IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-1484

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

Petitioners,

v.

FLORIDA DEPARTMENT OF MANAGEMENT SERVICES,

Respondent.
_____/

Lower Tribunals:
First District Court of Appeal,
Case No.: 1D04-4836

Columbia Co. 8th Judicial Circuit,
Case No.: 00-293-CA

SECOND AMENDED ANSWER BRIEF

S. Austin Peele
Darby, Peele, Bowdoin, Payne
Post Office Box 1707
Lake City, Florida 32056-1707

Benjamin K. Phipps
The Phipps Firm
Post Office Box 1351
Tallahassee, Florida 32302-1351

Anthony W. Garcia
Assistant General Counsel
Dept. of Management Services
4050 Esplanade Way, Suite 260
Tallahassee, Florida 32399-7016

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STATEMENT OF THE CASE AND FACTS

The Respondent does not accept the Statement of the Case and Facts submitted by Petitioners.

This action began in the Spring of 2000 when the Petitioners, "the Ottingers", filed an application for the issuance of a tax deed on the Lake City Correctional Facility. This is a state prison, the operation of which is presently overseen by the Department of Management Services, in accordance with The Florida Corrections Code and rules of the Department of Corrections.

When the State became aware that a private party was seeking issuance of a tax deed on one of its prisons, it filed an injunction action in the Columbia County Circuit Court, invoking the "all writs" jurisdiction of that court under Article V, Section 5(b), Florida Constitution. (R. – 1). The Clerk of the Circuit Court of Columbia County, the party statutorily charged with the responsibility of issuing tax deeds, was named as the defendant. (R. – 1). *See* §§197.512 et seq., Fla. Stats. The hearing was held in the Circuit Court on 27 July 2000 (R. – 6) and a temporary injunction was issued the following day. (R. – 7).

Approximately four years later, in April 2004, the Ottingers filed a number of pleadings including a motion to intervene in this injunction action. (R. – 21). The Columbia County School Board joined with the Ottingers in seeking to set aside the 2000 injunction. (R. – 64). No other tax levying authorities in Columbia

County joined the School Board. The School Board apparently believed they could avoid refunding the Ottingers tax certificates if they joined them. (R. – T.–9).

At a hearing held on 5 August 2004, the Circuit Court permitted the intervention of the Ottingers and the School Board. (R. – T.–20). The court also granted the motion for final summary judgment of the Ottingers, authorizing the issuance of the tax deed and permitting the Ottingers to take possession of the state prison. (R. – 104 et seq.).

The State appealed, and the First District Court of Appeal reversed the final summary judgment but certified a question of great public importance to this Court:

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?

The Petitioners timely sought review of the certified question in this Court. The Clerk of the Supreme Court then gave notice, setting a briefing schedule on the certified question, and indicating that this Court would defer its decision on accepting jurisdiction until after all briefs had been submitted.

SUMMARY OF THE ARGUMENT

In Florida, the United States, the State itself, and its political subdivisions are all sovereign entities and are immune from taxation. This Court has repeatedly recognized the sovereign immunity of these entities and has distinguished it from the exemptions which may be granted by the legislature to other governmental entities and to eleemosynary organizations.

Occasionally, through inadvertence or misunderstanding, taxes may be assessed against one of the governmental entities immune from taxation. If a resolution of the matter cannot be affected through administrative action, the immune entity against whom the taxes were inappropriately assessed has a number of remedies available, including taking no action whatsoever. Regardless of how the illegal assessment may be characterized, the immune sovereignty property is simply not subject to taxes and the assessment is void *ab initio*, the tax imposition is a nullity, and is uncollectible.

However, a prudent course of action may well require some affirmative steps to have the improper assessment removed. In this case, when the Ottingers sought to take possession of the Lake City Correctional Facility, through the issuance of a tax deed, the state prudently sought the issuance of a writ of injunction. Florida statutes specifically prohibit the issuance of tax deeds on property of any governmental entity and allow setting aside an inappropriately

issued tax deed up to four years after possession is taken by the tax deed holder. In this case, the action of the State might have been premature, but it certainly was not delinquent.

The Petitioners argue that the State's action was fatally delinquent because it was not brought under the statute which they would choose for it. The federal courts have specifically recognized that Florida has no such right to dictate to the United States how it may oppose inappropriately assessed ad valorem taxes. Just as the United States may assert its sovereignty in a timely brought action of its own choosing, so may the State of Florida.

The critical issue in this case is the sovereign immunity of the State of Florida, and its political subdivisions, as it applies to the imposition of ad valorem taxes (or any other taxes). The Attorney General, joined by counsel for the Department of Environmental Protection, will address this issue in his brief as *amicus curiae.*

The Petitioners now apparently concede that the federal courts have refused to permit the non-claim statute, on which Petitioners rely, to be applied against the United States when it was seeking to have the taxes set aside through a different remedy. But, they have not conceded that they would forego their claim if Columbia County were attempting to tax a federal facility.

Finally, the Petitioners have made a tortured effort to show that our legislature has consistently intended that the State be a "taxpayer", as that word is used in Section 194.171, Florida Statutes. Of course, the State is not a "taxpayer", under the provisions of Section 194.171 or under any other law or circumstance. The well-recognized concept of the State's sovereign immunity from taxation does not require any special recognition from the legislature. It is organic law. But the legislature has not been silent. It has expressly recognized this principle, and has even extended it to "any governmental unit" in the express statutory language found in Section 197.432(9), Florida Statutes. And if there should be any remaining doubt that the legislature expressly prohibits the taxation of this particular facility, during the most recent Legislative Session, they required the cancellation of the very certificates at issue in this case. This provision is attached as Appendix "A" to this Answer Brief.

STANDARD OF REVIEW

Whether to pass upon the question certified, to exercise this Court's discretionary jurisdiction, is, of course, purely within the discretion of this Court. If this Court decides to take up the certified question, we agree with Petitioners that review is of a question of land and is *de novo*.

ARGUMENT

I.
THIS COURT HAS LONG RECOGNIZED THE SOVEREIGN IMMUNITY OF THE STATE FROM LOCAL AD VALOREM TAXES

In its decision in this case, the First District recognized that this Court has always acknowledged the immunity, from taxation, of both federal and state governmental property. The First District stated:

> For example, in *Dickinson v. City of Tallahassee*, 325 So.2d 1, 3 (Fla. 1975), the court cited with approval the following language from *Orlando Utilities Commission v. Milligan*, 229 So.2d 262, 264 (Fla. 4th DCA 1969):
>
> > Exemption presupposes the existence of a power to tax whereas immunity connotes an absence of that power. The state and its political subdivisions, like a county, are immune from taxation since there is no power to tax them.
>
> In *Alford v. State*, 107 So.2d 27, 29 (Fla. 1958), the court explained that the term 'immunity' · · · does 'not · · · depend [ ] upon statutory or constitutional provisions but rests upon broad fundamentals of government.' (Brackets in original)

(App. R. – 6).

Dickinson is the most-often cited, and quoted, case dealing with the immunity of the state. This 1975 unanimous opinion dealt with an attempt by the City of Tallahassee to impose a 10% utility tax on the State of Florida and its agencies and departments, on Leon County and on the Leon County School Board.

All three purchased electricity, water, and gas from the city. The Court recognized their sovereign immunity and declared the tax illegal:

> The state's immunity from taxation is so well established in Florida's jurisprudence that little elaboration is needed here. In *Park-N-Shop, Inc. v. Sparkman*, 99 So.2d 571, 573-74 (Fla. 1958), we said that:
>
> > "property of the state and of a county · · · is *immune* from taxation, and we say this despite the reference to such property in [statutes] as being exempt."[1]

325 So.2d 1, at 3.

Two decades after *Dickinson*, this Court was called upon to decide how far down the line of political subdivisions the state's sovereign immunity should extend. *Canaveral Port Authority v. Department of Revenue*, 690 So.2d 1226 (Fla. 1996). Citing and quoting from *Dickinson*, the *Canaveral Port Authority* court held, "[t]he compelling policy reasons specified in *Dickinson* [for immunity from ad valorem taxes] continue to exist with regards to the State." 690 So.2d 1226, 1227. The majority of the *Canaveral Port Authority* court then determined that special districts should not be afforded the status of "political subdivisions of the

[1] For example, §196.199(1) provides in paragraph (a) that property of the United States shall be *exempt* from ad valorem taxes; paragraph (b) *exempts* property of the state; and paragraph (c) *exempts* property of the several political subdivisions of the state, as well as municipalities. Consequently, the statute writers failed to recognize the important distinction between immunity and exemption, as explained by the Fourth District in the *Orlando Utility Commission* case, *op. cit. supra*. This imprecision of language has continued to vex the courts, leading to the need for judicial clarification and interpretation in the *Canaveral Port Authority* case; *imfra*.

state", but that designation should continue to be limited to counties and school boards within the context of immunity from ad valorem taxation.

Thus, the present status of the law in Florida is that the state, counties, and school boards are immune from taxation. Such immunity springs neither from statute nor from the constitution, but is part of the organic law. Further, there remains "compelling policy reasons" to protect the state's sovereignty from predatory revenue extraction efforts by local taxing officials.

II.
THE STATE CAN ASSERT ITS SOVEREIGN IMMUNITY FROM LOCAL AD VALOREM TAXES BY WHATEVER MEANS ARE APPROPRIATE UNDER THE CIRCUMSTANCES

The crux of the Petitioners' case seems to be that there is but a single remedy available when ad valorem taxes have been inappropriately assessed, levied, or collected. That single remedy contains a non-claim provision requiring that action must it be initiated within 60-days of the certification of that inappropriate assessment. This certification normally occurs in October of any given tax year. In this case, the Petitioners argue the failure of the State to file a timely challenge, under Section 194.171, in December 1996, now leaves no recourse against issuance of a tax deed. Further, this absolute limitation of a single remedy, subject to a 60 day non-claim provision, is equally applicable to any immune governmental entity and to private taxpayers. Finally, Petitioners argue

that this Draconian restriction on fundamental due process was intended, if not expressly, then impliedly or presumably, by the Florida Legislature and this legislative scheme was approved by this Court in the two cases of *Markham v. Neptune Hollywood Beach Club*, 527 So.2d 814 (Fla. 1988) and *Ward v. Brown*, 894 So.2d 811 (Fla. 2005).

That exact argument was made by the taxing authorities of Broward County against the United States in *U.S. v. Broward County*, 901 F.2d 1005 (11th Cir. 1990). In that case, the Broward County Property Appraiser (Markham) argued that the United States (which was seeking a refund of taxes it claimed had been illegally assessed and therefore illegally paid) could only bring its action under Section 194.171. Markham then argued that having failed to initiate the action within the 60-day non-claim provision of that statute, the United States was foreclosed from seeking relief. The United States Court of Appeal for the Eleventh Circuit ruled that the United States was free to initiate its action (to set aside taxes illegally imposed upon it) through common law relief or through any federal or state statutory scheme available. The local taxing authorities could not dictate the action chosen by the United States. "The crux of defendants' argument rests upon their unavailing attempt to redefine this action · · · this does not change the nature of the cause of action or limit the United States to state causes of action for this refund of taxes." *United States v. Broward County*, 901 F.2d 1005, 1007-1008.

Similarly, local taxing authorities cannot impose upon the State of Florida a particular cause of action. The State, like the United States, may assert its sovereign immunity and set aside local ad valorem taxes improperly assessed against it by any appropriate action. It may do so under a specific statutory scheme authorized by the Florida Legislature, or through common law relief, or through an action authorized by the Florida Constitution.

Petitioners have argued, and the District Court has suggested, that the holding in *Markham v. Neptune Hollywood Beach Club*, 527 So.2d 814 (Fla. 1988) eliminated the distinction between void and voidable assessments as established in *Lake Worth Towers v. Gerstung*, 262 So.2d 1 (Fla. 1972). A careful reading of the *Neptune Hollywood Beach* decision does not support the thesis that this case specifically held and did away with the distinction between void and voidable.

To the contrary, in footnote 4 (527 So.2d 814, at 815) the court in *Neptune Hollywood Beach* stated, "[a] tax assessment will be considered unauthorized and void where it has been assessed in violation acts of Congress; · · ·." This footnote is in the present tense indicating that it was stating the present status of the law. This Court surely recognized in 1988 that it was not in the position to deprive the United States of jurisdiction to challenge an assessment which was made in violation of federal law. Further, there is not the least suggestion in the opinion that it reverses the *Lake Worth Towers* case, except to the extent that case refers to

the statute "as a statute of limitation." The actual *ratio decidendi* and holding of this case simply resolves the long running confusion about whether the statute is a statute of limitation or a statute of non-claim, holding that the 1983 Act resolved the dispute in favor of a jurisdictional statute of non-claim:

> As the Department points out, in *Lake Worth Towers* we referrred to section 192.21(2), Florida Statutes (1967), the predecessor to section 194.171(2), as a statute of limitations. Then in *Coe v. ITT Community Development Corp.*, 362 So.2d 8 (Fla. 1978), we recharacterized section 194.171(2) as a nonclaim statute and noted that our use of the term "statute of limitations" in *Lake Worth Towers* was the result of "an inartful use of the term." 362 So.2d at 9. Finally in *Miller v. Nolte*, 453 So.2d 397 (Fla. 1984), we expressly receded from our characterization of the statute as a nonclaim statute in *Coe* and held that "[d]ue process requires that section 194.171(2) be considered a statute of limitations." *Id*. at 401.[5] However, as pointed out by the *Gulfside* court, although *Miller* was released subsequent to July 1, 1983, the effective date of section 194.171(6), in *Miller* we were addressing a pre-1983 tax assessment and did not address the clear expression of legislative intent contained in subsection (6) that subsection (2) be considered a jurisdictional statute of nonclaim.[6] By application of subsection (6), the trial court in the instant case lacked jurisdiction to consider the taxpayers' suit. Therefore, the suit was properly dismissed.
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>
> 5 The respondents do not challenge the constitutionality of § 194.171(6).
>
> 6 It appears that Ch. 83-204, § 7, Laws of Fla. was the legislature's response to a decision of the Second District Court of Appeal, *Cape Cave Corp. v. Lowe*, 411 So.2d 887 (Fla. 2d DCA), *review denied*, 418 So.2d 1280 (Fla. 1982), wherein the Second District held, as we did in *Miller*, that § 194.171(2) was a statute of limitations, the benefit of which the tax assessor may by his actions become estopped from claiming.

527 So.2d 814, at 815-816.

Even if it was (in 1983) the intent of the Florida legislature that the only relief available to any Florida private taxpayer is the single remedy of Section 194.171, such limitations cannot apply to the sovereign. The *Canaveral Port Authority* case, decided eight years after *Hollywood Neptune Beach*, reaffirmed "the compelling policy reasons" to maintain the immunity of the state from ad valorem taxes. 690 So.2d 1226, 1227 (Fla. 1996). A private tax certificate speculator is not entitled to seize and sell off, for private profit, state properties.

III.
ENJOINING ISSUANCE OF THE TAX DEED ON THE PRISON WAS AN APPROPRIATE AND TIMELY ACTION

The record is utterly devoid of any evidence indicating what notice, if any, was sent the State relative to the 1996 and 1997 tax assessments or the 1998 sale of the tax certificates on the state prison. The record does show, however: (1) a public notice was recorded in November 1999 showing that the certificates had been issued in error and that the property was owned by the state (R. – 80); (2) a notice was sent to the Columbia County Property Appraiser by the Department of Revenue that the property was owned by the state and immune from taxation, in June 2000 (R. – 82); and (3) a recommendation was sent from the Department of Revenue to the Columbia County Property Appraiser and the Tax Collector to cancel the illegally issued certificates (R. – 84-85). Despite all that, the Columbia

County Clerk of the Circuit Court proceeded to process the application for the issuance of a tax deed when it was submitted in the Spring of the following year (2004).

The State could have stood by idly at that point and not resisted the issuance of the tax deed. But this would have resulted in a confrontation between the Ottingers, armed with a tax deed, and the state officials having possession of the prison and charged with the responsibility of confining and housing state prisoners. Such a confrontation could be easily avoided through the simple issuance of an injunction.

The Florida Constitution provides for such a remedy under the "all writs" provision of Article V, Section 5(b), Florida Constitution. In its Complaint, the State also relied upon the statutory prohibition against the issuance of any tax lien on state property found in Section 197.432(9), Florida Statutes.[2] Authority to set

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[2] This subsection states:

> (a) A certificate may not be sold on, nor is any lien created in, property owned by any governmental unit the property of which has become subject to taxation due to the lease of the property to a non-governmental lessee.

The financing arrangement in this case involves a "state instrumentality" (under the provisions of §115, IRC), "the Florida Correctional Finance Corporation," a Florida not-for-profit corporation whose officers and directors were, *ex officio,* the chair, executive director, and one other commissioner of the Correctional Privatization Commission, which corporation was created for the sole purpose of holding bare legal title to the prison and leasing it to the state agency (originally the Correctional Privatization Commission created under ch. 957, Fla. Stats, and now DMS) pursuant to a lease-purchase financing arrangement. (R. - 23). Under

aside improperly issued tax deeds is subject to a four year (or longer) statute of limitation under Sections 95.191 and 95.192. Enjoining the issuance of the tax deed against a state prison was neither improvident, imprudent, nor delinquent.

IV.
THE UNITED STATES COULD NOT CLAIM IMMUNITY UNDER PETITIONERS' THEORY THAT VOID ASSESSMENTS MUST BE CHALLENGED UNDER SECTION 194.171(2)

Petitioners argued before the First District that the legislature's withdrawal of sovereign immunity, implied in the adoption of Chapter 83-204, Laws of Florida, applied to all sovereign immunity, including that of the United States. Consistency required this argument.

Petitioners argued that the *Neptune Hollywood Beach* case abolished the distinction between void and voidable assessments. But included in that court's definition of void assessments (set out in the previously discussed footnote 4)[3] were those made void by "acts of Congress." If the *Neptune Hollywood Beach* court was ruling that all void assessments must now be brought within 60 days in compliance with the requirements of Chapter 83-204, then *all* void assessments fall under that provision, including assessments against the State of Florida and the

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the holding in *Leon Educational Facilities Authority v. Hartsfield*, 698 So.2d 526 (Fla. 1997), the state agency is the equitable owner of the prison. Under these facts, legal title to the prison is held by the state instrumentality and equitable title is held by the state agency.

[3] 527 So.2d 814, at 815

United States. "The far-reaching implications" of the imposition of taxes on the United States was specifically recognized by the First District in its opinion. (App. R. – 6). This is the implacable, if discomforting, result of Petitioners' logic.

In their Initial Brief, the Petitioners have attempted to soften the harsh result of their rationale by acknowledging that the federal courts have rejected it. *U.S. v. Broward County*, 901 F.2d 1005 (11th Cir. 1990). But that was not a case in which the assessment against the United States was "void." Rather it was a case in which Congress had waived the immunity from taxation of buildings constructed under the "Public Building Program" (40 U.S.C. § 602a(d)). In this case, the United States was suing because it believed the property was overvalued by the Broward County Property Appraiser (Markham). It brought an action *indebitatus assumpsit* for money had and received. It had paid the full amount of taxes and was seeking a refund for the alleged overpayment. The District Court had dismissed the action of the United States for lack of subject matter jurisdiction. As explained in our argument under Point II, Markham had argued that the action could only be brought under Section 194.171. The 11th Circuit rejected this argument and held that the local taxing officials could not dictate how the United States framed its action for recovery. Under the definition in *Lake Worth Towers* and in footnote 4 of *Neptune Hollywood Beach*, this was a "voidable" assessment challenge. As

such, it would never have escaped the 60-day time limit regardless of whether it was deemed to be a non-claim or statute of limitation provision.

If the Lake County Correctional Facility had been owned by the United States and operated by it as a federal prison, it would not be subject to taxation and would be immune. This would require the United States to assert its sovereign immunity through a cause of action other than *indebitatus assumpsit*. *United States v. State of California*, 655 F.2d 914 (9th Cir. 1980) seems to suggest that if the state has a statute providing procedural guidelines for a substantive form of relief, if the United States brings an action under that statute it is bound by those guidelines including statutes of limitations:

> It is well settled that the United States is not bound by state statutes of limitation. *United States v. Summerlin*, 310 U.S. 414, 416, 60 S.Ct. 1019, 1020, 84 L.Ed. (1940). To this general rule, however, there is an exception that a state statute which provides a time limitation as an element of a cause of action or as a condition precedent to liability applies to suits by the United States even if there is an otherwise applicable federal statute of limitation. [citations omitted].

655 F.2d 914, 918. Consequently, we should anticipate that the Petitioners would argue that in this hypothetical tax imposed on a federal prison, it is a void assessment, a category that no longer exists (they argue), and therefore the United States would be caught by the 60-day time limitation in Section 194.171(2), Florida Statutes, if it asserts its immunity in a Florida court.

If, on the other hand, they acknowledge that federal case law prevents the application of the 60-day non-claim statute to the United States, the attempted waiver of its sovereign immunity by the Florida legislature and the confirmation of that waiver by this Court, are simply void. Or, in the alternative, Petitioners would have to argue that it was the selective intent of the Florida legislature to waive only the sovereign immunity of the state, not that of the United States. That alternative argument then leads to the necessity of arguing that this Court mistakenly interpreted that legislative intent in the *Neptune Hollywood Beach* and *Ward v. Brown* cases by specifically including federal immunity as a void assessment and then eliminating void assessments as a separate category.

Of course, the better argument is that neither the holding nor the *ratio decidendi* of *Neptune Hollywood Beach* ever reached the immunity of the United States or of the state and its political subdivisions. This better argument also reconciles the conflict which Petitioners' theory creates between *Canaveral Port Authority* and *Neptune Hollywood Beach*.

V.
THE FLORIDA LEGISLATURE PROHIBITS IMPOSING LOCAL AD VALOREM TAXES ON THE PRISON

The Petitioners put forth the proposition that the legislature, on adopting Chapter 83-204, understood that they were including the state under the 60-day

jurisdictional non-claim amendment because the state was already defined as a "taxpayer." This, they argue, is true because the definitional section, 192.001, Florida Statutes, defines a "taxpayer" as the entity appearing on the tax rolls. Next, they contend that all property must be placed on the tax rolls whether it is taxable or not. §192.011, Fla. Stats.[4] Therefore, they conclude, property of the United States, the state, counties, school districts, all of which must be included on the tax roll under that statute, makes every one of those governmental entities "taxpayers" under the Florida ad valorem tax laws.

First, one must be cautious in attributing a great deal of deliberative legislative consideration to any specific provision of Chapter 83-204. It is one of those infamous "tax trains," which were cobbled together and passed during the last days of each Session in the 1980s in early 1990s. It runs from page 783 to page 814 in the 1983 Laws of Florida, Volume 1, Part One; it contains 43 sections; its title is three full single-spaced pages. The title claims that it is related to taxation, but its amendments run the gambit from sheriffs' and supervisor of elections' budgets (§§1 & 2), to occupational licenses (§40), and even "mobile home park recreational districts" (§36). Section 7, relating to Section 194.171, Florida Statutes, contains four separate amendments. Only one of these four is the

[4] This statute does not require immune property to be placed on the tax roll, but does state, "whether such property is taxable, wholly or partially exempt, · · ·." It is thus unclear whether the legislature intended to exclude immune property or this is another case of confusing "exempt" and "immune."

addition of the new subsection (6) making it clear that all of the procedural requirements of the section are jurisdictional.[5]

Second, the reason for the inclusion on the tax rolls on nontaxable property is part of the complex Florida Educational Funding Program ("FEFP") formulization. *See* §1011.62(4), Fla. Stats.

Third, Section 197.432(9), Florida Statutes, prohibits the sale of tax certificates on property of governmental units or the imposition of tax liens on such property. Absence a tax lien, a tax deed cannot be issued. Florida permits taxation of government-owned property only when it is leased to nongovernmental lessees who use the property for nongovernmental purposes. §196.199(2)(b), Fla. Stats. In that instance, the tax is not imposed upon the governmental unit, but on the private lessee's leasehold interest. The government's leased fee remains immune (or exempt in the case of municipalities and special districts). Section 196.199(8) imposes the tax on the lessee's leasehold interest. And Section 197.432(9) insures that it is not imposed on the government's leased fee. Thus, Florida's statutes prohibit Florida's governmental units from paying taxes. If they cannot and do not pay taxes, they can't be and aren't "taxpayers."

[5] In addition to the 60-day time limit, the other procedural requirements include a good faith payment prior to filing and payment in subsequent years. *See ISKCON v. Robbins*, 583 So.2d 767 (3 DCA 1991), which holds that the good faith payment requirement can be met by alleging that no taxes are due.

The 2005 Legislature addressed the taxability of the Lake City Correctional Facility and similar institutions in Bay, Glades, Palm Beach, and Gadsden Counties. Each year, since 1999, the Legislature has provided PILOTs ("payments in lieu of taxes") to those counties. §957.04(a), Fla. Stats. (1999). Apparently, as a response to this litigation and suits in Bay and Glades Counties to impose taxes on these institutions, the 2005/2006 PILOTs cannot be distributed until all outstanding claims for ad valorem taxes are withdrawn and any existing tax certificates are cancelled. The proviso language relating to withdrawal of claims and cancellation of outstanding tax certificates specifically addresses the Lake City Correctional Facility. Sec. §4, ch. 2005-70, LOF. A copy of the page of Chapter 2005-70 containing this proviso language is attached as Appendix "A" to this brief.

The 1983 legislature may have failed to express explicitly any waiver or nonwaiver of sovereign immunity in their amendment to Section 194.171 by the addition of subsection (6), but the 2005 legislature has expressed its intent as explicitly as possible. The tax certificates involved in this litigation must be cancelled and Columbia County must acknowledge that no current taxes will be imposed. Until both have happened, any payment *in lieu* of taxes will be withheld. The legislative intent of 22 years ago may be unclear; the legislative intent today is crystal clear.

CONCLUSION

The decision of the First District passing on this question is clear, concise, and easily understood. It expresses grave doubt that this Court could have intended for the non-claim provisions of Section 194.171 to apply to the State (or its political subdivisions). The Supreme Court should decline to review the certified question. By declining to review it, this Court will have effectively answered it in the negative.

This Amended Answer Brief is respectfully submitted this 22nd day of November, 2005.

S. Austin Peele
Florida Bar No.: 62231
Darby, Peele, Bowdoin & Payne
Post Office Box 1707
Lake City, Florida, 32056
386/752-4120
386/755-4569 Fax

Benjamin K. Phipps
Florida Bar No.: 63151
The Phipps Firm
Post Office Box 1351
Tallahassee, Florida 32302-1351
850/222-7000
850/681-3998 Fax

Anthony W. Garcia
Florida Bar No.: 110825
Assistant General Counsel
Dept. of Management Services
4050 Esplanade Way, Suite 260
Tallahassee, Florida 32399-7016
850/487-1082
850/922-6312 Fax

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Amended Answer Brief was provided by U.S. Mail on this 22nd day of November, 2005 to:

Laura Elizabeth Faragasso
Henry, Buchanan, Hudson,
Suber & Carter, P.A.
Post Office Box 1049
Tallahassee, Florida 32302-1049

Christine A. Guard
Assistant General Counsel
Dept. of Environmental Protection
3900 Commonwealth Blvd., MS-35
Tallahassee, Florida 32399-6575

Leandra Johnson
Post Office Drawer 2349
Lake City, Florida 32056-2349

Charles J. Crist, Jr., Attorney General
Christopher M. Kise, Solicitor General
Louis F. Huberner, Chief Deputy Solicitor General
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050

George T. Reeves
Davis, Schnitker, Reeves
& Browning, P.A.
Post Office Drawer 652
Madison, Florida 32341

_____
Benjamin K. Phipps

CERTIFICATE OF COMPLIANCE

I further certify that this brief is presented in 14-point Times New Roman and complies with the font requirements of Rule 9.210

_____
Benjamin K. Phipps