SUPREME COURT OF FLORIDA

DAVID KUHNLEIN, et al.,

Appellants/Plaintiffs,

vs. Case No. 85,618

FLORIDA DEPARTMENT OF REVENUE; et al.,

Appellees/Defendants.

_____/

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TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	i
TABLE OF CITATIONS	iii
I. STATEMENT OF THE CASE AND FACTS	1
II. SUMMARY OF THE ARGUMENT	4
III. STATEMENT OF THE LAW AND ARGUMENT	6
A. CLASS PLAINTIFFS ARE ENTITLED TO POSTJUDGMENT INTEREST	6
1. The plain language of § 55.03 mandates an award of postjudgment interest	6
2. This Court has consistently applied § 55.03 to judgments against the State and other governmental entities	9
3. This Court's recent decision in *Palm Beach County v. Town of Palm Beach* confirms that the State must pay postjudgment interest under § 55.03	12
4. Florida courts have applied § 55.03 to judgments against the State and local governments awarding tax refunds	15
5. Florida courts apply different legal standards for entitlement to prejudgment and postjudgment interest, and an award of postjudgment interest is not dependent on an award of prejudgment interest	17
6. As this Court has previously recognized, there are valid policy reasons for awarding postjudgment interest on judgments against the State	20
7. The Court must award postjudgment interest under § 55.03 in order to avoid difficult constitutional issues implicated by the trial court's ruling	22

B. CLASS PLAINTIFFS ARE ENTITLED TO PREJUDGMENT INTEREST..... 23

1. The trial court applied the wrong legal standard in considering Class Plaintiffs' request for prejudgment interest..... 23

2. The trial court's ruling is largely premised on an overly narrow interpretation of *Mailman v. Green*..... 26

3. Class Plaintiffs should be awarded prejudgment interest due to the State's inequitable conduct..... 30

IV. CONCLUSION..... 33

CERTIFICATE OF SERVICE..... 34

TABLE OF CITATIONS

	PAGE NO.
Berek v. Metropolitan Dade County, 422 So. 2d 838 (Fla. 1982)	11
Broward County v. Finlayson, 555 So. 2d 1211 (Fla. 1990)	24, 29
In re C.M.T. v. Department of Health and Rehab. Serv., 550 So. 2d 126 (Fla. 1st DCA 1989)	8
Chiles v. United Faculty of Florida, 615 So. 2d 671 (Fla. 1993)	24, 29, 30
City of Miami Beach v. Galbut, 626 So. 2d 192 (Fla. 1993)	7
City of Miami Beach v. Jacobs, 341 So. 2d 236 (Fla. 3d DCA 1976), cert. denied, 348 So. 2d 945 (Fla. 1977), cert. denied, 434 U.S. 939 (1977)	10, 16, 17
City of Miami v. Lewis, 104 So. 2d 70 (Fla. 3d DCA 1958)	14
Collins Investment Co. v. Metropolitan Dade County, 164 So. 2d 806 (Fla. 1964)	20
Department of Law Enforcement v. Real Property, 588 So. 2d 957 (Fla. 1991)	22
Department of Revenue v. Kuhnlein, 646 So. 2d 717 (Fla. 1994)	2, 10, 13, 15, 30, 31
Fischbach & Moore, Inc. v. McBro, 619 So. 2d 324 (Fla. 3d DCA 1993)	11, 21
Flack v. Graham, 461 So. 2d 82 (Fla. 1984)	24
Florida Insurance Guaranty Association v. Gustinger, 390 So. 2d 420 (Fla. 3d DCA 1980)	19
Florida Insurance Guaranty Association v. Jacques, 643 So. 2d 101 (Fla. 4th DCA 1994)	19
Florida Livestock Board v. Gladden, 86 So. 2d 812 (Fla. 1956)	9, 10, 22

I. STATEMENT OF THE CASE AND FACTS.

Class Plaintiffs commenced this action on August 6, 1992, seeking a declaration that the Florida Vehicle Impact Fee, § 319.231, Florida Statutes,[1] violated the United States Constitution, and an order requiring a refund of all monies collected under § 319.231. [R 10]. On November 30, 1993, the trial court issued a Final Summary Judgment for the Class Plaintiffs. [R 1522]. The trial court found that "[t]he impact fee patently discriminates against interstate commerce by making a distinction between otherwise similar motor vehicles based solely on the vehicles' origin outside the state. This facial discrimination renders the entire statute unconstitutional. . ." [R 1543-44]. The trial court further held that "the commerce clause violation alone is sufficient to require a refund in this case because the court is unable to provide any other clear and certain remedy as a matter of law." [R 1544].

Based on its findings, the trial court declared that § 319.231 was unconstitutional and "invalid ab initio," it enjoined the State of Florida from further enforcing § 319.231 and from "collecting the impact fees purportedly authorized thereunder," and it ordered the State to "refund the impact fees actually paid by each plaintiff in this case." [R 1544]. The trial court specifically held that its order of a full refund was "final". [R 1544].

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[1] Section 319.231 imposed an "impact fee" of $295 on "each original certificate of title issued for a motor vehicle previously titled outside of this state." Section 319.231 took effect on July 1, 1991.

The trial court's Final Summary Judgment for the Class Plaintiffs was automatically stayed by the filing of the State's appeal thereof on December 2, 1993. [R 1567]. On December 3, 1993, Class Plaintiffs moved the trial court to vacate the stay, or in the alternative, to escrow the fees collected under § 319.231 in an interest-bearing account during the pendency of the appeal. [R 1387, 1398]. The State objected, and the trial court denied the Class Plaintiffs' motion at a hearing on December 16, 1993. [R 1422, 1476]. The State therefore continued to collect the Impact Fee under § 319.231 while its appeal was pending.

In a unanimous 6-0 opinion rendered on September 29, 1994, this Court affirmed the Final Summary Judgment for the Class Plaintiffs in its entirety. Dept. of Revenue v. Kuhnlein, 646 So. 2d 717 (Fla. 1994). This Court agreed with the trial court that "the Florida impact fee does in fact result in discrimination against out-of-state economic interests in contravention of the Commerce Clause." Id. at 724. In addition, this Court ruled as follows:

> As the trial court below noted, the impact fee was void from its inception because the legislature acted wholly outside its constitutional powers. The only clear and certain remedy is a full refund to all who have paid this illegal tax. The result reached by the trial court and its refund order therefore are approved. Id. at 726.

On December 8, 1994, Class Plaintiffs moved the trial court for a final determination of the amount of postjudgment interest to

be paid on the refunds due the Class. [R ____].[2] At the same time, Class Plaintiffs separately moved to recover prejudgment interest on the monies to be refunded. [R ____]. Class Plaintiffs served Reply Briefs in support of their respective motions on February 8, 1995. [R ____, ____].

The trial court conducted a hearing on Class Plaintiffs' Motion for Final Determination of Postjudgment Interest and Class Plaintiffs' Motion for Prejudgment Interest on February 10, 1995. During that hearing, the trial court directed the parties to file supplemental briefs on the issue of which postjudgment interest rate applies to this case, the flat rate of 12% per annum set forth in § 55.03(1), Florida Statutes (1993), or the adjustable rate (currently 8% per annum) set forth in § 55.03(1), Florida Statutes (1994 Supp.). [R ____]. Class Plaintiffs then submitted their Supplemental Brief in support of their Motion for Final Determination of Postjudgment Interest on February 17, 1995. [R ____]. Class Plaintiffs' Supplemental Brief argued that the flat postjudgment rate of 12% per annum provided by § 55.03(1), Florida Statutes (1993), applies to the Final Summary Judgment for the Class Plaintiffs entered on November 30, 1993.

In the State's Response to the Court's Questions on the Timing and Rate of Interest dated February 17, 1995, the State conceded that the flat 12% postjudgment rate, not the new adjustable rate,

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[2] As of the date of this Initial Brief, the Clerk below had not yet fully prepared the record on appeal. When the record is prepared, Class Plaintiffs will submit a substitute Initial Brief containing all record cites not presently available.

applies to all judgments entered before January 1, 1995. [R ____]. Pursuant to the trial court's request, Class Plaintiffs then served a Second Supplemental Brief in Support of their Motion for Final Determination of Postjudgment Interest on March 9, 1995. [R ____, ____].

On April 5, 1995, the trial court entered a Final Order on Class Plaintiffs' Motion for Postjudgment Interest and a Final Order on Class Plaintiffs' Motion for Prejudgment Interest, denying both. [R ____, ____]. In denying prejudgment interest, the trial court refused to apply the standard adopted by this Court whereby a plaintiff may recover prejudgment interest from the State, despite sovereign immunity, when the equities so warrant. [R ____]. The trial court also denied postjudgment interest based on its denial of prejudgment interest, despite the trial court's acknowledgment that § 55.03, Florida Statutes, "normally awards postjudgment interest when a party recovers a sum of money." [R ____].

On April 11, 1995, Class Plaintiffs appealed from those Final Orders. Class Plaintiffs' appeal is before this Court pursuant to an Order of the Fifth District Court of Appeal dated April 28, 1995, certifying this appeal for direct review by this Court pursuant to Florida Rule of Appellate Procedure 9.125.

II. SUMMARY OF THE ARGUMENT.

Class Plaintiffs are entitled to recover postjudgment interest on the refunds to be paid by the State as a matter of law under Section 55.03, Florida Statutes (1993). The plain language of

§ 55.03 mandates an award of postjudgment interest on the judgment rendered in favor of the Class Plaintiffs on November 30, 1993. The trial court erred by failing to apply the unambiguous requirement in § 55.03(1) that a judgment "shall" bear interest at the rate of 12% per annum.

An award of postjudgment interest comports with a long line of Florida Supreme Court decisions which have awarded postjudgment interest without exception. In fact, this Court expressly held in 1991 that governmental entities are not immune from the payment of postjudgment interest on judgments entered against them. The trial court's denial of postjudgment interest conflicts with well-settled Florida law that requires application of § 55.03 to all judgments against all parties, including the State. The trial court's reasoning, that this is a tax refund case and the judgment is to be paid from the State Treasury, raises a distinction without a difference in the law.

The trial court's decision to deny postjudgment interest on the basis of its denial of prejudgment interest also conflicts with Florida law that distinguishes between the standards applicable to prejudgment and postjudgment interest. Unlike an award of prejudgment interest on a tax refund, which depends on the equities in each case, the recovery of postjudgment interest on all judgments is mandated by § 55.03. The trial court's linkage of postjudgment interest to prejudgment interest constitutes reversible error as a matter of law.

There are valid policy reasons underlying the requirement to pay postjudgment interest on any judgment. In this case, an award of postjudgment interest is necessary to avoid punishing Class Plaintiffs and rewarding the State for the State's decision to pursue an unsuccessful appeal on the merits of Class Plaintiffs' claim. In addition, an award of postjudgment interest is necessary in order to avoid the need to confront difficult constitutional issues, including due process and equal protection concerns, raised by the trial court's denial of postjudgment interest.

Finally, Class Plaintiffs are also entitled to recover prejudgment interest on their refunds. The trial court erred by applying an improper legal standard to Class Plaintiffs' request for prejudgment interest, and by failing to recognize the equities in this case that justify an award of such interest. Throughout the history of the Vehicle Impact Fee, the State acted unfairly towards the Class.

III. STATEMENT OF THE LAW AND ARGUMENT.

A. CLASS PLAINTIFFS ARE ENTITLED TO POSTJUDGMENT INTEREST.

1. The plain language of § 55.03 mandates an award of postjudgment interest.

Section 55.03(1), Florida Statutes (1993), provides for postjudgment interest as a matter of right on all judgments:

> (1) A judgment or decree entered on or after October 1, 1981, shall bear interest at the rate of 12 percent a year unless the judgment or decree is rendered on a written contract or obligation providing for interest at a lesser rate, in which case the judgment or decree bears interest at the rate specified in such

written contract or obligation. (Emphasis added).[3]

See also Section 687.01, Florida Statutes (1993) ("In all cases where interest shall accrue without a special contract for the rate thereof, the rate shall be 12 percent per annum, but parties may contract for a lesser or greater rate by contract in writing").

Where, as here, the plain language of a statute is unambiguous, a court may not construe the statute in a way which would limit its express terms. As this Court has noted, Florida courts are "without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications." Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984) (emphasis in original). See also State v. Jett, 626 So. 2d 691, 693 (Fla. 1993) ("It is a settled rule of statutory construction that unambiguous language is not subject to judicial construction, however wise it may seem to alter the plain language"); City of Miami Beach v. Galbut, 626 So. 2d 192, 193 (Fla. 1993) ("A statute's plain and ordinary meaning must be given effect unless to do so would lead to an unreasonable or ridiculous result").

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[3] The 1994 Legislature amended § 55.03 to provide for an adjustable rate applicable to judgments obtained on or after January 1, 1995. As set forth in the Statement of the Case and Facts above, the State admits that the 1994 amendments to § 55.03 are prospective in nature and therefore the 12% postjudgment rate, not the new adjustable rate, applies to all judgments entered before January 1, 1995. [R ____]. The Final Summary Judgment for the Class Plaintiffs was entered by the trial court herein on November 30, 1993. [R 1522, 1545].

Section 55.03(1) unambiguously provides that a judgment "shall" bear interest at the rate of 12 percent per annum, unless the judgment is based on a written contract or obligation providing for interest at a lesser rate. Well-settled rules of statutory construction dictate that "express exceptions made in a statute give rise to a strong inference that no other exceptions are intended and that exceptions will not be implied where, as here, the words of the statute are free from ambiguity." State Road Dept. v. Levato, 192 So. 2d 35, 39 (Fla. 4th DCA 1966).

Therefore, an award of postjudgment interest under § 55.03 is mandatory on any judgment and is not subject to the discretion of the trial court. Indeed, one court has held that the Legislature's use of the term "shall" in § 57.041, the litigation costs statute, "mandates that every party who recovers a judgment in a legal proceeding is entitled as a matter of right to recover lawful court costs . . . [and] a trial judge has no discretion under that statute to deny court costs to the party recovering judgment." Governing Bd. of St. John's River Water Mgmt. Dist. v. Lake Pickett Ltd., 543 So. 2d 883, 884 (Fla. 5th DCA 1989) (emphasis added).[4]

Accordingly, under § 55.03(1), Class Plaintiffs are entitled as a matter of law to postjudgment interest on their refunds from November 30, 1993, the date of the trial court's Final Summary Judgment finding the impact fee unconstitutional and ordering a

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[4] See also In re C.M.T. v. Dept. of Health and Rehab. Serv., 550 So. 2d 126, 127 (Fla. 1st DCA 1989) (use of the term "shall" is not permissive); Hill v. State, 624 So. 2d 826, 827 (Fla. 2d DCA 1993) (use of the term "shall" deprives trial court of discretion).

full refund of all fees collected under that unconstitutional statute. The trial court's denial of postjudgment interest was an impermissible effort to exercise discretion where none exists due to the plain, mandatory language of § 55.03. There is no statutory or decisional support for the denial of postjudgment interest, and none was cited in the trial court's Final Order. [R ____].

2. This Court has consistently applied § 55.03 to judgments against the State and other governmental entities.

This Court has consistently held that governmental entities like the State Defendants are not immune or exempt from having to pay postjudgment interest on judgments rendered against them. This Court has held that no statutory authority other than § 55.03 is necessary to award postjudgment interest on a judgment against the State.

For instance, in Florida Livestock Bd. v. Gladden, 86 So. 2d 812 (Fla. 1956), the plaintiff successfully sued the State to recover the value of wrongfully destroyed property. Relying on the silence in § 55.03 with regard to the obligation of the State to pay postjudgment interest, the State appealed the trial court's award of postjudgment interest, contending that "an agency of the state is not liable for interest in the absence of a specific statute or a lawfully binding contract providing for interest." Id. at 812. The plaintiff contended, on the other hand, that he was entitled to postjudgment interest because § 55.03 "applies to all judgments and makes no exceptions in favor of the state." Id.

This Court agreed with the plaintiff and refused to exempt the State from the duty imposed by the plain language of § 55.03. This Court concluded that, where sovereign immunity was not a bar to suit against the State,[5] § 55.03 permitted the prevailing party to recover postjudgment interest from the State. Id. at 813.

This Court followed the reasoning of Florida Livestock in Stone v. Jeffres, 208 So. 2d 827 (Fla. 1968), in which it refused to limit the scope of § 55.03 based on the type of judgment or decree involved in a particular case. More specifically, the Stone Court addressed whether a prevailing party is entitled to postjudgment interest under § 55.03 on an award of attorney's fees in a workers' compensation case. This Court began its analysis by noting that "the Florida Workmen's Compensation Act does not provide expressly for allowance of interest on attorneys' fees, ... but is silent on the subject." Id. at 828. However, because § 55.03 provides postjudgment interest on "all judgments and decrees," this Court found "little justification for making a specific exception and excluding interest on compensation awards of attorney's fees." Id. at 829 (emphasis added).[6]

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[5] In that case, the State had enacted a statute, Section 585.03, Florida Statutes, waiving its sovereign immunity from suit against Florida Livestock Board. Here, this Court has previously held that sovereign immunity is not a bar to the Class Plaintiffs' recovery in this case. Dept. of Revenue v. Kuhnlein, 646 So. 2d 717, 721 (Fla. 1994).

[6] Following Stone, Florida courts have applied § 55.03 across the board to a wide variety of judgments and decrees. See, e.g., City of Miami Beach v. Jacobs, 341 So. 2d 236 (Fla. 3d DCA 1976), cert. denied, 348 So. 2d 945 (Fla. 1977), cert. denied, 434 U.S. 939 (1977) (taxpayer class action refunds); Houghton v. City of St. Petersburg, 416 So. 2d 465 (Fla. 2d DCA 1982) (state

Similarly, in Roberts v. Askew, 260 So. 2d 492 (Fla. 1972), this Court upheld an award of costs and postjudgment interest in a successful quiet title suit against the Board of Trustees of the Internal Improvement Trust Fund of Florida. With respect to postjudgment interest, this Court held as follows:

> Fla. Stat. § 55.03, F.S.A., provides that all judgments and decrees shall bear interest at the rate of six per cent. This statute and other applicable statutes make no exemption in favor of the Trustees from the obligation to pay interest on a judgment rendered against the Trustees. Id. at 495 (emphasis added).

In Roberts, this Court expressly followed the same reasoning employed by this Court in Simpson v. Merrill, 234 So. 2d 350 (Fla. 1970), where the Court held that under § 57.041, Florida Statutes, "costs may be taxed against the State and its agencies in favor of the party recovering judgment." Id. at 351. The Court in Simpson explained that § 57.041 "provides for the recovery of legal costs by the party recovering the judgment in all cases except those specifically exempted." Id. The exemptions in § 57.041, the Court noted, "do not include the State or its agencies and we can find no basis for reading such an exemption into the plain language of the Act." Id. (emphasis added). Thus, in applying the reasoning in Simpson, the Roberts Court held that the State Trustees "should be required to pay interest just as they are required to pay court costs." Roberts, 260 So. 2d at 495. Accord Berek v. Metropolitan

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political subdivision liable for postjudgment interest on judgment for "return of money"); Fischbach & Moore, Inc. v. McBro, 619 So. 2d 324 (Fla. 3d DCA 1993) (attorney's fees incurred in arbitration).

Dade County, 422 So. 2d 838, 840 (Fla. 1982) ("[T]he general provisions of law which make costs and interest recoverable by the prevailing party are applicable when a tort claimant prevails against the state").

As these cases demonstrate, time and again this Court has stated unequivocally that § 55.03 applies with full force and effect to the State and its agencies on "all judgments and decrees." Stone, 208 So. 2d at 829; Roberts, 260 So. 2d at 495. Beginning in Florida Livestock and continuing through Stone and Roberts, this Court has refused to read into the plain language of § 55.03 any exemption for the State, its agencies or subdivisions, or to limit the statute's scope based on the nature of the judgment or decree entered against the State.

3. This Court's recent decision in *Palm Beach County v. Town of Palm Beach* confirms that the State must pay postjudgment interest under § 55.03.

This Court's decision in Palm Beach County v. Town of Palm Beach, 579 So. 2d 719 (Fla. 1991), is its most recent pronouncement that § 55.03 applies to all judgments against all parties, including governmental entities. In Palm Beach County, the trial court ordered Palm Beach County to remit to 17 municipalities one-half of all ad valorem taxes collected from them during two fiscal years by the County and used for roads and bridges within the County. However, the trial court did not award postjudgment interest on the taxes to be remitted to the cities, and the cities appealed. The district court of appeal certified the following question to this Court:

> IS A GOVERNMENTAL ENTITY IMMUNE FROM THE PAYMENT OF POSTJUDGMENT INTEREST UNDER THE DOCTRINE OF SOVEREIGN IMMUNITY? Id. at 719.

This Court answered the certified question in the negative, finding that "the question presented is governed by section 55.03, Florida Statutes." Id. at 720. The Court rejected the County's argument that § 55.03 "is inapplicable because interest may only be awarded when the right to interest can be implied from the language of a statute which waives sovereign immunity." Id. To the contrary, this Court held as follows:

> In this instance, we find it unnecessary to look for an underlying statute to imply interest, when section 55.03 expressly provides for postjudgment interest without listing any exception to its application. Id. (emphasis added).

This Court further pointed out that the question of "governmental immunity from suit was resolved below against the county," and that Palm Beach County was now "inappropriately attempting to relitigate the immunity issue." Id. Similarly, in this case, the Court has previously rejected the State's sovereign immunity defense on the merits of Class Plaintiffs' refund claim. Dept. of Revenue v. Kuhnlein, 646 So. 2d 717, 721 (Fla. 1994) (Kuhnlein I). As in Palm Beach County, the State is now inappropriately attempting to relitigate the immunity issue by arguing that it should not be required to pay postjudgment interest on the refunds ordered by this Court as the "only clear and certain remedy" available to Class Plaintiffs.

The State is also attempting to circumvent this Court's ruling in Palm Beach County that § 55.03 "expressly provides for

postjudgment interest without listing any exception to its application." The State argued below that Palm Beach County is distinguishable because it involved a refund of county taxes as opposed to state taxes. However, the certified question answered by this Court in Palm Beach County was not limited to counties; rather, it asked whether "a governmental entity" is immune from the payment of postjudgment interest. This Court's answer, that § 55.03 "expressly provides for postjudgment interest without listing any exception to its application," leaves no room for doubt: there are no exceptions to § 55.03. This Court's reasoning in Palm Beach County did not hinge on the source of the monies due to be refunded. Its ruling applies equally to all tax refunds from all governmental entities.

Any attempt to draw a distinction between state and county immunity is further refuted by this Court's recognition in Kaulakis v. Boyd, 138 So. 2d 505 (Fla. 1962), that counties partake of the State's sovereign immunity from liability. Id. at 507. The Court explained that counties "are organized as political subdivisions of the state and constitute a part of the machinery of the state government." Id. See also City of Miami v. Lewis, 104 So. 2d 70, 72 (Fla. 3d DCA 1958) (Municipalities are "as much a political subdivision of the state" as counties); 57 Am. Jur. 2d Municipal, Etc., Tort Liability § 67 (1988) ("Sovereign immunity is generally described as applicable to the state, and ... may encompass political subdivisions, including municipalities, counties, towns, schools and related bodies").

Notwithstanding the plain language of § 55.03 and this Court's unambiguous ruling in Palm Beach County, the State's position is that it is entitled to an exception to § 55.03 for judgments that award refunds of state taxes. However, the State unsuccessfully raised a similar argument in Kuhnlein I. In its opposition to a refund on the merits, the State argued that there was no authority for a refund of state, as opposed to local, taxes in a class action suit. Both the trial court and this Court, in ordering a full refund of the Impact Fees collected under § 319.231, refused to adopt such an arbitrary and legally insupportable distinction.

4. Florida courts have applied § 55.03 to judgments against the State and local governments awarding tax refunds.

Consistent with § 55.03 and Palm Beach County, Florida courts do not distinguish between judgments to be paid from the State Treasury as opposed to county or municipal funds in awarding postjudgment interest thereon. To the contrary, as in Palm Beach County, Florida courts have consistently awarded postjudgment interest on judgments against the State and other governmental entities for tax refunds, among other claims.

For instance, in Miller v. Agrico Chemical Co., 383 So. 2d 1137 (Fla. 1st DCA 1980), the district court reviewed an appeal by the Florida Department of Revenue of a final judgment awarding a refund of 1977 severance taxes paid by a group of chemical companies under § 211.30(5), Florida Statutes. After affirming the trial court's award of the refund of those 1977 state taxes, the district court also affirmed the trial court's award of

postjudgment interest "on the amount of the tax refunds found to be due to the taxpayers." Id. at 1139. The district court rejected the argument by the Department of Revenue that "there is no statutory authority for judgment interest on tax refunds." Id. Citing § 55.03, the district court approved the award of interest on the refunds of the 1977 state taxes, "accruing from the date of judgment." Id. at 1139-40.

The decision in Miller confirms the propriety of awarding postjudgment interest on refunds of State taxes. It also refutes the State's claim and the trial court's finding below that there are no reported Florida decisions that have applied postjudgment interest to refunds of State taxes from the State Treasury. [R ____].

Florida courts have also awarded postjudgment interest on tax refunds in class action suits. In City of Miami Beach v. Jacobs, 341 So. 2d 236 (Fla. 3d DCA 1976), cert. denied, 348 So. 2d 945 (Fla. 1977), cert. denied, 434 U.S. 939 (1977), the trial court held that a city ordinance which imposed certain "fire line charges" was invalid, and ordered the city to refund those charges to the members of a class who challenged the ordinance. Following the city's unsuccessful appeal from that judgment, the trial court ordered the city to pay postjudgment interest on the refunds from the date of entry of the original judgment. The city challenged that ruling on appeal, and the district court affirmed:

> We find no error in the provision of the order which conferred upon the members of the class interest on the amounts to which the court found the city was obligated to reimburse

> them. The interest provided for by the court was that which would accrue from the time of the entry of the judgment determining the plaintiffs were entitled to refunds from the city, as provided for by Section 55.03, Florida Statutes. Id. at 238.

In awarding postjudgment interest on tax refunds, the district courts in Miller and Jacobs followed this Court's repeated admonition that § 55.03 applies to all judgments, regardless of the nature of the judgment or the status of the defendant as a governmental entity. Stone v. Jeffres, 208 So. 2d 827, 829 (Fla. 1968); Roberts v. Askew, 260 So. 2d 492, 495 (Fla. 1972).[7] By contrast, in denying postjudgment interest to the Class on the basis that the judgment rendered in favor of the Class is not a "traditional money judgment" [R ____], the trial court failed to adhere to this Court's precedents. Indeed, the trial court did not cite any legal authority for its ruling in this regard.

5. Florida courts apply different legal standards for entitlement to prejudgment and postjudgment interest, and an award of postjudgment interest is not dependent on an award of prejudgment interest.

In addition, the trial court's ruling in this case, that "[w]here the State is not required to pay prejudgment interest on state tax refunds, it will not be required to pay postjudgment interest on those same refunds" [R ____], is flatly at odds with prior decisions by this Court and other Florida courts which hold directly to the contrary. As demonstrated above, postjudgment interest is mandatory under § 55.03. On the other hand, as will be shown below, prejudgment interest on a tax refund can be awarded

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[7] See also note 5, supra.

upon an equitable-based showing. Postjudgment interest can, and must, be awarded on a state tax refund independent of any considerations of prejudgment interest.

As noted above, in Palm Beach County v. Town of Palm Beach, 579 So. 2d 719 (Fla. 1991), the County argued that postjudgment interest should not be awarded under § 55.03 because, it contended, "interest may only be awarded when the right to interest can be implied from the language of a statute which waives sovereign immunity." Id. at 720. For that proposition, the County relied on this Court's decisions in University Presbyterian Homes, Inc. v. Smith, 408 So. 2d 1039 (Fla. 1982), and Mailman v. Green, 111 So. 2d 267 (Fla. 1959).

However, this Court in Palm Beach County rejected the County's reliance on Presbyterian Homes and Mailman, noting that those two cases "are distinguishable in that they involve the question of prejudgment interest, a question not presented here." Palm Beach County, 579 So. 2d at 720. Therefore, this Court refused to apply the standard for prejudgment interest in awarding postjudgment interest to the cities. The fact that the cities did not recover prejudgment interest on their refund did not defeat their right to recover postjudgment interest under § 55.03.

Likewise, in Miller v. Agrico Chemical Co., 383 So. 2d 1137 (Fla. 1st DCA 1980), the district court affirmed the trial court's award of postjudgment interest under § 55.03 on the state tax refunds due the taxpayers. The Florida Department of Revenue unsuccessfully argued to the district court that "there is no

statutory authority for judgment interest on tax refunds." Id. at 1139. The district court explained that "the cases cited as authority [by the State] deal with claims for interest from the date of payment of the tax" rather than from the date of the judgment. Id. at 1139-40. The district court in Miller therefore upheld the principle that postjudgment interest can and must be awarded in cases where prejudgment interest is not also awarded. See also Florida Ins. Guar. Ass'n v. Gustinger, 390 So. 2d 420, 421 n.2 (Fla. 3d DCA 1980) (Notwithstanding FIGA's non-liability for prejudgment interest under § 631.57(1)(b), Fla. Stat., "FIGA remains responsible for the payment of lawful interest on the final judgment itself from the date of entry," under § 55.03); Florida Ins. Guar. Ass'n v. Jacques, 643 So. 2d 101, 103 (Fla. 4th DCA 1994) ("[A]lthough FIGA may be liable for postjudgment interest, it is not liable for prejudgment interest").

In Lewis v. Anderson, 382 So. 2d 1343 (Fla. 5th DCA 1980), moreover, the district court reversed a trial court's award of prejudgment interest on a state tax refund. Relying on this Court's decision in Mailman and its progeny, the district court held that "there is no equitable or statutory basis to affirm the award of interest on the refunds from the date of payment by the taxpayer." Id. at 1344. Notwithstanding its denial of prejudgment interest, however, the district court recognized that postjudgment interest on the state tax refunds must still be awarded under § 55.03. Citing Simpson and City of Miami Beach, supra, the district court held that § 55.03 (which at that time set interest at 6% per

annum) "provide[s] a basis to collect 6% interest on the judgment appealed from in this case from the date of the judgment." Id. at 1343 n.1.

Therefore, the district court in Lewis, like the district court in Miller, recognized that refunds of State taxes must bear postjudgment interest as provided by § 55.03, regardless of any denial of prejudgment interest on the same refunds.[8] Further, this Court (in Palm Beach County), together with the district courts of appeal in the First District (in Miller), the Third District (in Gustinger), the Fourth District (in Jacques), and the Fifth District (in Lewis), have all held that postjudgment interest must be paid on any judgment under § 55.03 notwithstanding the fact that prejudgment interest is not also due. No court has held to the contrary.

6. As this Court has previously recognized, there are valid policy reasons for awarding postjudgment interest on judgments against the State.

In declining to exempt the State from application of the litigation costs statute, § 57.041, this Court in Simpson v. Merrill, 234 So. 2d 350 (Fla. 1970), noted the traditional sovereign immunity enjoyed by the State and its agencies. However,

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[8] Significantly, the Florida Legislature chose not to include any exception in § 55.03 for judgments against the State when the Legislature amended § 55.03 in 1981 and again in 1994. Its actions in this regard, following the decisions by the district courts in Miller and Lewis (both in 1980) and this Court's decision in Palm Beach County (in 1991), must be construed as legislative approval of the courts' application of § 55.03 in those cases. Collins Inv. Co. v. Metropolitan Dade County, 164 So. 2d 806, 809 (Fla. 1964) ("When a statutory provision has received a definite judicial construction, a subsequent re-enactment will be held to amount to a legislative approval of the judicial construction").

as the Court in Simpson explained, there are policy reasons why the State and private litigants should be treated equally in duly filed lawsuits:

> [G]overnmental agencies today directly effect the lives and property of private citizens more than at any time in the past. This trend has given rise to increased litigation as individuals contest the demands of government. When, through litigation, these demands are determined to be unlawful, the government, like any other party, should be compelled to pay the costs of the litigation. Simpson, 234 So. 2d at 351.

Accord Roberts v. Askew, 260 So. 2d 492, 495 (Fla. 1972) (following same reasoning in Simpson in requiring the State to pay interest under § 55.03).

This case is a perfect example of the policy basis underlying an award of postjudgment interest against the State. The State imposed a $295 additional "impact fee" on motor vehicles previously titled outside of this State. Class Plaintiffs challenged this "demand of government" on constitutional grounds and successfully established that it was unlawful. Consistent with this Court's reasoning in Simpson, the State, like any other private litigant, must be required to pay postjudgment interest on the judgment rendered against it. Otherwise, Class Plaintiffs, as the prevailing party, will be prejudiced due to the State's decision to pursue its unsuccessful appeal.[9] Indeed, this Court has observed

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[9] See Fischbach & Moore, Inc. v. McBro, 619 So. 2d 324, 325 (Fla. 3d DCA 1993) ("[A] prevailing party should not be penalized when a non-prevailing party decides to contest" a judgment, by denying interest from the date of the judgment); Inacio v. State Farm Fire & Casualty Co., 550 So. 2d 92, 97 (Fla. 1st DCA 1989) (To deny interest "would be to penalize the prevailing party" and

that an award of postjudgment interest on judgments against the State is necessary to do "complete justice." Florida Livestock Bd. v. Gladden, 86 So. 2d 812, 813 (Fla. 1956); Treadway v. Terrell, 158 So. 512, 519 (Fla. 1935). Accord Palm Beach County, 579 So. 2d at 720 n.2.

7. The Court must award postjudgment interest under § 55.03 in order to avoid difficult constitutional issues implicated by the trial court's ruling.

It is a well-established principle of statutory construction that where possible a court should construe a statute in a manner which permits it to avoid addressing and resolving issues of constitutional law. State v. Stalder, 630 So. 2d 1072, 1076 (Fla. 1994); Department of Law Enforcement v. Real Property, 588 So. 2d 957, 961 (Fla. 1991). Here, this Court should construe § 55.03 as applicable to the State in an action involving the refund of unconstitutionally collected taxes from the State Treasury because to do otherwise would require this Court to resolve several difficult issues of federal and state constitutional law.

For instance, as this Court recognized in Simpson and Roberts, supra, a holding requiring "successful litigants against the State and its agencies to the pay their own costs offends our basic sense of fairness and may well be a violation of due process of law." Simpson, 234 So. 2d at 351; Roberts, 260 So. 2d at 495 (applying

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"reward" the non-prevailing party by allowing the latter party "interest-free use of the money" while it "continu[es] to contest" the claim); Stone v. Jeffres, 208 So. 2d 827, 830 (Fla. 1968) ("[U]nless such interest is allowed, temptation will be afforded to delay payment of [the judgment] by resorting to appeals in situations which could work hardships upon persons ordinarily least able to be burdened by any delays").

principles announced in Simpson to postjudgment interest context). Thus, were this Court to adopt the trial court's interpretation of § 55.03, it would be forced to determine whether such an interpretation violates Class Plaintiffs' rights under the Due Process Clause. See Reich v. Collins, 115 S. Ct. 547 (1994).

Moreover, in light of this Court's decision in Palm Beach County applying § 55.03 in the tax refund context to a political subdivision of the State, a holding that § 55.03 does not apply to the State in a tax refund case would require this Court to examine whether the distinction between state agencies and state subdivisions is sufficiently rationally related to a legitimate state interest so as to pass muster under the Equal Protection Clause. See Zobel v. Williams, 457 U.S. 55 (1982).

In contrast, construing § 55.03 consistent with its plain language and this Court's precedents to require the payment of postjudgment interest in this case would obviate the need to address these troubling constitutional issues. Under these circumstances, this Court should order the State to pay postjudgment interest on the monies collected under the facially unconstitutional Impact Fee statute.

B. CLASS PLAINTIFFS ARE ENTITLED TO PREJUDGMENT INTEREST.

1. The trial court applied the wrong legal standard in considering Class Plaintiffs' request for prejudgment interest.

Unlike postjudgment interest, which is mandatory under § 55.03, an award of prejudgment interest against the sovereign requires a consideration of the equities in each individual case.

Indeed, this Court has frequently balanced the equities in considering a request for prejudgment interest against the State. See, e.g., Chiles v. United Faculty of Florida, 615 So. 2d 671, 678 (Fla. 1993) ("An award of [prejudgment] interest [against the State which breached an employment contract] depends heavily on equitable considerations"); Broward County v. Finlayson, 555 So. 2d 1211, 1213 (Fla. 1990) (In class action lawsuit, Court holds that prejudgment interest should be awarded, not "according to a rigid theory of compensation for money withheld, but . . . in response to consideration of fairness"); Flack v. Graham, 461 So. 2d 82, 84 (Fla. 1984) (Court examines relative equities in discussing the right to recover prejudgment interest together with back pay).

The trial court erred when it held that prejudgment interest on a tax refund can only be awarded where State officials engaged in illegal, as opposed to inequitable, conduct. Courts hold that "equitable grounds" may justify an award of prejudgment interest on a tax refund against the State despite the absence of statutory authority. Lewis v. Anderson, 382 So. 2d 1343, 1344 (Fla. 5th DCA 1980). Such an equitable basis may include "inequitable circumstances, or excessive taxes or unfair dealings with a taxpayer by the taxing authorities." Id.

The analysis in Lewis stems from this Court's ruling in Mailman v. Green, 111 So. 2d 267 (Fla. 1959). In Mailman, this Court stated that an award of prejudgment interest on a tax refund can be supported by "equitable principles relative to unjust enrichment of the state at the expense of its citizens, or failure

of the state to deal fairly with them." Id. at 269. Accord State ex rel. Four-Fifty Two-Thirty Corp. v. Dickinson, 322 So. 2d 525, 530 (Fla. 1975). More recently, this Court, after referring to the general rule against prejudgment interest, went on to state:

> However, the law is not absolute and a judicial determination regarding interest may depend on equitable considerations and whether the nature of the claim warrants a prejudgment interest award.

State v. Family Bank of Hallandale, 623 So. 2d 474, 479 (Fla. 1993).

In its Final Order denying prejudgment interest, the trial court improperly equated "inequitable" conduct with "illegal" conduct. The trial court held that Class Plaintiffs made no showing that "there existed any illegal or unlawful conduct" by the State Defendants. [R ____]. Further, "[n]o law was shown to be broken by the Defendants in the enactment, administration and enforcement of Section 319.231, Florida Statutes." [R ____]. However, as made clear by the cases cited above, Class Plaintiffs were not required to show that the State violated a law; rather, Class Plaintiffs were required to show that the State acted inequitably or unfairly towards the Class.

As will be set forth below, moreover, Class Plaintiffs demonstrated that the State was unjustly enriched and that it acted inequitably when it recklessly passed a facially unconstitutional tax, it vigorously enforced that tax and thereby deprived hundreds of thousands of Florida citizens of their constitutional rights,

and it engaged in dilatory and other improper litigation tactics after Class Plaintiffs brought their challenge to § 319.231.

2. The trial court's ruling is largely premised on an overly narrow interpretation of *Mailman v. Green*.

The trial court's denial of prejudgment interest is primarily based on an improper interpretation of this Court's 1959 decision in Mailman v. Green, 111 So. 2d 267 (Fla. 1959). The trial court held that Mailman imposes "certain conditions" that must be met before a party can even address "equitable principles": the party must first show that "the Comptroller had clear legal authority to pay a specific refund, because the amount to be paid was not in doubt, and he refused to do so." [R ____, ____]. Mailman, however, did not create such a conditional approach to considering prejudgment interest in every tax refund case.

In Mailman, the plaintiffs filed a petition for mandamus against the Comptroller seeking a refund of overpaid estate taxes. The plaintiffs did not challenge the constitutionality of any provision, but simply claimed that the Comptroller was obligated under law to pay prejudgment interest because the amount due to be refunded was certain and the Comptroller had a legal duty to make such a refund payment. This Court rejected these contentions, finding that a writ of mandamus was not justified because the amount was in dispute and there was no basis for such a legal duty:

> To repeat, the amount ultimately to be paid was throughout the litigation in doubt. Whether the Comptroller should refund any or all of it could not have been divined by that officer and that being the case, we have found no room for the play of equitable principles relative to unjust enrichment of the state at

> the expense of its citizens, or failure of the state to deal with them fairly. Id. at 269.

The Mailman Court focused on the Comptroller's duty not because plaintiffs sought a tax refund but because procedurally the action was in the form of a mandamus by which the plaintiffs sought to compel the Comptroller to exercise a legal duty to refund a sum certain. The Court examined the existence of such a duty because, under Florida law, a writ of mandamus will issue only where the state official has a clear legal duty to act and the amount to be refunded is certain. See State ex rel. Four-Fifty Two-Thirty Corp. v. Dickinson, 322 So. 2d 525 (Fla. 1975); State ex rel. Seaboard Air Line R. Co. v. Gay, 35 So. 2d 403 (Fla. 1948).

Nowhere in Mailman nor in subsequent decisions does a "duty" analysis form a necessary precondition for an award of prejudgment interest. In fact, the Mailman Court expressly limited its facts to the mandamus context:

> It should now be remembered that strictly speaking this was not an action against the state seeking the recovery of money but one against the Comptroller predicated on the assertion that the petitioners had a clear legal right to coerce the payment by him of a duty, namely, the payment to them of the interest described. Mailman, 111 So. 2d at 268.

The Court's analysis thus has no application in a case such as this in which Class Plaintiffs instituted an action for declaratory and injunctive relief against an unconstitutional tax statute and the recovery of all funds collected under the unconstitutional statute.

The trial court's interpretation of Mailman is further undermined by the fact that the Court in Mailman did examine

equitable principles in determining whether an award of prejudgment interest was warranted, finding that the "money was not inequitably withheld by the state and used by it to the detriment of the petitioners." Id. at 269.

Likewise, in Lewis v. Anderson, 382 So. 2d 1343 (Fla. 5th DCA 1980), the district court applied Mailman and examined the record to determine whether equitable circumstances existed to warrant an award of prejudgment interest. The district court in Lewis concluded that the record could not support an award of prejudgment interest because "[n]o testimony was presented to the trial court concerning inequitable circumstances, or excessive taxes or unfair dealings with the taxpayer by the taxing authorities." Id. at 1344.[10]

Class Plaintiffs are entitled to recover prejudgment interest notwithstanding the results in Mailman and Lewis. Aside from the fact that Mailman was a mandamus action, the Court in Mailman observed that "Congress controlled the life of the tax and the proportion of it to be received by the state while the Federal Tax Court adjudicated the dispute that arose about its amount." Mailman, 111 So. 2d at 268. In Lewis, moreover, the district court was faced with the situation where there was no evidence regarding the State's dealings with its taxpayers. Lewis, 382 So. 2d at 1344.

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[10] As discussed earlier, however, the district court in Lewis recognized that postjudgment interest on state tax refunds must be awarded under § 55.03 notwithstanding its denial of prejudgment interest. Lewis, 382 So. 2d at 1343 n.1. See Section III.A.5., supra.

Thus, in Mailman the State was passive; in Lewis there was no record evidence of any activity by the State. Here, by contrast, there is ample evidence that the State "controlled the life of the tax" and did everything in its power to continue collecting the tax as long as possible, including but not limited to collecting the tax for a period of 10 months after the trial court had ruled the statute unconstitutional. Further, as set forth below, there is substantial evidence in the record regarding the State's unfair dealings with Class Plaintiffs.

The trial court incorrectly applied Mailman and ignored this Court's more recent pronouncements in Chiles v. United Faculty of Florida, 615 So. 2d 671, 678 (Fla. 1993), and Broward County v. Finlayson, 555 So. 2d 1211, 1213 (Fla. 1990). As made clear in those decisions, an award of prejudgment interest against the State is based upon equitable considerations, not upon a finding of a breach of a clear legal duty to pay certain monies. For example, in Finlayson, this Court held that Emergency Medical Technicians were entitled to prejudgment interest on their award of over-time pay. This Court awarded prejudgment interest not because government officials "broke the law" in refusing to pay over-time, but because the equities favored the plaintiffs. Finlayson, 555 So. 2d at 1213-14.

In Chiles v. United Faculty of Florida, 615 So. 2d 671 (Fla. 1993), moreover, the State was held to have violated the constitutional right of a public employees union by impermissibly impairing a contract. A majority of this Court also carefully

examined equitable considerations but found that they favored the State and therefore denied prejudgment interest. Justices Kogan and Shaw, however, dissenting in part, argued that the equities required the payment of interest:

> When equitable principles are factored in, the State's obligation was clearly as great as that of the union. The State, as opposed to many private parties, is a highly sophisticated bargaining entity with vast practical experience and nearly limitless technical resources at its disposal to facilitate it in the decisionmaking process. ... Equity, to my mind, unquestionably lies with the innocent victim here -- the state workers -- who should be made whole for their losses. Chiles, 615 So. 2d at 679.

The important point of Chiles is that both the majority and dissent weighed the equities in examining the prejudgment interest issue. The trial court erred in failing to do likewise.

3. Class Plaintiffs should be awarded prejudgment interest due to the State's inequitable conduct.

The equities in this case compel an award of prejudgment interest on the refunds due the Class. The State was unjustly enriched by its collection of the Vehicle Impact Fees, and it acted irresponsibly in its consideration, enactment, enforcement and litigation of the Vehicle Impact Fee. This Court held in its unanimous opinion of September 29, 1994, that the Impact Fee "must be declared facially unconstitutional" under the Commerce Clause of the United States Constitution. Dept. of Revenue v. Kuhnlein, 646 So. 2d 717, 725 (Fla. 1994). In addition, this Court found that the "only clear and certain remedy" is a full refund of the Impact Fees that the Class paid to the State:

> As the trial court below noted, the impact fee was void from its inception because the legislature acted wholly outside its constitutional powers. The only clear and certain remedy is a full refund to all who have paid this illegal tax. Id. at 726.

While simply enacting a facially invalid piece of revenue-raising legislation may not be sufficient to support an award of prejudgment interest, the facts reveal that much more occurred in this case than the passage of a facially unconstitutional tax. Indeed, it is the manner in which the State enacted the Impact Fee and persisted in its collection that most justifies the recovery of prejudgment interest.

Specifically, as established at the evidentiary hearing before the trial court and in the 45 Exhibits contained in the Appendix in Support of Class Plaintiffs' Motion for Prejudgment Interest [R ____-____],[11] the State passed the Impact Fee without first engaging in any constitutional or empirical analysis to determine the legality of, or necessity for, the statute. Even after being apprised by Class Plaintiffs of the patent constitutional defects in the Impact Fee, the State persisted in its active enforcement of § 319.231. The State targeted the statute at the individuals least able to protect themselves -- those who had yet to move to Florida and were without the power of suffrage. Not content with such discrimination, the statute included an express exemption for licensed Florida motor vehicle dealers, the privileged few with a

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[11] A complete discussion of the State's conduct, in conjunction with those exhibits, is contained at pages 16-31 of Class Plaintiffs' Reply Brief in Support of Class Plaintiffs' Motion for Prejudgment Interest. [R ____-____].

powerful lobby. The State, moreover, engaged in all dilatory and other litigation tactics necessary to keep this facially invalid law on the books as long as possible, until this Court told the State to stop collecting the Impact Fee.

Throughout the history of the Impact Fee, then, the State acted inequitably. The trial court's holding, that "Class Plaintiffs presented no evidence to show the Defendants or others dealt unfairly with the Class Plaintiffs" [R ____], is refuted by the overwhelming evidence in the record to the contrary. The trial court's ruling fails to account for the injury to Class Plaintiffs and the fact that the State received the full benefit of the use of Class Plaintiffs' money for the past years.[12]

Specifically, how do the equities favor a State which exacted harsh penalties from its taxpayers for non-payment, including interest, fines, and even imprisonment, yet now claims to be exempt from the obligation to pay prejudgment interest when the shoe is on the other foot? How do the equities favor a State which failed to

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[12] Indeed, the State invested the Vehicle Impact Fees and earned interest on these monies. [R ____]. At an absolute minimum, such interest earnings must be paid to the Class. The First District Court of Appeal recently addressed a similar issue in Leon County v. Dept. of Revenue, 648 So. 2d 1215 (Fla. 1st DCA 1995). In that case, the Department of Revenue impermissibly retained as a service charge a portion of gas tax proceeds which were to be paid to the State Board of Administration on behalf of various counties. The State invested the retained monies during the pendency of the litigation, and the earned interest was transferred to General Revenue. The district court held that the earned interest "may not be retained by the state." Id. at 1216. The district court explained that recovery of the accrued earnings "recaptures the benefit of the state's wrongful retention and use" of the gas tax proceeds. Id. at 1217. The decision in Leon County requires a similar result in this case at a minimum.

undertake any constitutional analysis of § 319.231 prior to its enactment, yet clung to its view of the statute's validity despite warnings, lawsuits and even a trial court decision to the contrary? How do the equities favor a State when the express purpose of its legislation is to target the disenfranchised -- those person just moving to the State and least able to protect themselves through the ballot box -- and the State provides an exemption for Florida motor vehicle dealers, the privileged few? How do the equities favor a State when it fought successfully to preclude the placement of the Vehicle Impact Fees in an interest-bearing escrow account during the pendency of its appeal, and it now refuses to pay interest on the monies wrongfully retained?

A proper consideration of the equities in this case justifies Class Plaintiffs' recovery of prejudgment interest on their refunds. Otherwise, Class Plaintiffs will not be fully compensated for their constitutional loss. Kissimmee Util. Auth. v. Better Plastics, Inc., 526 So. 2d 46, 47 (Fla. 1988) ("For a plaintiff to be fully compensated, the award must include damages suffered from the loss of the use of the money . . . [T]he plaintiff is to be made whole from the date of the loss").

IV. CONCLUSION.

For all of the foregoing reasons, Appellants/Plaintiffs respectfully pray this Court to reverse the trial court's Final Order on Class Plaintiffs' Motion for Postjudgment Interest and its Final Order on Class Plaintiffs' Motion for Prejudgment Interest, and to instruct the trial court to award postjudgment interest and

prejudgment interest on the tax refunds due the Class, in accordance with Class Plaintiffs' Motion for Final Determination of Postjudgment Interest and Class Plaintiffs' Motion for Prejudgment Interest.

Respectfully submitted this 15th day of May, 1995.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile to ERIC J. TAYLOR, ESQUIRE, Assistant Attorney General, The Capitol, Tax Section, Tallahassee, Florida 32399-1050; and JOSEPHINE A. SCHULTZ, Assistant General Counsel, Office of the Comptroller, Hurston South Tower, #S225, 400 West Robinson Street, Orlando, Florida 32801; and by U. S. Mail to ROBERT W. SMITH, ESQUIRE, 430 North Mills Avenue, Suite 1000, Orlando, Florida 32803, this 15th day of May, 1995.

MICHAEL J. BEAUDINE