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SUPREME COURT OF FLORIDA

PORT OF PALM BEACH DISTRICT,)
)
Petitioner,)
v.)
)
DEPARTMENT OF REVENUE, et al,)
)
Respondents)

Case No. 85,434
District Court of Appeal,
4th District - 93-03053

BRIEF ON THE MERITS OF PETITIONER

PORT OF PALM BEACH DISTRICT

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TABLE OF CONTENTS

TABLE OF CITATIONS

Florida Statutes

Laws of Florida

Other Authorities

Final Bill Analysis & Economic Impact Statement
Chapter 93-233, Laws of Fla. 1993

PRELIMINARY STATEMENT

Petitioner, The Port of Palm Beach District (Plaintiff and Appellee below), will be referred to as the Port of Palm Beach District or the Petitioner. The Respondent, State of Florida, Department of Revenue, "DOR", Defendant and Appellant below, will be referred to as DOR or the Respondent. The Palm Beach County Tax Assessor, Gary R. Nikolits, Defendant and Appellant below will be referred to as Nikolits or jointly with DOR as Respondents.

Reference to the trial record will be cited as "R", followed by the page number corresponding to the Clerk's Index, along with the title to the item referred to, such as the Final Judgement.

STATEMENT OF THE FACTS AND CASE

Formed in 1915 by a special act of the Legislature, the Port of Palm Beach District is one of the twelve deep water ports of this state as set forth in Section 311.09(1), Fla. Stat.. It is a port authority as defined in Section 315.02(2), Fla. Stat., and is not a municipality nor a creature of Palm Beach County.

The Port of Palm Beach District is considered to be a landlord port, in that the buildings and warehouses it owns are leased to companies that operate their import/export businesses over the docks and wharfs of Petitioner. The tenants consist of bulk cement handlers that import their cement from Mexico and Europe, and resell it to local manufacturers of cement blocks and other cement products; export shipping companies using semi-tractor trailer containers to send products to the Caribbean and Central America; sugar cooperatives that export bulk sugar and molasses; import of bulk fuel oil for Florida Power and Light Company; bulk shippers of products to overseas markets; and cruise ships.

Respondents embarked upon a plan, starting in 1992, to search the tax rolls of port properties in this state in an attempt to impose an ad valorem tax burden on property owned by the ports but leased to non-governmental tenants, and never before taxed, for as long as 80 years in the case of the Port of Palm Beach District. For the Port of Palm Beach District the ad valorem tax burden would be almost $500,000 per year for a port that received total revenue of approximately $6,549,892 in 1992 (R. 594). Ad valorem taxes for the years 1992 through the date of rendition of a decision in this case could be as high $3,000,000.

The Port of Palm Beach District filed a suit seeking declaratory relief under Chapter 86, Fla. Stat., and for injunctive relief against Nikolits in the 15th Judicial Circuit Court, in and for Palm Beach County on September 11, 1992 (R.1 -33). After the hearing on Petitioner's Motion

for Summary Judgement, the Honorable Judge Hoy entered a Summary Judgement in favor of Petitioner on June 22, 1993 (R-520-522), finding that the real property owned by the Port of Palm Beach District was immune from taxation by virtue of the fact that the Port was a political subdivision of the state of Florida and enjoining Nilolits from assessing taxes on the real property owned by the Port of Palm Beach District and leased to non-governmental lessees..

A final judgement was entered on September 9, 1993 (R.583-586), which was subsequently amended on June 14, 1995 to properly reflect the parcel identification numbers of the properties which were the subject matter of the suit. Judge Hoy's Final Judgement entered an injunction against Nikolits from taxing the subject properties. After issuing the 1992 tax bills, which were the predicate for the filing of the action in the Circuit Court, Nikolits issued ad valorem tax bills for 1993 and 1994 with the same assessments as in the 1992 bills, but with the taxable value being set at zero.

Notices of Appeal to the Fourth District Court of Appeal ("Fourth District") were filed on October 7, 1993 by Respondent DOR (R. 603-611), and Respondent Nikolits (R. 612-613).

At the time of the oral argument on the appeal to the Fourth District, the Fifth District Court of Appeal ("Fifth District") had issued its ruling in Florida Department of Revenue v. Canaveral Port Authority, 642 So. 2d 1097 (Fla. 5th DCA 1994), *review granted* 652 So. 2d 816 (Fla. 1995). The Fourth District issued its opinion on February 23, 1995. It adopted the findings of the Fifth District, and to a great extent relied upon the absence of a designation in the charter of the Port of Palm Beach District that it was a political subdivision of the state.[1] After entry of

[1]In fact, during oral argument the Fourth District asked counsel for DOR to confirm that if the charter of the Port of Palm Beach District contained the words, a subdivision of the state, that this case would be decided in favor of the Port. Counsel for DOR agreed with the Court.

the order from the Fourth District, the Port of Palm Beach District filed its Notice to Invoke Discretionary Jurisdiction.

SUMMARY OF ARGUMENT

The Port of Palm Beach District, a special taxing district and political subdivision of the state of Florida, is before this Court to confirm the immunity of its real property from ad valorem taxation. In 1992, Respondents began to claim that the passage of the tax reform act, Chap, 71-133, Laws of Fla. (1971), repealed the immunities and exemptions relied upon by this port and others for so many years. Respondents' have waited over 22 years to argue that port properties are taxable under this statute.

As its first point on appeal, the Port of Palm Beach District submits it is a political subdivision of the state, immune from ad valorem taxation. In fact its charter, Chap. 74-570, Laws of Fla. (1974), provides that the Port of Palm Beach District is not subject to regulation or control of any other political subdivision, Palm Beach County, the City of Riviera Beach, or any state agencies, other than the trustees of the internal improvement trust fund.

This Court has approved the rational set forth in Sarasota-Manatee Airport Authority v. Mikos, 605 So. 2d 132 (Fla. 2d DCA), *review denied,* 617 So. 2d 320 (Fla. 1993), which established a clear statement of when governmental units of this state are immune from ad valorem taxation of their real property leased to non-governmental lessees.

Under this authority, the Port of Palm Beach District is immune from ad valorem taxation. Application of a strict pass/fail taxability test, based upon whether the user is in business to make a profit, as suggested by Respondents, is not supported anywhere by statute. In fact the Legislature has consistently exempted or retained immunity of the property of numerous

governmental units that have leased their property to a user for profit.[2] To adopt the Respondents' test will, for example, expose the state of Florida to ad valorem tax liability for its leases of submerged state land to non-governmental lessees, a result clearly not intended by the Legislature.

Secondly, the Port of Palm Beach District is designated as a political subdivision under its charter, A careful examination of the special powers granted to the Port of Palm Beach District by its charter shows that it is unregulated by **any other political subdivision of the state,** By implication, the Legislature has included the Port of Palm Beach as a political subdivision.

Thirdly, Petitioner brought to the attention of the Legislature during the 1995 Legislative session that this Court, in Sarasota-Manatee Airport Authority v. Mikos, supra, acknowledged that the designation of a unit of government as a political subdivision of the state gave that unit of government immunity from ad valorem taxation.

Petitioner had introduced in the Legislature during the 1995 session a special act that amended its charter to identify the Port of Palm Beach District as immune from ad valorem taxation as being a political subdivision of the state in the nature of a county insofar as ad valorem taxation is concerned. [3] This 1995 special act was passed by the unanimous votes of both legislative bodies, The Legislature has again reinforced its intention that the real property of the

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[2] Such users include: Fixed base airport operators, F. S. 196.0 12(6); users of renewable energy sources, F.S. 196.175; and companies engaged in the business of aquaculture, F. S. **253.68.**

[3] Chap, 95-467, Laws of Fla. (1995) added language that reads as follows:

"The Port of Palm Beach District shall constitute a body politic and a body corporate, and is deemed to be a political subdivision of the State of Florida within the meaning of sovereign immunity from taxation, in the same manner as counties and other political subdivisions of the State of Florida."

Port of Palm Beach District is immune from taxation,

The Port of Palm Beach District also enjoys specific statutory exemption from ad valorem taxation. The clear language of the charter of Petitioner provides another specific exemption of its property from taxation, as well as the interests of its tenants.[4] Respondents argue that Chap, 7 1- 13 3, Laws of Fla. (197 1) repealed all special acts creating ports in this state, which may have had a tax exemption or immunity contained in their charters. The Port of Palm Beach District submitted its charter for readoption to the Legislature in 1974, and it was adopted by the passage of Chap. 74-570, Laws of Fla. (1974). This law, adopted three years after Chap. 71-133, Laws of Fla. (1971), was not affected in any way by the 1971 act relied upon by Respondents and supersedes any effect Chap. 7 1 - 13 3, Laws of Fla. (197 1), may have had on the Port of Palm Beach District.

Petitioner also asks this Court to review the statutory analysis detailed in this brief and agree with Petitioner's position that Section 196.199(2)(a), Fla. Stat., provides a distinct and separate basis for the determination of when port property is exempt from ad valorem taxation, and that Section 196.199(4), Fla. Stat., relied on so heavily by Respondents to repeal any tax exemption or immunity of ports, does not, in fact, apply to ports at all.

The Port of Palm Beach District also enjoys the independent and specific exemption from ad valorem taxation granted to port authorities under Section 3 15.11, Fla. Stat., which provides

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[4] The pertinent section of Chap. 74-570, Laws of Fla. (1974) reads:

> "All property of and all revenues derived from such port facilities, including such parts thereof heretofore or hereafter constructed or acquired, shall be exempt from all taxation by the State of Florida, or by any county, municipality or other political subdivision thereof."

that a qualified unit is not required to pay any state, county, municipal or other taxes on its owned real property. Port facilities have the broadest possible definition under Chap. 3 15, Fla. Stat,, and the Legislature has decided that the operation of these facilities are proper public and governmental functions, used for public purposes.

As a final point, this Court is asked that if, in spite of the arguments set forth above to the contrary, it were to find that the real property of Petitioner is subject to ad valorem taxation, that such a finding be prospective only and not retrospective to the date Nikolits first purported to impose such ad valorem taxes,

ARGUMENT

I. THE PORT OF PALM BEACH DISTRICT IS A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND IS ADMINISTERING THE GENERAL POLICIES OF THE STATE OF FLORIDA IN THE LEASING OF ITS PROPERTIES TO NON-GOVERNMENTAL LESSEES.

The state of Florida, in adopting Chapter 3 11, Fla. Stat., has identified the promotion and continued development of a commercial viable network of deep water ports in this state as an important governmental function, The method of implementing this governmental function is through the funding and management of a network of twelve deep water ports, as identified in Section 3 11.09(1), Fla. Stat.. These specialized transportation entities use waterborne commerce to implement and further the governmental function and purpose expressed by the Legislature.

The Port of Palm Beach District is a creature of the Legislature, and unlike the ports of Miami, Everglades and Jacksonville', its competing ports on the eastern seaboard, is not an arm of county government. The special act that created the Port of Palm Beach District gave it all of the powers of a county, and a duty to perform tasks that are certainly not those of a municipality

It was a similar governmental function and purpose that the Second District was asked to review in Sarasota-Manatee Airport Authontv v. Mikos, Inprthat case it was commerce through the air rather than through water. However the government's purpose, and the goal it desired to achieve were the same; the enhancement of the economy of this state. The Legislature has, by the passage of Chapter 3 11, Fla. Stat., devised a method to increase the economic well being of this state and its citizens by the promotion of waterborne commerce, which relies upon the transportation of goods from one place to another.

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[5] Chap, 94-422, Laws of Fla. (1994) defined the Jacksonville Port Authority as an agency and political subdivision of the state in the nature of a county and not a municipality.

Florida courts have long recognized that the government can promote certain types of economic development, and that these activities qualify as a valid governmental purpose, State v. Miami Beach Redeveloament Agency, 392 So. 2d 875 (Fla. 1981); Panama Citv v. State, 93 So, 2d 608 (Fla. 1957) and Straughn v. Camp, 293 So. 2d 689 (Fla. 1974). In State v. Miami Beach Redevelonment Agency, supra, this Court stated the test was:

> "If a project serves a public purpose sufficient to allow the expenditure of public funds and the sale of bonds under article VII, section 10, then the use of eminent domain in furtherance of the project is also proper."
>
> 392 So. 2d at page 885

The charter of the Port of Palm Beach District grants it the same powers of eminent domain and issuance of revenue bonds as were under consideration in the State v. Miami Beach Redevelopment Agency case.

As long ago as 1952 this Court agreed that transportation of goods and people, from one place to another, albeit via a different medium, could be a valid governmental purpose. In State v. Town of North Miami, 59 So. 2d 779 (Fla. 1952) it was found that:

> ". air transportation, such as that flowing into and out of Miami serves a real public purpose, and in developing this port, owning and operating the same, it could not be said that the City of Miami was not serving a public purpose and municipal purpose."
>
> 59 So. 2d at page 784.

The same rational used by the Second District in Sarasota-b Airport Authoritv v. Mikos, supra, as to air transport is applicable to waterborne transport. Both the Sarasota-Manatee Airport Authority and the Port of Palm Beach District are specialized governmental units, political subdivisions of this state, as is expressly or impliedly stated in their charters,

engaged in the furtherance of recognized governmental functions, whose purpose is the improvement of the economic condition of the state. The Fifth District in Florida Department of Revenue v. Canaveral Port Authority, supra, considered the application of Chapters 3 15 and 3 11, Fla. Stat. in reaching a decision that can only be considered as strained, in order to distance that court's opinion from the Sarasota-Manatee Airport Authority v. Mikos finding.

There are no other cases cited in support of the Fifth District's new standard for determining when a governmental entity is a political subdivision of the state, in the absence of a proper label from the Legislature. Their new test is:

> " 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."
>
> 642 So. 2d at page 1100.

When viewed together, Chapterss 3 11 and 3 15, Fla. Stat. are a clear and unequivocal expression, using the broadest language possible, that the promotion of international trade and commerce through the state's deep water ports is a governmental function, to be supported by the expenditure of both state funds, Sections 3 11.09(4) & (5), Fla. Stat., and local (port generated) funds. If this Court agrees that the Port of Palm Beach District is performing the general administration of the policies of the state, as set forth in Chaps. 3 11 and 3 15, Florida Stat,, then under either the holding of this Court in Sarasota-Manatee, or under the new criteria established by the Fifth District in Florida Department of Revenue v. Canaveral Port Authority, the Port of Palm Beach District is a political subdivision of the state of Florida and its real properties are immune from ad valorem taxation.

In addition to the above reasoning for finding the Port of Palm Beach District a political

subdivision of the state, an examination of existing law indicates that the Legislature has clearly expressed its opinion of what is to be considered as a political subdivision of this state. In Section 196.29, Fla. Stat., readopted as recently as 1988, which deals with cancellation of ad valorem taxes upon property acquired during the tax year by a governmental unit, political subdivisions are defined as one of the units which can avail itself of that statutory provision, and uses the definition of political subdivision set forth in Section 1 .01, Fla. Stat. Included within that definition are:

> "counties; cities; towns; villages; special tax districts; special road and bridge districts; bridge districts; and all other districts in this state."

As stated by this Court in Williams v. Jones, 326 So. 2d 425 (Fla. 1975), *appeal dismissed,* 429 U.S. 803, 50 L. Ed. 2d 63, 97 S. Ct. 34 (1976),

> ". , , the Legislature is presumed to know the existing law when it enacts a statute and is also presumed to be acquainted with the judicial construction of former laws on the subject concerning which a later statute is enacted."
>
> **326** So. 2d at 435.

Accordingly, the Port of Palm Beach District is a political subdivision of this state, and exempt from ad valorem taxation.,

II. THE CHARTER OF THE PORT OF PALM BEACH DISTRICT DEFINES IT AS A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND GRANTS IT IMMUNITY FROM AD VALOREM TAXATION.

The Port of Palm Beach District is an independent special taxing district of the state of Florida, as defined in Section 189.4035, Fla. Stat., and governs an area of 971 square miles or approximately one half of Palm Beach County. Under its charter, which was originally enacted as Chap. 7081, Laws of Fla. (1915), the Petitioner enjoys all of the attributes of a political

subdivision in the nature of a county, including the right to levy ad valorem taxes, issue general obligation and revenue bonds, acquire property by eminent domain, and operate a transportation system, including bridges, subways, railroads, wharfs and docks

Special powers granted to the Port of Palm Beach District, and which are not generally granted to municipalities, include the acquisition of harbor and port facilities, establishment of foreign trade zones under the control of the United States Department of Commerce, establishment and operation of a railroad under the control of the Interstate Commerce Commission and the Federal Railroad Retirement Board, the undertaking of oceanographic research, development and commerce, and the right to loan money to the United States of America for harbor dredging and deepening.

The most distinct and unique power given to the Port of Palm Beach District may be found in Article 8, Section 2, Special Powers, subsection 25, of Chap. 74-570, Laws of Fla. (1974):

> "Except as provided in this act, **the approval of any other political subdivision or public body, agency or instrumentality of the State of Florida, except for the board of the trustees of the internal improvement trust fund, shall not be required** for the approval, grant or exercise of any of the powers granted by this act, The State of Florida hereby consents to the exercise of any and all powers granted by this act without further authorization or approval hereof by any of its agencies or instrumentalities, except as may be required from the board of the trustees of the internal improvement trust fund as to the use of any state lands lying under water, and which are necessary for the accomplishment of the purposes of this act."
>
> Emphasis added.

The above exculpation from regulation of the Port of Palm Beach District from any city,

county, agency or other political subdivision of the state of Florida is a power that even the counties of this state do not have. The use of the words **other political subdivisions** is a clear indication that the Legislature considers the Petitioner a political subdivision of this state. Otherwise they would have used the words **approval of any political subdivision** instead of the cited language.

The clearest expression of the fact that the Port of Palm Beach District is a political subdivision of the state of Florida is found in Chap. 74-570, Laws of Fla. (1974). Under the holding of Sarasota-Manatee Airport Authority, supra, this alone mandates finding that Petitioner is immune from ad valorem taxation of its fee interest in property leased to non-governmental lessees.

III. THE REAL PROPERTY OF THE PORT OF PALM BEACH DISTRICT IS IMMUNE FROM AD VALOREM TAXATION UNDER THE PROVISIONS OF CHAPTER 95-467, LAWS OF FLORIDA, 1995.

If there was ever any doubt of the intention of the Legislature with respect to the classification of the Port of Palm Beach District as a political subdivision of the state, it was put to rest during the 1995 Legislative session, Chap. 95-467, Laws of Fla. (1995), was adopted by the unanimous vote of both houses of the Legislature in the 1995 session. This act amended the charter of the Port of Palm Beach District in response to the holding of the Second District in the Sarasota-Manatee Airport Authority case, as well as the view expressed by the Fifth District in Florida Department of Revenue v. Canaveral Port Authority, supra. 95-467, Laws of Fla. (1995), provides that Petitioner is:

> ". . . a body politic and a body corporate, and is deemed to be a political subdivision of the State of Florida within the meaning of

> sovereign immunity from taxation, in the same manner as counties and other political subdivisions of the State of Florida."

The Legislature has, in 1995, reiterated its classification, for ad valorem tax purposes, of the Port of Palm Beach District. This clear expression of Legislative intent is not to be lightly overturned by the courts. As stated in Eastern Airlines, Inc. v. Deoartment of Revenue, 455 So, 2d 311 (Fla. 1984), *appeal dismissed*, 474 U.S. 892, 88 L.Ed. 2d 214, 106 S.Ct. 213 (1985):

> "In the field of taxation particularly, the legislature possesses great freedom in classification. The burden is on the one attacking the legislative enactment to negate every conceivable basis which might support it."

455 So. 2d at page 314.

Once again, the Port of Palm Beach District is immune from ad valorem taxation on its fee interest in property leased to non-governmental lessees, as it is recognized by the Legislature that it is a political subdivision of the state, and that it has been granted immunity from such taxation

IV. CHAPTER 74-570, LAWS OF FLORIDA EXEMPTS THE REAL PROPERTY OF THE PORT OF PALM BEACH FROM AD VALOREM TAXATION.

In addition to the immunities granted to the Port of Palm Beach District by its charter and the application of the holding in the Sarasota-Manatee Airport Authority case, there is a specific statutory grant of an exemption from ad valorem taxation. The Port of Palm Beach District's charter was readopted in its entirety in 1974 by the passage of Chap. 74-570, Laws of Fla.(1974). This special act, in Article X, Section 12, grants a specific exemption of the property of the Port of Palm Beach District from ad valorem taxation from any county, municipality or political subdivision of the state, This section reads as follows:

> "All property of and all revenues derived from such port facilities, including such parts thereof heretofore or hereafter constructed or

> acquired, shall be exempt from all taxation by the State of Florida, or by any county, municipality or other political subdivision thereof"

Laws of a later date and of specific application take precedence over general laws in existence at the time of their enactment that are in conflict, Lincoln v. Florida Parole Commission 643 So. 2d 668 (Fla. 1st DCA 1994) (comparing Section 775.084(4)(e), Section 944.291 and Section 947.1405, Fla. Stat., relating to sentencing of habitual offenders); Fletcher v. Fletcher, 573 So, 2d 941 (Fla. 1st DCA 1991) (comparing Section 61.046(14) and Section 61.30(2)(a)(4), Fla. Stat,., relating to child support obligations; and McKendry v. State, 641 So. 2d 45 (Fla. 1994) (comparing Section 948.01 and Section 790.221(4), Fla. Stat., relating to possession of a short barreled shotgun).

Respondents rely upon the passage of Chap. 71-133, Laws of Fla. (1971), as the singular act that has given county property appraisers the power to assess and tax ports in this state, whether they are considered to be political subdivisions of the state or not. While that act may well have repealed the ad valorem exemption portion of the charter of the Canaveral Port Authority, it can not and did not operate to repeal the 1974 special act that readopted the charter of the Port of Palm Beach District, and specifically granted a tax exemption,

V. THE PORT OF PALM BEACH DISTRICT'S REAL PROPERTY LEASED TO NON-GOVERNMENTAL LESSEES IS EXEMPT FROM AD VALOREM TAXATION BY REASON OF THE EXEMPTIONS GRANTED IN SECTION 196.199(2)(a), FLORIDA STATUTES, AND CHAPTER 315, FLORIDA STATUTES.

The authority to tax fee interests in real property in Florida is found in Section 196.00 1(1), Fla. Stat., and the authority to tax leasehold interests in real property is found in Section 196.001(2), Fla. Stat, These authorities are then restricted and limited in the next 19 pages of the law containing Chap. 196, Fla. Stat., by setting forth exemptions from these taxes. Initially

focusing on homesteads, dating back to 1935, exemptions have been expanded to allow other uses of property to be exempt, even if that use of property is by a profit making entity, such as labor organization property, fairgrounds, community centers, and aircraft fixed base operators for profit, and now total over 24 separate types of exemptions in this Chapter alone.

Against this complicated background of statutory enactments that over the years have repealed and re-enacted tax exemptions and classes of use of properties that are taxable or non-taxable, this Court is faced with the task of interpreting several statutes that cover the same subject matter, and may appear to be inconsistent with each other.

A careful examination of Section 196.199, Fla. Stat., demonstrates that the Legislature never intended to impose ad valorem taxes on ports, Section 196.199(1), Fla. Stat, has nothing to do with this case. That section only applies to property **owned and used** by a governmental unit Respondents are attempting to tax the fee interest in property owned by the ports and **used by their lessees.**

Section 196.199(2)(a), Fla. Stat,, gives certain types of governmental units ad valorem tax exemption if the lessees of their properties use them to perform a governmental or public purpose, as defined in Section 196.012(6), Fla. Stat.

Section 196.199(4), Fla. Stat., deals with tax exemptions, just as does Section 196.199(2)(a), Fla. Stat. DOR's position is that the use of the property must fall into one of the "Four Angels" of exempt use of property, i.e., religious, literary, charitable or scientific, as enumerated in Section 196.199(4), Fla. Stat., in order to be tax exempt. This focus is misplaced. The Port of Palm Beach District and the other ports in Florida need not and have never relied upon their properties being used for one of the Four Angels, This argument completely ignores

the specific statutory exemptions granted to the Port of Palm Beach District by Chap. 74-570, Laws of Fla. (1974), Chap. 3 15, Fla. Stat., and Section 196.199(2)(a), Fla. Stat., each of which independently mandates that Petitioner's property be found exempt from ad valorem taxation.

Respondents rely on a series of cases to support their position that, as a matter of law, exemptions and immunities from ad valorem taxation for ports do not exist, These cases can be distinguished, either because they primarily apply to municipalities trying to find an ad valorem tax exemption for a tenant of their property, Page v. Fernandina Harbor Joint Venture, 608 So. 2d 520 (Fla. 1 st DCA 1992), *review denied,* 620 So.2d 761 (Fla. 1993) (lease of marina facilities from city); Capital City Country Club, Inc. v. Tucker, 613 So. 2d 448 (Fla. 1993) (lease of golf club from city); or are instances where a non-governmental tenant, that by its very nature could not claim to be performing a governmental purpose, was trying to avoid taxation on its leasehold interest, e.g., Williams v. Jones, supra (barbershops, rental cottages, motels and homes); Straughn v. Camp, supra (same as in Williams); Volusia County v. Daytona Beach Racing & Recreational Facilities District, 341 So, 2d 498 (Fla. 1976) appeal dismissed 434 U.S. 804 (1978) (Daytona Beach Speedway); St. John's Associates v. Mallard, 366 So. 2d 35 (Fla. 1st DCA 1978), cert. *dismissed,* 373 So. 2d 912 (Fla. 1979) (storage of Volkswagen automobiles); Hillsborough Aviation Authority v. Walden 210 So. 2d 193 (Fla. 1968) (motel); and Tre-O-Ripe Groves. Inc. v. Mills, 266 So. 2d 120 (Fla. 1st DCA 1972) (orange grove). Taxation of leasehold interests is simply not the point of this case. Moreover, none of these cases involve or concern a port authority or the application of Chapter 3 15, Fla. Stat.

Petitioner recognizes that, in Capital City Country Club v. Tucker, supra, this Court imposed a different test on municipalities, as opposed to political subdivisions and other

divisions of the state. That case held that city leased property must be used exclusively for governmental purposes in order to escape ad valorem taxation on the fee estate. But Capital Citv Country Club does not apply to any type of governmental unit other than a municipality. Property owned by all other types of governmental units may escape ad valorem taxation on the fee interest in the land, if the user, even if its engaged in a profit making venture, is performing a governmental or public purpose as defined in Section 196.012(6), Fla. Stat.

Until 1961 the law was unclear in Florida on the tax status of government owned property that was leased to non-governmental lessees. Section 192.62, Fla. Stat., adopted in 1961, imposed ad valorem taxation on "exempt or immune" property used for a profit making venture, If the Legislature had left this section unchanged, there would be a clear indication of the uses of government owned properties upon which ad valorem taxation could be imposed. However, this provision was repealed in 197 1 and Section 196.199, Fla. Stat., was adopted in its place, which imposed the ad valorem tax burden on the **leasehold interest** instead of the fee title held by the governmental unit, In 1980 the Legislature amended Section 196.199, Fla. Stat., to reclassify leaseholds in government property as being subject to only the intangible tax, which had the effect of decreasing the tax liabilities of certain types of leasehold estates.

Reference to one of the more recent changes in Section 196.199, Fla. Stat., amply demonstrates that being engaged in a business for-profit is not mutually exclusive with performing a government function and purpose. The Legislative History of Chap. 93-233, Laws of Fla. 1993, contained in the Florida Legislature-Regular Session-l 993 History of House Bills, is informative of the intent of the Legislature to expand the types of users of property that are exempt from ad valorem taxation. This Legislative History discussed the effect of the proposed changes to

Section 196.012(6), Fla. Stat.. Quoting from the Legislative History of House Bill 557:

> "Section 196.012(6)(a), F.S. is amended to include in the definition of governmental, municipal, or public purposes or function activities undertaken by a lessee which are permitted under the terms of its lease of real property designated as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration and which is used for the administration. operation, business offices and activities of an aircraft full service fixed base operation providing goods and services to the general aviation public. The inclusion of these activities as a governmental. municipal or public purpose exempts such property from ad valorem taxation."

Emphasis added.

The Legislature knowingly and intentionally exempted the for-profit operation of private airplane facilities from ad valorem taxes on land leased from the government. Accordingly, the use of property owned by ports by a for-profit entity does not, in and of itself, disqualify the property from being immune or exempt from ad valorem taxation,

The fact that the user of the land is engaged in making a profit is not the determinant of taxability, If the Legislature feels that the furtherance of the state's public purposes and functions can be performed by a for-profit entity, than the state can and has provided for an exemption of that entity from ad valorem taxation

Other statutory provisions can be examined to determine the Legislature's intent with respect to immunity from ad valorem taxation of for-profit lessees of government owned land, The board of trustees of the internal improvement trust fund is empowered under Section.253.68, Fla. Stat., to lease submerged lands for the conduct of aquaculture activities for commercial purposes, which includes leases for private and public docks, and under Section 253.47, Fla. Stat,, may lease submerged lands for petroleum purposes.

Section 253.73, Fla. Stat., authorizes the board of trustees of the internal improvement trust fund to implement, pursuant to the Florida Administrative Procedure Act, rules and regulations necessary to carry out the above cited provisions of Florida law. Section 18.21.004(1)(c) of the Florida Administrative Code, adopted under that authority, provides, in part:

> "Equitable compensation shall be required for **leases and easements which generate revenues, monies or profits for the user or that limit or preempt general public use."**
>
> Emphasis added.

Accordingly, the Legislature and the board of trustees of the internal improvement trust fund recognize that submerged sovereign land can be used to exclude general public use, thereby not providing any governmental use at all, nor serve any religious, literary, charitable or scientific purposes, and that the users can make a profit from the lease. What more could the state do to fall into Respondents' category of taxable use of public owned land? Under the rational of Respondents, the state of Florida should be deemed to have waived sovereign immunity to ad valorem taxes on its submerged lands that are leased to private entities, and the Department of Revenue now has a new universe of heretofore untaxed lands to go after

The correct rule to apply is found in Section 196.199(2)(a), Fla. Stat.. Under Section 196.199(2)(a), Fla. Stat., if the use to which the lessee puts the property is for a governmental or public purpose or function as defined in Section 196.199.012(6), Fla. Stat., the property is tax exempt. The governmental units that have this exemption are, in addition to the United States

and the state itself, those listed in Section 196.199(2)(a), Fla. Stat., as the state's:

> several political subdivisions;
> municipalities;
> agencies;
> authorities; and
> other public bodies corporate.

In contrast, F.S. 196.199(4) only applies to these units of government:

> municipalities;
> agencies;
> authorities; and
> other public bodies corporate.

Obvious by their absence in Section 196.199(4), Fla. Stat., are, of course, political subdivisions of the state. At the time of adoption of Section 196.199(4), Fla. Stat., in 1971, the Legislature had already enacted Section 196.199(2)(a), Fla. Stat., and they purposefully did not include political subdivisions in the 1971 law relied so heavily upon by Respondents Since a political subdivision type of governmental unit has a broader ad valorem tax exemption, the ports wish to be so considered as being one of them, and Respondents want just the opposite result.

Under Section 3 15.11, Fla. Stat., an exemption from ad valorem taxes is granted to the facilities of the deep water ports of this state. Section 3 15.16, Fla. Stat. mandates that the provisions of Chapter 3 15, Fla. Stat. be liberally construed. There is no requirement in Chapter 3 15, Fla. Stat, to import any limitations on tax exemption provided in Chapter 196, Fla. Stat.

Respondents reliance on Chap. 7 1-13 3 , Laws of Fla. (197 1), in 197 1 to repeal any of the then existing statutory tax exemptions or immunities does not apply to the exemption granted to ports in Section 3 15.11, Fla. Stat., as it was last amended in 1973

The facilities at the Port of Palm Beach District which Nikolits is attempting to tax, such

as warehouses and cement silos, clearly fall within the definition of facilities as contained in Section 315.06(2), which include:

> ". . . improvements of every kind and nature and description, including, but not without limitation, channels, turning basins, jetties, breakwaters, public landings, wharves, docks, markets, parks, recreational facilities, **structures, buildings, piers, storage facilities** and any and all property and facilities necessary or useful in connection with the foregoing, ."

Chapter196, Fla. Stat., allows exemption of government owned land from ad valorem taxation, if the non-governmental user is performing a governmental function. The profit or non-profit status of the lessee is immaterial. Chapter 315, Fla. Stat. contains a specific grant of ad valorem tax exemption for port facilities. The function being performed by the tenants at the Port of Palm Beach District, and the facilities they lease meet both statutory requirements, and accordingly, the fee interest of the Petitioner in its leased lands and buildings is exempt from taxation,

VI. IF THIS COURT WERE TO FIND THAT AD VALOREM TAXES ARE DUE ON THE REAL PROPERTY OF THE PORT OF PALM BEACH DISTRICT LEASED TO A NON-GOVERNMENTAL LESSEE, SUCH AD VALOREM TAXES SHOULD BE DUE ONLY PROSPECTIVELY AFTER THIS COURT'S DECISION.

The basis for the new **(1992)** found right of Respondents to impose ad valorem taxation on Petitioner's land is claimed to arise from the passage of the tax reform act, Chap. 71-133, Laws of Fla. (1971), which Respondents say repealed all of the exemptions contained in the special acts creating ports. Respondents have waited over 20 years to argue that port properties are taxable under this statute. To impose this tax burden at a point in time, before this Court has ruled on this complex issue, would be unfair to the Port of Palm Beach District, as it has relied upon its historic tax immunity and exemption. The Port of Palm Beach District cannot just turn

around and collect the tax from its tenants, as they have not been programed to pay these taxes and it may be impossible to collect from them, many of whom are small ship's agents and/or individual operators of warehouses. For this reason, if this Court were to find that there is neither immunity nor exemption from ad valorem taxation of the property of the Port of Palm Beach District leased to non-governmental users, it should only be applied prospectively to this decision, as was decided in the cases of Interlachen Lakes Estates. Inc. v Snyder, 304 So, 2d 433 (Fla. 1973) and City of Naples v Conboy, 182 So. 2d 412 (Fla. 1965).

In Interlachen Lakes Estates. Inc., this Court held a statute authorizing platted land unsold as lots to be assessed at the same rate as unplatted land, until 60% of the lots in the subdivision had been sold. The Court's decision had the impact of assessing several year's of unpaid taxes on property owners, who had relied upon a statute imposing a lesser tax burden. The decision was made prospective only, in view of this reliance.

Petitioner is in a similar, but worse, position as the property owners in Interlachen, as the Port of Palm Beach District's tax liability would go from zero to 100% instead of from 60% to 100%. In deciding to apply tax liability going forward only, this Court held, in Martinez v. Scanlan, 582 So. 2d **1167** (Fla. 1991) that:

> "Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity."
>
> **582** So. 2d at 1174.

As expressed Justice Barkett's dissent filed in the Martinez, case, where a precedent has been established, such has been the case for Petitioner for over 80 years, and a subsequent court

case overrrules the expectations flowing from that precedent, then the doctrine of nonretroactivity can be applied, in order to avoid "jolting the expectations" of the parties.

CONCLUSION

There are ample grounds to find that all twelve deep water ports in the state of Florida are providing the implementation of the policy and general administration of the state's express governmental goals and functions. They are political subdivisions of this state, not municipalities, and an examination of their purposes, functions and duties, as imposed upon them by the Legislature confirm this classification. With or without a label, they are in fact included within what the Legislature, the Second District and this Court meant when they said political subdivisions of this state are immune from ad valorem taxation, because of what they do for the state.

Exemption from ad valorem taxation for the other deep water ports and Petitioner exists under several provisions of both general law and the special act applicable to the Port of Palm Beach District. The Legislature has the power to grant exemptions if it feels that the use of the land in question is in furtherance of an identified goal and public purpose of the state. For these reasons, the decision of the Fourth District in following the rational of the Fifth District in the Florida Department of Revenue v. Canaveral Port Authority case, should be overturned, and the summary judgement in favor of Petitioner affirmed.

Respectfully submitted.
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