IN THE SUPREME COURT OF FLORIDA

P. DEWITT CASON, Clerk of the Circuit Court in and for Columbia County, Florida, et al.,

Petitioners,

v. **Case No. SC05-1484**

FLORIDA DEPARTMENT OF MANAGEMENT SERVICES,

Respondent.
_____/

Amicus Curiae Brief on Behalf of the State of Florida and In Support of the Respondent

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INTEREST OF THE AMICUS CURIAE

This brief is submitted by the Attorney General on behalf of the State of Florida, as amicus curiae.

The State of Florida owns real property throughout the state. The Board of Trustees of the Internal Improvement Trust Fund, for example, holds title to over three million acres of uplands, approximately three million acres of internal sovereignty lands, and over six million acres of territorial sovereignty lands. Government buildings on state-owned lands house public officials and their staffs who exercise the sovereign powers of the state. The state also operates numerous correctional facilities. Other state-owned lands may be devoted to recreational or conservation use, schools or highways.

Although all of this property is immune from ad valorem taxation and assessments, occasionally some of it appears on the tax rolls as taxable property. In a given year the Board of Trustees may receive hundreds of notices from taxing authorities for imposition of ad valorem taxes or assessments, to which it must respond. In some instances where the Board of Trustees has not received notices of tax assessments, tax certificates and tax deeds have been issued. If the state's immunity has been waived as petitioners contend, the state may have no choice but to redeem

tax certificates by paying the face amount of taxes assessed, plus interest, or filing suit to cancel tax deeds.

The State of Florida has the strongest interest in protecting its property from loss through the operation of general tax laws that have no application to the state. It also has the strongest interest in protecting government from disruption and from having to expend funds to redeem erroneously issued tax certificates or on lawsuits to cancel tax deeds.

Accordingly, this brief is submitted in support of the respondent, Florida Department of Management Services.

SUMMARY OF ARGUMENT

The First District Court of Appeal certified the following question as one of great public importance:

> Do the Jurisdictional Non-Claim Provisions of Section 194.171, Florida Statutes, Apply to Bar a Claim of the State That Asserts an Assessment is Void Because it Was Made on Property Immune From Ad Valorem Taxation?

This action began when the respondent sought an injunction in circuit court against the issuance of a tax deed on the Lake City Correctional Facility, asserting the property was owned by the state and immune from taxation. Petitioners contend the injunction action was barred by section 194.171, Florida Statutes, a generally applicable non-claim statute requiring that actions challenging tax assessments be filed within a specified period of time.

Petitioners' contention fails because state property is excluded from the operation of all state tax laws unless the legislature has plainly and clearly expressed a contrary intent. The legislature has not plainly and clearly expressed an intent to make state property subject to taxation or waived the state's immunity from proceedings to enforce those laws. Accordingly, section 194.171 does not bar this action.

ARGUMENT

I. SECTION 194.171, FLORIDA STATUTES DOES NOT APPLY TO THE STATE.

In attempting to establish that section 194.171 applies to the state, petitioners argue that the statute's plain and ordinary meaning must control unless that would lead to unreasonable or absurd results. Section 194.171 does not refer to the state, and nowhere in their brief do petitioners address the absurdity of the result for which they contend, namely, subjecting state correctional facilities, or for that matter any state property, to conveyance to speculators for nonpayment of taxes that were never owed. Indeed, precisely because of the state's immunity from taxation, the plain and ordinary meaning rule cannot be applied to divest the state of its property in the absence of expressly stated legislative intent.

A. State Tax Laws Are Not Construed to Apply to State Property Absent a Clear Statement of Legislative Intent.

Petitioners' argument is grounded in the assumption that the state's general laws on taxation apply to property immune from taxation even in the absence of a definite statement from the legislature to that effect. That assumption is contrary to decisional law in Florida and throughout the country.

This Court has held that the state's immunity from taxation is "not dependent upon statutory or constitutional provisions but

rests upon broad grounds of fundamentals in government." State ex rel. Charlotte County v. Alford, 107 So.2d 27, 29 (Fla. 1958) (citing 61 C.J. 366 and 84 C.J.S. Taxation §200). See also 84 C.J.S. Taxation §244. The Court's decision in Alford reflects the general rule that

> [t]ax statutes are construed not to embrace property of the government or its instrumentalities unless the legislative intention to include such property is plainly and clearly expressed. This immunity rests upon fundamental principles of government, it being necessary in order that the functions of government shall not be unduly impeded, as well as for other reasons.

71 Am. Jr. 2d State and Local Taxation §267. Immunity from taxation, based on compelling reasons of fiscal management, is essential to the proper functioning of state government. Canaveral Port Authority v. Dep't of Revenue, 690 So. 2d 1226, 1227 (Fla. 1997). See also Dickinson v. City of Tallahassee, 325 So. 2d 1, 4 (Fla. 1975)(same). Thus, this Court requires a "clear and direct expression" of the state's intent to subject its property to local tax burdens. Id. at 4.

These principles of statutory construction are recognized throughout the case law. The United States Supreme Court long ago concluded that "[g]eneral tax acts of a state are never, without the clearest words, held to include its own property . . . although not in terms exempted from taxation." Van Brocklin v.

Anderson, 117 U.S. 151, 174 (1886)(citing cases). As the Court explained:

> [I]nasmuch as taxation of public property would necessarily involve other taxation for the payment of the taxes so laid, and thus the public would be taxing itself in order to raise money to pay over to itself, the inference of law is that the general language of statutes prescribing the property which shall be taxable is not applicable to the property of the state or its municipalities. Such property is therefore, by implication, excluded from the operation of laws imposing taxation, unless there is a clear expression of intent to include it.

Id. at 174 (emphasis added)(quoting Trustees for the Support of Public Schools v. Trenton, 30 N.J. Eq. 667, 681 (N.J. App. 1879)).

In People v. Doe, 36 Cal. 220, 222 (Cal. 1868), the supreme court of California rejected a claim much like petitioners', holding that the state's tax laws were "understood as referring to private property and persons, and not including public property and the State or any subordinate part of State Government. . . ." The court further observed that the "State has nowhere attempted the absurdity of taxing itself, or of authorizing suits to be brought . . . against itself or its property for the purpose of collecting the tax." Id. at 223. See also Worcester County v. Worcester, 116 Mass. 193, 194 (Mass. 1874)("We do not think that it was the intent of the legislature to subject [public property] to such a remedy, when its enforcement might operate to deprive them of the very instrumentalities by which they were able to

perform the duties imposed upon them, and might be attended with serious inconvenience or positive injury to the administration of justice in the Commonwealth."

State courts have continued to adhere to the principle that their general tax laws will be administered as excluding public property:

> Some things are always presumptively exempted from the operation of general tax laws, because it is reasonable to suppose they were not within the intent of the legislature in adopting them. Such is the case with property belonging to the State and its municipalities, and which is held by them for governmental purposes. All such property is taxable, if the State shall see fit to tax it; but to levy a tax upon it would render necessary new taxes to meet the demand of this tax, and thus the public would be taxing itself, and no one would be benefited but the officers employed, whose compensation would go to increase the useless tax. It cannot be supposed that the legislature would ever purposely lay such a burden upon public property, and it is, therefore, a reasonable conclusion that, however general may be the enumeration of property for taxation, the property held by the State and by all its municipalities for governmental purposes was intended to be excluded, and the law will be administered as excluding it in fact.

Pelouze v. City of Richmond, 33 S.E. 2d 767, 769 (Va. 1945) (quoting Cooley on Taxation, §61 (4th ed.)) (emphasis added); Independent School District, Cassia County v. Pfost, 4 P.2d 893, 898 (Id. 1931) (same).

Petitioners have cited not a single contrary ruling. Hence, in the absence of a clear statement of legislative intent, Florida's general tax laws, including section 194.171, should not be construed to apply to state property that is immune from taxation.

B. There is No Clear Statement of Legislative Intent That Section 194.171 or Any Other Law Should be Applied to Divest The State of Property That is Immune from Taxation.

Section 194.171 does not by its plain terms apply to the state, and petitioners, despite their misstatement of the controlling rule of construction, do not attempt to argue that it does. Rather, cobbling together bits and pieces of other statutes, petitioners infer that section 194.171, in the absence of language excluding the state, will apply to deprive the state of its immunity. In short, petitioners contend that because procedural statutes of limitation generally apply to the state, and because state property is assessed even though immune from taxation, the state is a "taxpayer" and hence subject to the constraints of section 194.171, Fla. Stat. See §§95.011, 192.001(13), and 192.011, Fla. Stat.

This argument fails for the obvious reason that neither these statutes nor any others manifest a clear intent to deprive the state of its property because of its failure to pay taxes that were assessed in error. If section 194.171, as a general tax law,

does not by its clear terms apply to the state, then petitioners cannot rely on section 95.011 to make it apply. Section 95.011 does not purport to waive the state's immunity. When the state waives its sovereign immunity from suit, or when it waives its immunity from taxation and accepts the attendant consequences, it must state its intent to do so in the clearest terms. See Spangler v. Florida State Turnpike Auth., 106 So. 2d 421, 424 (Fla. 1958)(waiver of sovereign immunity must be clear and unequivocal and will not be reached as product of inference or implication); First Union Nat. Bank v. Ford, 636 So. 2d 523, 525-26 (Fla. 5th DCA 1993)(requiring clear manifestation of intent to waive immunity from taxation), aff'd sub nom. Leon Co. Educ. Facilities Auth. v. Hartsfield, 698 So. 2d 526 (Fla. 1997); Dickinson, 325 So. 2d at 4 (requiring clear and direct expression of intent to waive immunity from taxation). That clear statement of legislative intent is nowhere to be found.

Other statutory provisions, however, clearly refute even the inference that section 194.171 applies to the state to cut off its immunity. Section 197.432(9), Florida Statutes, prohibits the sale of a tax certificate on property owned by any governmental unit that is subject to taxation because the property is leased to a nongovernmental entity. That section further provides that delinquent taxes shall be enforced and collected as provided in section 196.199(8), Florida Statutes. Under section 196.199(8),

delinquent taxes do not become a lien on state property but are recoverable by legal action against the lessee-taxpayer. In fact, the property of the state is not subject to a lien of any kind. §11.066(5), Fla. Stat. If leased state property is beyond the reach of speculators, how can it possibly be concluded that a state correctional facility is subject to section 194.171 and tax enforcement proceedings in the absence of the clearest words of legislative intent?

Petitioners also rely on section 196.31, Florida Statutes, in support of the argument that the state is a "taxpayer." Again, whether the state may technically fall within the definition of "taxpayer" is not relevant in the absence of a clear statement that immune property is subject to section 194.171 and divestment through the issuance of tax certificates and tax deeds. By its plain terms, section 196.31 applies only when the legislature has expressly subjected state land to taxation. Section 196.31 does not support the contention that immune property is subject to the general tax laws.

C. Case Law Has Not Held That the State is Subject to Section 194.171.

Petitioners have also misread Lake Worth Towers v. Gerstung, 262 So. 2d 1 (Fla. 1972), Markham v. Neptune Hollywood Beach Club, 527 So. 2d 814 (Fla. 1988), and Ward v. Brown, 894 So.2d 811 (Fla. 2004). The Lake Worth Towers decision stated in dicta that the

time limits of section 192.21(2), Florida Statutes (1967), did not apply to assessments that were void because of sovereign immunity or the exempt status of the property. 262 So. 2d at 4. That statement certainly is consistent with the controlling rule on construction of general tax statutes, as set forth above. The Court went on to say that if the tax was not paid and tax certificates or tax deeds issued, a suit to cancel the certificate or deed must be brought within the time allowed by chapter 197, Florida Statutes. Id.

Petitioners construe Neptune Hollywood Beach Club and Ward as holding that a challenge to any void assessment, including an assessment on immune state property, must be brought within the 60-day time limit set by section 194.171(2). But neither case concerned state property or even suggested that this statute applied to the state. Petitioners' argument lacks not only a clear statement of support from the legislature, but also from this Court.

The casual reference in Lake Worth Towers to chapter 197, Florida Statutes, cannot support the conclusion that the state may be divested of its property for non-payment of taxes that were never owed. As pointed out, the statement is pure dicta. Nothing in Chapter 197, Florida Statutes, then or now, expresses a clear legislative intent to subject property immune from taxation to the operation of the general tax laws. Lake Worth Towers' offhand

reference to Chapter 197, to the extent it may suggest otherwise, is neither correct nor binding. See Coastal Petroleum v. American Cyanamid, 492 So. 2d 339, 344 (Fla. 1986) (holding that statements in earlier decision that the Marketable Record Title Act could operate to divest the state of sovereignty lands were dicta and non-binding). This Court has not been empowered to waive the state's immunity in the absence of legislative action.

Petitioners' reliance on section 194.171 is inappropriate for another reason. The courts of this state have long held that a tax deed based on an illegal assessment is void, conveys no title, and can be set aside at any time. McKeown v. Collins, 21 So. 103, 105 (Fla. 1896); Cape Atlantic Landowners Ass'n, Inc. v. County of Volusia, 581 So. 2d 1384, 1386 (Fla. 5th DCA 1991); Mid-State Homes, Inc. v. Nassau County, 198 So. 2d 382, 384-385 (Fla. 1st DCA 1967). Petitioners have not explained why they seek the issuance of a void instrument or what benefit they will derive from it.[1]

[1] In Lake Worth Towers this Court suggested the state act within the time limits of chapter 197, Florida Statutes, to have a tax certificate or deed cancelled. Petitioners' brief points out that the only relevant statute in chapter 197 at that time was section 197.725, Fla. Stat. (1971), which would have given the state four years from the time the holder of a tax deed took possession to file an action to recover possession. Pet. Init. Br. at 19-20. That statute still exists as section 95.191, Florida Statutes. The prospect of giving a tax deed holder possession of a prison or any government building is nonsensical. Perhaps petitioners believe that if a void tax deed is issued they will be entitled to a 12% annual return on their investment pursuant to section 197.602, Florida Statutes. However, the state has not waived its immunity under that statute, either.

It does not appear from petitioners' brief that they wish to contest the immune status of the property in question. But whether they do or not, if the property is immune from taxation the Ottingers may seek a refund under section 197.443 or 197.444, Florida Statutes. They are not entitled to anything more.

D. Public Policy Favors the State's Position.

Public policy considerations underlying the sixty-day filing period for tax assessment challenges will not be undermined by holding that section 194.171 does not apply to the state. As Ward points out, the legislative intent and public policy behind this provision "is to ensure prompt payment of taxes due and making available revenues that are not disputed." 894 So. 2d at 815. The state does not owe taxes to the counties and therefore prompt payment is not a valid policy consideration, nor is the pre-filing requirement to pay taxes that are not disputed. See §194.171(3), Fla. Stat. To the contrary, it is petitioners' assumption -- that the general tax laws should be interpreted to apply to state property -- that threatens fiscal injury and disruption of the government. If there is any conceivable public policy justification for making immune property subject to the general tax laws, the vagaries of the assessment process, and human error, it should come from the legislature.

II. THE DOCTRINE OF LEGAL ESTOPPEL HAS NO APPLICATION TO THIS CASE.

Petitioners contend that the ruling in Trustees of the Internal Imp. Trust Fund v. Bass, 67 So. 2d 433 (Fla. 1953), "is not based on . . . an act of the Legislature," and therefore "implicitly recognize[es] that there is no general rule that the STATE may only be divested of its property with its consent." Pet. Init. Br. at 27. In fact, neither Bass nor any other case recognizes that the state may be divested of its property without its consent, or at least by virtue of an affirmative act that manifests consent. While the original tax assessment on state land was not authorized by law, the Bass court held the state was estopped to eject a later owner who held title under a Murphy Act deed (authorized by the legislature and issued by the state) and who had been in possession more than eleven years under that deed. Here, in contrast, the Ottingers have never been in possession, the state has not failed to assert its rights, and no tax deed has issued.

Although petitioners have not asserted an estoppel claim in this case, their reliance on that doctrine overlooks certain fundamental principles. First, estoppel will never apply to impair the exercise of the state's sovereign powers. Trustees of the Internal Imp. Trust Fund v. Claughton, 86 So. 2d 775, 778 (Fla. 1956); Trustees of the Internal Imp. Trust Fund v. Lobean,

127 So. 2d 98, 104 (Fla. 1961)(Drew, J., joined by five other justices, concurring); Florida Board of Forestry v. Lindsay, 205 So. 2d 358, 360 (Fla. 2d DCA 1927). The state's ability to exercise its sovereign powers would surely be impaired if it were subject to loss of its corrections facilities and other government buildings through erroneous tax assessments and the issuance of tax certificates and tax deeds. Second, a tax deed based on an invalid assessment is void. McKeown, Cape Atlantic Landowners Ass'n, and Mid-State Homes, supra. Petitioners do not explain how the doctrine of estoppel could possibly apply to validate a deed that is void from inception and known to be void when issued.

In sum, the legislature has nowhere stated its intent to make state prisons or other government facilities subject to local taxation or to tax enforcement laws that could deprive the state of property that is immune from taxation. The instant action for injunctive relief is timely and not barred by section 194.171.

CONCLUSION

The decision of the First District Court of Appeal should be affirmed.

Respectfully Submitted,

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