IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

PORT OF PALM BEACH DISTRICT,
etc.,

Petitioners

vs. Case No. 85,434

STATE OF FLORIDA, DEPARTMENT
OF REVENUE, et al.,

Respondents.
_____/

**CORRECTED BRIEF OF AMICUS CURIAE,
ST. LUCIE COUNTY PORT AND AIRPORT AUTHORITY,
IN SUPPORT OF PETITIONERS**

H. Michael Madsen
Kimberly L. King
MESSER, VICKERS, CAPARELLO,
MADSEN, GOLDMAN & METZ, P. A.
Post Office Box 1876
Tallahassee, FL 32302-1876
(904) 222-0720

Attorneys for St. Lucie County Port
and Airport Authority

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PRELIMINARY STATEMENT

The *amicus curiae*, the St. Lucie County Port and Airport Authority ("SLCPAA"), is a special taxing district created by the Florida Legislature through the "St. Lucie County Port and Airport Authority Act," chapter 88-515, Laws of Florida. The SLCPAA operates a seaport and an airport in St. Lucie County. In this brief, the Port of Palm Beach District is sometimes referred to as the "PPBD," and the St. Lucie County Port and Airport Authority is sometimes referred to as the "SLCPAA."

SUMMARY OF THE ARGUMENT

Under this Court's decision in *Eldred v. North Broward Hospital District*, 498 So. 2d 911 (Fla. 1986), special districts, along with counties, school districts, and municipalities, are "sovereign" and deemed to partake of the State's sovereign immunity from liability in tort. If a governmental entity is "sovereign" for one purpose, it is "sovereign" for all purposes; the existence of sovereignty does not depend upon the nature of the claim. Immunity flows from sovereignty and bars all claims against the sovereign in its courts except to the extent its immunity has been waived. Thus, as sovereigns, special districts should be immune from taxation except to the extent their immunity has been waived.

The Fifth District Court of Appeal, analyzing the issue of special district tax immunity in *Department of Revenue v. Canaveral Port Authority*, 642 So. 2d 1097, 1100 (Fla. 5th DCA 1994), *review granted*, 652 So. 2d 816 (Fla. Feb. 16, 1995)(Case No. 84,743), announced that an entity of local government cannot enjoy sovereign immunity unless it acts "as a branch of general administration of the policy of the state." Although this test is couched in terms of sovereign "immunity," it is really a test for sovereignty; the court did not reach the issue of waiver. *Canaveral Port Authority* is inconsistent with *Eldred*. Under *Eldred*, all counties, school districts, municipalities, and special districts are sovereign, but under *Canaveral Port Authority*, only some of them are.

The test for sovereignty articulated in *Canaveral Port Authority* is also flawed in two other ways. First, it is based upon a distinction between "governmental" and "proprietary"

activities that courts drew in cases pre-dating the 1968 revision of our Constitution. As this Court pointed out in *Eldred,* the governmental/proprietary analysis is no longer a valid basis for determining sovereignty. Second, it depends upon historical distinctions between the natures of cities and counties that no longer hold true under our modern system of local government. Therefore, the *Canaveral Port Authority* test should be rejected. The proper inquiry is not whether the Port of Palm Beach District is a particular kind of political subdivision or even whether it is a "political subdivision" at all. The issue is whether the sovereignty that now inheres in all units of local government under the 1968 Constitution has been waived for purposes of taxing any of them.

A Legislative waiver of sovereign immunity must be clear and unequivocal, and will not be found by implication. *Dickinson v. City of Tallahassee*, 325 So.2d 1 (Fla. 1975); *Spangler v. Florida State Turnpike Authority*, 106 So. 2d 421 (Fla. 1958). Section 196.199, Florida Statutes, creates exemptions from tax for various units of state and local government. The statute should not be read, by implication, as waiving sovereign immunity from taxation for situations that do not fall within the stated exemptions. *Dickinson, supra.* Subsection (4) of section 196.199 simply creates an exception to one of the exemptions created elsewhere in the statute. Thus, to read subsection (4) as creating a waiver of immunity would be to create such a waiver by implication. The clear presumptive construction of the statute, under *Dickinson* and similar decisions, is to the contrary.

However, if this Court determines that a "political subdivision" test should be retained in some form, then the Court should recognize that there are more than 900 special districts in Florida, which vary widely as to their nature, functions, authority, boundaries, and governance. Accordingly, SLCPAA submits that the Court should be cautious in announcing any rule of law beyond that necessary to decide the case before the Court.

ARGUMENT

POINT I

THE PALM BEACH PORT DISTRICT IS IMMUNE FROM AD VALOREM TAXATION.

The law in Florida is well settled that the State of Florida[1] and its counties[2] enjoy sovereign immunity from the ad valorem tax on real property,[3] regardless of how the property is used,[4] unless the immunity has been waived by clear and specific statutory

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[1] ***First Union Nat'1 Bank v. Ford,*** 636 So. 2d 523, 525 (Fla. 5th DCA 1993)("the general rule is that property belonging to the state is presumed to be immune from taxation unless there is a clear manifestation of intent to tax it")(citation omitted); ***Sarasota-Manatee Airport Authority*** v. ***Mikos,*** 605 So. 2d 132, 133 (Fla. 2d DCA 1992)("The state and its political subdivisions are immune from taxation"), ***review denied,*** 617 So. 2d 320 (Fla. 1993). ***See also State*** *ex rel.* ***Charlotte County v.*** *Alford*, 107 So. 2d 27, 29 (Fla. 1958)("exemption" of State-owned lands from taxation "is not dependent upon statutory or constitutional provisions but rests upon broad grounds of fundamentals in government"). Similarly, "[t]he United States and its property are immune from taxation by the states." ***Miami Free Zone Corp. v.*** *Robbins*, 542 So. 2d 1007, 1008 n.1 (Fla. 3d DCA 1989)(citing *McCulloch* ***v. Maryland,*** 17 U.S. (4 Wheat.) 316 (1819)).

[2] *Park-N-Shop,* ***Inc. v. Sparkman,*** 99 So. 2d 571,573 (Fla. 1957) (Iproperty of the state and of a county, which is a political division of the state, ... is immune from taxation"). See ***First Union National Bank of Florida v. Ford, 636 So.*** 2d 523, 525 (Fla. 5th DCA 1993)(where county was lessee and equitable owner of real property on which county government's offices were housed, although bank held title to the property under lease-trust financing arrangement, property was immune from ad valorem tax),

[3] § 196.001, Fla. Stat. (1991).

[4] ***See Park-N-Shop, Inc. v. Sparkman,*** 99 So. 2d 571 (Fla. 1957)(land owned by Hillsborough County but leased to private parties who conducted for-profit businesses on the land was immune from ***the tax); Sarasota-Manatee Airport Auth. v. Mikos, 605 So.*** 2d 132 (Fla. 2d DCA 1992), ***review denied,*** 617 So. 2d 320 (Fla.1993)(airport authority property under lease to nongovernmental lessees was irnrnune from the tax even though it was not being used for "exempt" public purposes).

language.[5] For purposes of this proceeding, we assume that Florida municipalities are not immune from taxation, although their real property is exempt from the ad valorem tax when used for certain purposes.[6] The law concerning special district tax immunity is unsettled, and the decisions under it are inconsistent both in approach and outcome. At present, some special districts are deemed immune,[7] while other special districts are not.*

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[5] ***First Union Nat'l Bank*** v. ***Ford,*** 636 So. 2d 523, 525 (Fla. 5th DCA 1993)("the general rule is that property belonging to the state is presumed to be immune from taxation unless there is a clear manifestation of intent to tax it"); ***Florida Department of Revenue v. Canaveral Port Auth.,*** 642 So. 2d 1097, 1102 n. 11 (Fla. 5th DCA 1994). See ***also Dickinson v. City of Tallahassee,*** 325 So. 2d 1, 3 (Fla. 1975)(State did not waive its immunity from city tax on utilities in the 1968 constitution or any statute).

[6] ***See Mikos v. City of Sarasota,*** 636 So. 2d 83, 85 (Fla. 2d DCA 1994)("Municipal property is not immune from taxation but it may be exempt under some circumstances"); ***Orlando Utilities Comm'n v. Milligan,*** 229 So. 2d 262 (Fla. ***4th*** DCA 1969), ***cert. denied,*** 237 So. 2d 539 (Fla. 1970)(land owned by municipal utilities commission and used as recreation area for exclusive use of utility's employees and their families was neither immune nor exempt from ad valorem taxation). See ***also*** art. VII, § 3(a), Fla. Const. ("All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation").

[7] ***Sarasota-Manatee Airport Auth. v. Mikos,*** 605 So. 2d 132 (Fla. 2d DCA 1992)(Sarasota-Manatee Airport Authority is immune from the ad valorem tax), ***review denied,*** 617 So. 2d 320 (Fla.1993); ***Andrews v. Pal-Mar Water Control Dist., 388 So.*** 2d 4 (Fla. 4th DCA 1980)(Pal-Mar Water Control District is immune from the ad valorem ***tax), review denied,*** 392 So. 2d 1371 (Fla. 1980). See ***also*** Op. Fla. Att'y Gen. 076-87 (1976)(advising chairman of the House Natural Resources Committee that "property owned by [drainage and water management] districts is immune from ad valorem taxation") ***(cited in Andrews v. Pal-Mar Water Control Dist.,*** 388 So. 2d 4, 5 n. 1 (Fla. 4th DCA 1980)); Op. Fla. Att'y Gen. 074-3 15 (1974) ("property owned by the Oklawaha Basin Recreation and Water Conservation Control Authority is immune from ad valorem taxation").

[8] ***State Department of Revenue v. Port of Palm Beach Dist.,*** 650 So. 2d 700 (Fla. 4th DCA), ***review granted,*** (Fla. June 23, 1995)(No. 85,434)(Port of Palm Beach District is

The thesis of this brief, as explained below, is that the test for determining whether a special district is a 'political subdivision" of the state, and therefore immune from taxation, is based on long-obsolete notions of local government law.

A.

UNDER *ELDRED V. NORTH BROWARD HOSPITAL DISTRICT*, SPECIAL DISTRICTS PARTAKE OF THE STATE'S SOVEREIGN IMMUNITY.

This ***Court*** in ***Eldred v. North Broward Hospital Dist., 498*** So. 2d 911 (Fla. 1986), recognized that special districts enjoy sovereign immunity from suit (and liability) in tort except to the extent waived by statute. The specific issue in the case was "whether the provisions of section 768.28 waiving sovereign immunity and limiting liability for governmental entities were intended to apply to special taxing districts." ***Id.*** at 9 13. If the statute applied, then the North Broward Hospital District would be liable for only $50,000 on a $900,000 judgment for damages. In order to reach the issue, the Court first had to decide whether Florida's special districts enjoy sovereign immunity. The Court decided that they do.

On the threshold issue, the judgment creditors argued that, under *Suwannee* ***County Hospital Corp.*** v. ***Golden,*** 56 So. 2d 911 (Fla. 1952), the district could not enjoy sovereign

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not immune from the ad valorem ***tax); Florida Department of Revenue v. Canaveral Port Auth.***, 642 So. 2d 1097 (Fla. 5th DCA 1994)(Canaveral Port Authority is not imrnune from the ad valorem ***tax); Hillsborough County Aviation Auth. v. Walden,*** 210 So. 2d 193, 194-95 (Fla. 1968)(Hillsborough County Aviation Authority is not immune from the **ad** valorem tax) .

immunity because its functions were "proprietary" rather than "governmental." The Court rejected that argument, reasoning that the 1968 revision of our Constitution, the 1973 enactment of section 768.28, and the 1979 decision in ***Commercial Carrier Corp. v. Indian River County,*** 371 So. 2d 1010, 1015 (Fla. 1979), had intervened to make the theory behind ***Golden*** "no longer applicable to this type of governmental liability." 498 So. 2d at 914. Significantly, the Court also noted that the 1968 Constitution recognized special taxing districts as "governmental." ***Id.*** at 913.

Since the modern view is that special districts, along with counties, school districts, and municipalities, are deemed to partake of the State of Florida's sovereign immunity from suit and liability in tort, it follows that special districts also partake of the State of Florida's sovereign immunity from taxation. ***See State ex rel. Charlotte County v. Alford,*** 107 So. 2d 27, 29 n.9 (Fla. 1958)(noting that immunity from suit is analogous to immunity from taxation). The existence of sovereignty does not depend upon the nature of the claim.[9] s fundamental that if one is sovereign, then all claims against him in his courts are barred except to the extent of his consent.

'Before the 1968 revision to our constitution, Florida courts used various rationales to permit some kinds of tort claims to be brought against municipalities. However, they did so not because municipalities lacked sovereignty but because the courts "felt [a] need to ameliorate the sometimes harsh results of applying the doctrine of sovereign immunity. " ***Commercial Carrier Corp. v. Indian River County,*** 371 So. 2d 1010, 1015 (Fla. 1979).

B.

THE "POLITICAL SUBDIVISION" TEST ARTICULATED IN *CANAVERAL PORTAUTHORITY* IS INHERENTLY UNSOUND AND SHOULD BE REJECTED.

In deciding that the PPBD is not immune from the ad valorem tax, the Fourth District Court of Appeal relied on the reasoning expressed by the Fifth District *Court* in *Canaveral Port Authority, supra. Port of Palm Beach Dist.*, 650 So.2d at 701. The Fifth District Court reasoned that the Canaveral Port Authority could be immune only if it was a ""political subdivision' of the state." 642 So.2d at 1099. While recognizing that all local governments are, by statute, deemed 'political subdivisions," *id.*, n.6, the Court reasoned that only certain "political subdivisions" should be immune from taxation:

> . ..the question whether an authority is a political subdivision of the state depends on whether the entity claiming immunity acts as a branch of general administration of the policy of the state.

Id. at 1100.

This test for sovereignty is derived from cases that were decided under a "governmental/proprietary" analysis of sovereign immunity that has been superseded by constitutional amendment, statute, and Supreme Court decision. *See Eldred v. North Broward Hospital Dist., 498 So.* 2d 911,913 (Fla. 1986). Furthermore, those cases were decided before advent of the 1968 constitutional revisions that recognized special districts as separate local governmental entities of equal dignity with counties, school districts, and municipalities for purposes of sovereign immunity. *Id.*

Specifically, the *Court* in *Canaveral Port Authority* relied upon *Hillsborough County Aviation Authority v. Walden,* 2 10 So.2d 193 (Fla. 1968), which is based upon *Broward County Port Authority v. Arundel Corp.,* 206 F.2d 220 (5th Cir. 1953), which is in turn based in pertinent part upon *Keggin v. Hillsborough County,* 71 So. 372 (Fla. 1916). In light of changes in the law made after these cases were decided, none stands as authority for the proposition that a local government must act "as a branch of general administration of policy of the state" in order to enjoy sovereign immunity. The *Court* in *Canaveral Port Authority* also relied upon *Commissioners of Duval County v. City of Jacksonville,* 18 So. 339, 340 (Fla. 1895), which simply does not stand for the proposition ascribed to it. Each of these decisions is discussed in turn below.

In *Keggin v. Hillsborough County,* 71 So. 372 (Fla. 1916), this Court decided that counties are immune from suit in tort. The Plaintiff apparently argued on appeal that negligence suits should be permitted against counties as they were permitted against cities. The Court rejected this argument, reasoning as follows:

> While a county may, in some respects, resemble a municipality in that both organizations deal with public interests, their differences are so great that the cases discussing the latter's liability in damages for the negligent omission to perform a public duty are not analogous to those in which such a liability is sought to be imposed upon a county. The one feature which sufficiently distinguishes them is that the Counties are under the [1885] Constitution political divisions of the state. municipalities are not: the county. under our Constitution, being a mere governmental agency through which many of the functions and powers of the state are exercised.... It therefore partakes of the immunity of the state from liability. Many of the powers exercised by a municipality, such as building and maintaining streets, ... are, in their nature and character, corporate rather than governmental. The corporation being

> organized voluntarily by the citizens of the locality for the purpose of local government, it is given the power and charged with the duty by the state of keeping the streets in a safe condition.... The citizens of a municipality have a proprietary interest in the property and funds of the municipality; the citizens of a county have not.... It is when exercising its functions for its quasi private corporate advantage that a city is held to be liable for its negligence in the discharge of its duties, but a county acts only in a public capacity as an arm or agency of the state.

71 So. at 373 (emphasis added). The observation that "counties are under the [1885] Constitution political divisions of the state, municipalities are not" has in later opinions taken on significance far beyond that which the *Court* in *Keggin v. Hillsborough County* gave it. The second part of the sentence, "the county, under our Constitution, being a mere governmental agency through which many of the functions and powers of the state are exercised," modifies the first. Thus, by referring to counties as political subdivisions, the Court was observing that counties engaged only (or at least principally) in "governmental" activities. Cities, the Court noted by contrast, engaged in proprietary activities (for which they were amenable to suit). Thus, viewed as a whole, the passage quoted above reveals that the distinction the Court was drawing between counties and cities was based upon their activities -- governmental as compared with proprietary. That distinction, drawn in 19 16, is not a valid basis for determining sovereignty in 1995. As this *Court* in *Eldred v. North Broward Hospital Dist.*, 498 So, 2d 9 11, 9 14 (Fla. 1986) noted, the governmental/proprietary distinction (the theory behind *Golden)* is "no longer applicable" to sovereign immunity.

Furthermore, counties are no longer "merely governmental agenc[ies] through which many of the functions and powers of the state are exercised." 7 1 So. at 373. Counties now

engage in a great many proprietary activities. And cities, under home rule and Legislative mandates, now serve as to a much greater extent as agencies "through which many of the functions and powers of the state are exercised." *Id.; see* Art. VIII § 2(b), *Fla. Const.* (1968); Ch. 73-129, *Laws of Florida,* ("Municipal Home Rule Powers Act"); *Fla. Stat, § 166.021 (1993); City of Miami Beach v. Forte Towers,* Inc., 305 So. 2d 764 (Fla. 1974). Thus, the language of our constitutions describing counties as "political subdivisions" of the State is no longer a valid or pertinent basis for any distinction between county and city sovereignty. Nor is it a valid or pertinent basis for any distinction between county and special district sovereignty.

The Federal *Court* in *Broward County Port Authority v. Arundel Corp., 206* F.2d 220 (5th Cir. 1953), looked to Florida law (including *Keggin*) in deciding that the Broward County Port Authority was not immune from the payment of interest on its debt to a contractor. The Authority argued that it "should be analogized to a county," while the contractor argued that the Authority was a municipal corporation. *Id.* at 222. (Under Florida law, counties were immune from the payment of interest, while cities were not.) The Court evaluated these arguments under a governmental/proprietary activities analysis:

> Examining the corporate nature of the Port Authority . . . leads us to the conclusion that Port Authority does not enjoy the immunity from the payment of interest on its obligations which a Florida county does vicariously as an agent of the state by virtue of its peculiar office as a branch of the general administration of the policy of the state. Keggin v. Hillsborough County, ... 71 So. 372. 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 pronrietarv function.

206 F.2d at 223 (emphasis added). Whatever its vitality in 1953, this governmental/proprietary distinction has since been abandoned.

Similarly, in *Aerovias Interamericanas De Panama, S. A. v. Board of County Commr 's of Dade County,* 197 F. Supp. 230, 253-54 (SD. Fla. 1961), *rev'd, 307* F. 2d 802 (5th Cir. *1962) cert. denied, 37* 1 U.S. 96 1 (1963), the Federal District Court followed *Broward County Port Authority, supra,* in deciding that the Dade County Port Authority was not a "governmental subdivision" of the state as that term was used in a one-year statute of limitations. Based on *Arundel Corp.,* the Court reasoned that the port authority operated the airport "not as a governmental agency but as a business corporation." *Id.* at 254.

The Fifth District in *Canaveral Port Authority* also relied upon *Hillsborough County Aviation Auth. v. Walden,* 210 So.2d 193 (Fla. 1968), in which this Court decided that certain real property owned by the Authority "'was not immune from taxation, . . . since the . . . Authority, unlike a county, [was] not a political division or subdivision of the state."' *Id.* at 194- 195 (emphasis added). However, the opinion in *Hillsborough County Aviation Authority* was based upon *Broward County Port Authority v. Arundel Corp., 206* F.2d 220 (5th Cir. 1953), and *Aerovias Interamericanas De Panama v. Board of County Commissioners of Dade County,* 197 F. Supp. 230 (SD. Fla. 1961), which are discussed above. Thus, in light

of later changes in the law, *Hillsborough County Aviation Authority,* like the cases upon which it is based, should not serve as support for the "political subdivision" test articulated by the *Court* in *Canaveral Port Authority.*

Finally, *Commissioners of Duval County v. City of Jacksonville,* 18 So. 339,340 (Fla. 1895), involved the validity of a statute that required the County to turn over to the City "one-half of the amount realized from a special tax for public roads and bridges levied and collected on the property within the corporate limits" of the City. The County argued it was limited by the constitution to using its taxing authority for "county purposes," which, it argued, did not include building roads within an incorporated municipality. *See Art. IX, $5, Fla. Const.* (1885).

This Court concluded that the statute did not violate the constitution, because people of the entire county could travel on public streets situated within the municipalities. Thus, such roads did not serve "so distinctly and exclusively a municipal purpose as to render it impossible for the legislature to authorize the counties to devote revenue raised by county taxation" for such streets. *Id.* at 343.

In construing the constitutional term "county purpose," the Court quoted from several cases dealing with counties and their purposes. Among the quotations was the following one from an Ohio case:

> "With scarcely an exception, all the powers and functions of the county organization have a direct and exclusive reference to the general policy of the state, and are in fact but a branch of the general administration of that policy."

18 So. at 343 (quoting *Hamilton County Board of Com 'rs v. Mighels, 7* Ohio St. 109 (Ohio 1857) (emphasis added)). This quotation from the Ohio case served merely to explain why the county was not prohibited from spending county tax money on public roads located within municipalities. The reason was that in doing so the County would be carrying out the policy of the State, which had plenary control over all roads. 18 So. at 343. Thus, "county purposes" included State purposes.

In sum, *Commissioners of Duval County v. City of Jacksonville* simply does not stand for the proposition ascribed to it by the Court in Canaveral Port Authority -- that "[w]hat makes an entity a political subdivision of the state entitled to immunity from taxation is its role as a branch of the general administration of the policy of the state." 642 So.2d at 110 1 (emphasis added).

This Court should reject the "political subdivision" test as articulated by the Fifth District Court in *Canaveral Port Authority* and followed by the Fourth District Court in this case. It is based on outmoded case law and will only lead to further confusion among courts that struggle to employ it. See *Commercial Carrier Corp., supra, 37* 1 So.2d at 1017. The test invites a case-by-case analysis of the many factors that can differ among the more than 900 special districts in Florida, such as their mode of operation and governance, their boundaries, their powers, and their status as dependent or independent special districts. Such districts should be recognized as sovereign under the 1968 Constitution, unless and until

either the people, by constitutional amendment, or the Legislature, by clear, direct waiver, remove that sovereignty.

POINT II

THE LEGISLATURE HAS NOT WAIVED SPECIAL DISTRICTS' SOVEREIGN IMMUNITY FROM AD VALOREM TAXATION

In the proceedings in this case before the Court of Appeal, the property appraiser asserted that, even if the PPBD enjoyed sovereign immunity generally, the Legislature waived that immunity with respect to the ad valorem property tax, through subsection 196.199(4), *Fla. Stat.* (Supp. 1992).

Under a rule of strict statutory construction followed consistently by the courts of this state, subsection (4) of section 196.199 cannot be deemed an effective waiver of the sovereign immunity of special districts from the ad valorem tax. As this Court has explained:

> . ..[because] immunity of the state and its agencies is an aspect of sovereignty, the courts have consistently held that statutes purporting to waive the sovereign immunity must be clear and unequivocal. Waiver will not be reached as a product of inference or implication. The so-called "waiver of immunity statutes" are to be strictly construed.

Spangler v. Florida State Turnpike Auth., 106 So.2d 421,424 (Fla. 1958) (Legislature did not waive Authority's immunity through statute giving it the power to "'sue and be sued in its own name"').

The Legislature knows how to waive sovereign immunity when it wants to. When it does, it says so, in clear and unequivocal language. See § 768.28(1), Fla. Stat. (1993) ("the

state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act"). Subsection (4) of section 196.199 does not even purport to waive the sovereign immunity of special districts from the ad valorem tax. Indeed, there is no language anywhere in section 196.199 indicating a Legislative intent to waive the sovereign immunity of any unit of government.

The State made the same argument about a waiver to the *Court* in *Canaveral Port Authority*. The Court reacted with skepticism. Without ruling on the argument, the Court observed:

> . . .if the legislature intended a waiver of sovereign immunity from taxation, it chose extraordinarily oblique language to accomplish the purpose. The legislature has shown it knows how to express its intent to waive sovereign immunity. $768.28, Fla. Stat. (1993). See *Dickinson, 325* So.2d at 3-4.

642 So.2d at 1102 n. 11.

Subsection 196.199(4) is included in a section that creates exemptions from the tax -- and then imposes limitations on those exemptions -- in respect of certain government property. Subsection 196.199(4) is nothing more than an exception to an exemption. An exception to an exemption cannot operate to impose a tax any more than an exemption can. *See Dickinson v. City of Tallahassee, 325* So.2d 1, 4 (Fla. 1975) ("We reject the suggestion that an express grant of tax authority can be expanded through the terminology of an exception").

The constitution of this State commands: "No tax shall be levied except in pursuance of law." Art. VII, § l(a), *Fla. Const.* Statutes purporting to impose a tax are strictly

construed against the State. If there is any doubt about whether a law imposes a tax, the doubt is resolved in favor of the taxpayer. *See, e.g., State ex rel. Housing Authority of Plant City v. Kirk,* 23 1 So.2d 522, 524 (Fla. 1970). Especially given the strong presumption against implied waivers of sovereign immunity, this Court should not find a waiver by implication in section 196.199(4), Florida Statutes.

POINT III

IF A POLITICAL SUBDIVISION TEST IS TO BE RETAINED, IT SHOULD PERMIT SPECIAL DISTRICTS TO DEMONSTRATE FACTUALLY THAT THEY PARTAKE OF THE STATE'S SOVEREIGNTY FOR PURPOSES OF TAXATION.

Even if this Court concludes that a "political subdivision" test of some kind is still warranted, SLCPAA respectfully submits that the Court should continue to permit issues of special district sovereign immunity to taxation to be determined on a case-by-case basis, through evaluation of pertinent legislative "facts" peculiar to each district. It has long been the practice of this court to analyze sovereignty issues in this way. See, e.g., *Spangler v. Florida State Turnpike Authority,* 106 So.2d 421,422 (Fla. 1958).

Florida has more than 900 special districts. Each has unique characteristics, such as its status as "dependent" or "independent," its function, its geographical boundaries, its power (if any) to levy ad valorem taxes, and other aspects of the relationship it has to the government of the county in which it is situated. The SLCPAA, for example, has several characteristics not necessarily shared by the PBPD or other special districts. The SLCPAA is a "dependent special district" within the meaning of Section 189.403(2), Florida Statutes.

This means that its tax millage is added to St. Lucie County's millage for purposes of determining whether the County has exceeded the maximum millage allowed to the County by law. §200.001(8)(d), *Fla. Stat.* SCLPAA's geographical boundaries are coextensive with those of St. Lucie County. Ch. 61-2754, § 2, at 4069, Laws of Fla.; ch. 88-515, § 2, at 237-38, Laws of Fla. By Legislative design, the SLCPAA functions as a department within the government of St. Lucie County. It is governed by the County Commissioners of St. Lucie County, who serve in such capacity by virtue of their offices as County Commissioners. The Clerk of the Circuit Court of St. Lucie County serves as the Treasurer and custodian of all Authority funds, functions the Clerk also performs for the County. The SLCPAA has no power to levy or collect any taxes directly. Rather, its annual levy must be transmitted to the Board of County Commissioners, which has a duty to order the County Property Appraiser to assess, and the County Tax Collector to collect, the taxes assessed.

Whatever the outcome of this case -- whether the court rules that the property of the PBPD at issue is immune or is not immune from taxation -- the SLCPAA respectfully submits that the court's ruling should be announced in terms that will not foreclose special districts from the opportunity to demonstrate facts establishing that they partake of the State's sovereignty for purposes of immunity from taxation. Given the wide variation among special districts as to their very nature and mode of existence, a sweeping statement of law that special districts are not immune from taxation may have unforseen and unintended consequences for many of Florida's special districts and the taxpayers they serve.

CONCLUSION

Amicus curiae, St. Lucie County Port and Airport Authority, respectfully submits that the decision under review in this Court should be quashed and the case remanded with instructions to affirm the judgment of the Circuit Court in all respects.

Respectfully submitted,

MESSER, VICKERS, CAPARELLO,
MADSEN, GOLDMAN & METZ, P. A.
Post Office Box 1876
Tallahassee, FL 32302-1876
(904) 222-0720

H. Michael Madsen
Florida Bar No. 0 15 1896

Kimberly L. King
Florida Bar No. 05930 11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been furnished this 25th day of August, 1995, by US. mail, postage prepaid and affixed to:

Robert B. Cook, Esquire
11911 U. S. Highway One
Suite 308
North Palm Beach, FL 33408
Counsel for Port of Palm Beach District

Lee R. Rohe, Esquire
Assistant Attorney General
Office of the Attorney General
The Capitol, Tax Section
Tallahassee, FL 32399-1050
Counsel for Florida Department of Revenue

Jay R. Jacknin, Esquire
Eric Ash, Esquire
Christiansen & Jacknin
1555 Palm Beach Lakes Blvd.
Suite 1010
West Palm Beach, FL 33401
Co-counsel for Palm Beach County Property Appraiser

Gaylord A. Wood, Jr., Esquire
Wood & Stuart, P. A.
304 S.W. 12th Street
Ft. Lauderdale, FL 33315-1521
Co-counsel for Palm Beach County Property Appraiser

Kimberly L. King

H:\USERS\ELIZ\STLUCIE\BRIEF.C1