunity from ad valorem taxation of the Authority's property leased to nongovernmental lessees.

District Court of Appeal in Sarasota-Manatee Airport Authority v. Mikos, 605 So. 2d 132 (Fla. 2d DCA 1992), rev. denied, 617 So. 2d 320 (Fla. 1993) and disapprove First Union National Bank of Florida v. Ford, 626 So. 2d 535 (Fla. 5th DCA 1993), to the extent it conflicts with the principles and the decisions cited herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: **Harold T. Bistline, Esq.**, and **Patricia K. Onley, Esq.**, Stromire, Bistline & Miniclier, P. O. Box 8248, 1970 Michigan Avenue, Bldg. E, Cocoa, FL 32924-8248; **Richard A. Harrison, Esq.**, and **Stewart C. Eggert, Esq.**, Allen, Dell, Frank & Trinkle, 101 E. Kennedy Blvd., Suite 1240, The Barnett Plaza, P. O. Box 2111, Tampa FL 33602; **John J. Copelan, Jr., County Attorney**, and **Pamela M. Kane, Assistant County Attorney**, Port Everglades Department, 1850 Eller Dr, Ft. Lauderdale, FL 33316; **Jon M. Wilson, Esq., Mark C. Extein, Esq.**, and **Lili C. Metcalf, Esq.**, Foley & Lardner, 111 N. Orange Ave., Suite 1800, Orlando, FL 32801; **Charles D. Bailey, Jr., Esq.**, Williams Parker, Harrison, Dietz & Getzen, 1550 Ringling Blvd., Sarasota, FL 34236; **Benjamin K. Phipps, Esq.**, Adorna & Zeder, P.A., P. O. Box 1351, Tallahassee, FL 32302; **Larry E. Levy, Esq.**, P. O. Box 10583, Tallahassee, FL 32302, and **Robert K. Robinson, Esq.**, 330 South Orange Avenue, Sarasota, FL 34326 on this 2nd day of May, 1995.

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