IN THE SUPREME COURT
STATE OF FLORIDA

P. DEWITT CASON, CLERK OF
THE CIRCUIT COURT, ET. AL.

Petitioners,

	Sup. Ct. Case No: SC05-1484
vs.	D.C.A. Case No: 1D04-4836
	Cir. Ct. Case No: 00-293-CA

STATE, DEPARTMENT
OF MANAGEMENT SERVICES,

Respondent.
_______________________________________/

PETITIONERS - OTTINGERS'
REPLY BRIEF ON THE MERITS

On Appeal from the District Court of Appeal, First District.

George T. Reeves
Fla. Bar No. 0009407
Davis, Schnitker, Reeves & Browning, P.A.
P. O. Drawer 652
Madison, FL 32341
(850) 973-4186
Fax No. (850)973-8564

ATTORNEYS FOR THE PETITIONERS –
OTTINGERS

TABLE OF CONTENTS

Table of Contents i

Table of Citations..iii

Reply-Argument
Respondent's Answer Brief

I. The Parties Agree That the State Has Immunity from Local Ad Valorem Taxes. However, this Fact Does Not Affect Whether the State Is Bound by Non-claim Statutes.............................1

II. The State Can Assert Its Sovereign Immunity From Local Ad Valorem Taxes only within the Jurisdictional Time Limits Set by the Legislature...2

III. Enjoining Issuance Of The Tax Deed On The Prison Was Neither Appropriate Nor Timely...3

IV. The United States Can Bring an action to enforce its Federal Remedies Regardless of Section 194.171(2)....................................6

V. The Florida Legislature has not spoken on whether the prisons in the instant case are immune from taxation....................................7

Reply-Argument
Amicus Brief

VI. SECTION 194.171 FLORIDA STATUTES APPLIES TO THE STATE...9

A. The State is Bound by the General Non-claim Statute at Issue in this Case...9

B. There is an Adequate Statement of Legislative Intent That Section 194.171 may be Applied to Divest The

State of Property That is Otherwise Immune from Taxation.............12

C. Case Law Has Held That the State is Subject to General Limitations of its Ability to Bring Suit to Contest Tax Assessments...14

D. Public Policy Favors the OTTINGERS's Position............................16

VII. The Doctrine of Legal Estoppel Has No Application to this Case..17

Conclusion 18

Certificate of Service..19

Certificate of Compliance...20

TABLE OF CITATIONS

CASES PAGES

FLORIDA AUTHORITIES:

Brown v, Firestone,
382 So.2d 654 (Fla. 1980)..7-8

Cape Atlantic v. County of Volusia,
581 So.2d 1384 (Fla. 5th DCA 1991)..15

Doctor's Office v. Agency for Health Care Admin.,
912 So.2d 1274 (Fla. 4th DCA 2005)..3

Hutchinson v. Babcock Ventures,
867 So.2d 528 (Fla. 5th DCA 2004)..5

Lake Worth Towers v. Gerstung,
262 So.2d 1 (Fla. 1972)..1, 11-13, 16

Markham v. Neptune,
527 So.2d 814 (Fla. 1988)..16

Trustees of Internal Improvement Trust Fund v. Bass,
67 So.2d 433 (Fla. 1953)...1, 10, 12, 13, 17

Ward v. Brown,
894 So.2d 811(Fla. 2005)...16

FEDERAL AUTHORITIES:

U.S. v. Broward County,
901 F.2d 1005 (11th Cir. 1990)..2, 3, 6

U.S. v. California,
507 U.S. 746 (1993)..2

OUT OF STATE AUTHORITIES:

People v. Doe,
36 Cal. 220 (Cal. 1868)..9-11

FLORIDA CONSTITUTION:

Art. III, § 12, Fla. Const..7

FLORIDA STATUTES:

§ 11.066(5), Fla. Stat...14

§ 95.011, Fla. Stat...17

§ 95.191, Fla. Stat..5, 6

§ 95.192, Fla. Stat..5, 6

§ 194.171, Fla. Stat...2, 5, 6, 9, 11, 12

§ 196.199(8)(a), Fla. Stat...4-5

§ 197.122(2), Fla. Stat…………...15

§ 197.432(2), Fla. Stat…………...15

§ 197.432(9) Fla. Stat...3, 4, 13, 14

LAWS OF FLORIDA:

Ch. 2001-266, § 1, Laws of Fla...14

Ch. 2001-266, § 150, Laws of Fla...14

Ch. 2005-70, § 4 at 116, Laws of Fla...7

REPLY ARGUMENT

Respondent's Answer Brief

I. The Parties Agree That the State Has Immunity from Local Ad Valorem Taxes. However, this Fact Does Not Affect Whether the State Is Bound by Non-claim Statutes

The OTTINGERS agree that this court has long recognized that the STATE is immune from local ad valorem taxes. The OTTINGERS have never disputed this fact.

However, the OTTINGERS would point out that the STATE also enjoyed sovereign immunity from local ad valorem taxation in 1953 when this court ruled in *Trustees of Internal Improvement Trust Fund v. Bass,* 67 So.2d 433 (Fla. 1953) that the STATE could be deprived of title to its real property by failing to timely asserts its ownership interest. Further the STATE enjoyed sovereign immunity from local ad valorem taxes in 1972 when this court ruled in *Lake Worth Towers v. Gerstung,* 262 So.2d 1 (Fla. 1972) that general statute of limitations would bar actions by the STATE to recover its property lost through the ad valorem taxation process. The STATE's sovereign immunity from taxation cannot be construed as authority for the STATE to bring an action challenging an allegedly erroneous tax assessment at any time it wishes.

II. The State Can Assert Its Sovereign Immunity From Local Ad Valorem Taxes only within the Jurisdictional Time Limits Set by the Legislature.

In this section the STATE asserts that it is the position of the OTTINGERS that there is only one remedy available to the STATE to challenge an allegedly improper tax assessment, and that remedy is an action under Section 194.171, Florida Statutes. That statement is correct. Further, the STATE has cited no authority to the contrary.

The only case cited by the STATE in this vein, is the case of *U.S. v. Broward County,* 901 F.2d 1005 (11th Cir. 1990), *overruled on other grounds*, *U.S. v. California,* 507 U.S. 746 (1993). The STATE argues that, like the United States in *Broward County,* the STATE is not limited to the remedy provided in Section 194.171, Florida Statutes. Answer Brief at page 15. This argument is fundamentally wrong.

In *Broward County,* the court rejected the contention that Section 194.171, Florida Statutes applied to the United States, holding:

> This argument presupposes that the United States must look to the state law for the creation of its cause of action. But the cause of action asserted by the government is not a state law judicial remedy or cause of action but is a federal common law cause of action in quasi-contract for money had and received. In these circumstances the state statute has no application to this action.

U.S. v. Broward County, 901 F.2d 1005, 1009 (11th Cir. 1990)

The reasoning of the court in *Broward County,* is plain and strait forward. The United States' ability to bring a Federal common law cause of action, will not be affected by the limitations imposed by the Florida Legislature on the remedies available under Florida law. *Broward County,* is inapplicable to the STATE because, unlike the United States, the STATE has no Federal common law cause of action available to it. The STATE, "must look to the state law for the creation of its cause of action," if it is to have one.

III. Enjoining Issuance Of The Tax Deed On The Prison Was Neither Appropriate Nor Timely

Lack of Evidence of Notice to the State.

The Respondent asserts that the record is utterly devoid of any evidence indicating what notice was sent to the STATE concerning the tax assessments and tax deeds. Answer Brief at page 17. The Respondents have failed to raise any issues concerning notice before the trial court or the District Court of Appeal and have therefore waived any complaint a to the adequacy of notice. *Doctor's Office v. Agency for Health Care Admin.,* 912 So.2d 1274 (Fla. 4th DCA 2005)

Section 197.432(9), Florida Statutes.

The STATE cites Section 197.432(9), Florida Statutes as a statutory prohibition against the creation of any lien in STATE property. The STATE's

reliance on Section 197.432(9), Florida Statutes is misplaced. This statute reads in its entirety[1] as follows:

> 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 lease of the property to a nongovernmental lessee. The delinquent taxes shall be enforced and collected in the manner provided in s. 196.199(8). However, the ad valorem real property taxes levied on a leasehold that is taxed as real property under s. 196.199(2)(b), and for which no rental payments are due under the agreement that created the leasehold or for which payments required under the original leasehold agreement have been waived or prohibited by law before January 1, 1993, must be paid by the lessee. If the taxes are unpaid, the delinquent taxes become a lien on the leasehold and may be collected and enforced under this chapter.

§ 197.432(9), Fla. Stat. (Emphasis supplied)

The STATE ignores the fact that this statute is limited on its face to instances where government property is leased to a non-governmental lessee. In this case the lease is to the STATE, so this statute cannot apply. Further, the STATE ignores the remainder of subsection (9) which provide an alternative method of collecting the tax. Subsection (9) specifically provides that the delinquent taxes shall be enforced and collected in the manner provided in Section 196.199(8), Florida Statutes. This statute provides in part:

> Any and all of the aforesaid taxes on any leasehold described in this section shall not become a lien on same or the property itself but shall constitute a debt due and shall be recoverable by legal action or by the

[1]The STATE quotes only a portion of this statute in its Answer Brief.

> issuance of tax executions that shall become liens upon any other property in any county of this state of the taxpayer who owes said tax. The sheriff of the county shall execute the tax execution in the same manner as other executions are executed under chapters 30 and 56.

§ 196.199(8)(a), Fla.Stat.

Should the STATE be correct that the provisions of Section 197.432(9), Florida Statutes, apply to defeat the creation of the lien of the taxes herein, then the requirement that the taxes would be collectable under Section 196.199(8), Florida Statutes would also apply.

Sections 95.191 and 95.192, Florida Statutes.

The STATE cites the fact that the Statute of limitations for setting aside tax deeds is 4 years under Sections 95.191 and 95.192, Florida Statutes as showing that the action herein was timely. This is incorrect because these general statutes of limitations, apply to actions in general to set aside tax deeds. Tax deed may be set aside for a variety of reasons including inadequate notice to all proper parties, payment of taxes before issuance of the tax deed, etc. *Hutchinson v. Babcock Ventures,* 867 So.2d 528 (Fla. 5th DCA 2004) The 60 day time limit for challenging an allegedly improper tax assessments is not extended thereby. If it were then the 60 day time limit would be meaningless, because the tax deed could always be challenged within 4 years after issuance. Sections 95.191 and 95.192,

Florida Statutes must be read in para materia with Section 194.171, Florida Statutes. Challenges to assessments must be brought within 60 days after the roll is certified and challenges to tax deeds for any other reason are untimely after 4 years from the date of issuance.[2]

IV. The United States Can Bring an action to enforce its Federal Remedies Regardless of Section 194.171(2).

In this section of the Answer Brief the STATE apparently attempts to disprove the OTTINGERS reading of the non-claim statute by showing that the OTTINGERS interpretation would lead to the result that the United States would be bound by the non-claim statute and since the *U.S. v. Broward County,* 901 F.2d 1005 (11th Cir. 1990) held that the United States was not bound by the non-claim statute then the OTTINGERS reading of the non-claim statute must be incorrect. This reasoning is faulty as set out below.

Broward County, held that the United States was not bound by the 60 day non-claim period because it was able to bring a Federal common law cause of action regardless of the availability of State law remedies. *U.S. v. Broward*

[2] The OTTINGERS would point out that Sections 95.191 and 95.192, Florida Statutes, which the STATE agrees are applicable to it, are general in nature and no more specifically reference the STATE than does Section 194.171, Florida Statutes. For some reason, the STATE asserts that Section 194.171, Florida Statutes, cannot be applicable to the STATE unless it specifically references the

County, 901 F.2d 1005, 1009 (11th Cir. 1990) *Broward County,* did not hold that State law remedies could be available outside of the 60 day time period in the non-claim statute. If the STATE has a Federal remedy it might well be able to bring it outside of time provided in the non-claim statute. However, the STATE has no Federal remedy and thus its only option is to bring an action within the time provided in the non-claim statute or not at all.

V. The Florida Legislature has not spoken on whether the prisons in the instant case are immune from taxation.

The OTTINGERS disagree with STATE's interpretation of the effect of Ch. 2005-70, § 4, Laws of Fla. In this act the Legislature provides:

> Distribution of these funds is contingent upon (1) the withdrawal of any outstanding claims or (2) the county commission of the county where the correctional facility is located stipulating by resolution and memorandum of understanding with the state that by the county commission's acceptance of payment in lieu of ad valorem taxation, the county commission waives any ad valorem tax claim for Fiscal Year 2005-2006 for the related facility, whichever is applicable. Distribution of these funds for each facility is further contingent upon the county commission canceling any outstanding tax certificate and quieting title to any tax deed, or portion thereof, that is based on unpaid ad valorem taxes for the relevant facility.

Ch. 2005-70, § 4, at 116, Laws of Fla.

STATE, but Sections 95.191 and 95.192, Florida Statutes may apply to the STATE without such specific reference.

Since the above act is an appropriations act it may only deal with appropriations issues and not the substantive law. Art. III, § 12, Fla. Const.

> The Florida Legislature is vested with authority to enact appropriations and reasonably to direct their use. In furtherance of the latter power, the legislature may attach qualifications or restrictions to the use of appropriated funds. *In re Advisory Opinion to the Governor*, 239 So.2d 1, 9 (Fla.1970). The authority to enact appropriations is tempered by the limitation in article III, section 12, Florida Constitution, that laws making appropriations shall contain provisions on no other subject.

Brown v. Firestone, 382 So.2d 654, 663-664 (Fla.1980) (Emphasis supplied)

The expression of the intent of the Legislature that certain facilities are immune from taxation would be beyond the proper purview of an appropriations bill and therefore not allowed under the Florida Constitution.

However, the construction urged by the STATE cannot be even inferred by the language of the appropriations act. In the appropriation act, the Legislature provides for payment in leu of taxes for several counties for the loss of tax revenue due to the prison facilities located therein. However, the Legislature does not declare that such facilities are immune or exempt from taxation. Rather, it places the burden on the County to resolve all pending tax suits and controversies prior to receiving the payments in leu. In other words, a County will not receive its payment in leu of taxes, until it can assure the STATE that the pending tax suits are

resolved. In this way the STATE avoids both paying the payments in leu of taxes and, should the STATE not prevail in the tax suit, the taxes due. This is hardly an explicit expression of legislative intent that the prisons at issue are immune from taxation. Rather this is a very practical way of ensuring that the STATE does not pay a bill twice.

Reply-Argument
Amicus Brief

VI. SECTION 194.171 FLORIDA STATUTES APPLIES TO THE STATE.

A. The State is Bound by the General Non-claim Statute at Issue in this Case.

In this section the AMICUS argues that the state property simply travels outside the state tax laws and thus the state cannot loose it property without a definite legislative statement to that effect. For this proposition the AMICUS, like the STATE, cites case law from Florida and other states which holds that the STATE is immune from taxation. Except for the one case set out below, these cases do not address the STATE's contention that it is allowed to bring a suit to challenge an assessment of taxes after the statutory time limit to bring such suit has run. The OTTINGERS reassert their previous responses to these arguments.

However, one case cited by the AMICUS does specifically address the issue of whether a STATE may bring an action any time it wishes to contest a tax assessment. In *People v. Doe,* 36 Cal. 220 (Cal. 1868) the California Supreme Court addressed a similar issue. In *Doe,* a person brought suit to have the title to certain real property transferred to him for the non-payment of taxes pursuant to the California ad valorem tax laws. After successfully prosecuting such suit, the new title holder petitioned the court for a writ of assistance to put him in possession of the property. The California trial court denied the petition for the writ of assistance, for that portion of the property which it was determined belonged to the City of Sacramento. The California Supreme Court affirmed the trial court, ruling that even though the judgment in the previous suit was binding upon all the world, it could not be held to apply to public property because tax laws are understood as referring only to private property. *Doe,* at 221-222. The court in *Doe,* makes a very strong statement of law, or rather a strong statement of California law. *Doe,* serves to illustrate the difference between Florida law and the position of the STATE herein.

Under *Doe,* even after a judgment was entered granting title to property, the STATE could not be divested of its property. Under Florida Law, the STATE can

be divested of its interest in real property by failing to contest an erroneously issued tax deed quickly enough.

> In its inception the tax assessment was not authorized by law and had it been moved against promptly might have been set aside, but the present owner has been in possession more than eleven years under a deed issued by the State. Under such a state of facts, even if his title is not good by adverse possession, the State is estopped to question it.

Trustees of Internal Improvement Trust Fund v. Bass, 67 So.2d 433, 433-434 (Fla. 1953)

Further, under Florida law the sovereign is bound by general statutes of limitation where bringing suit to contest a tax deed or tax certificate.

> [W]e deem it important to reflect in this opinion 'deadlines' we find in the law which limit the institution of suits to vacate an illegal or absolutely void tax assessment against property that is not taxable either because of **sovereign immunity** or its exempt status. Definitions of these types of properties appear in Chapter 196, Florida Statutes. Such properties are in a different category from properties that are subject to taxation. Tax assessments against the latter will not be held invalid, either in whole or in part, unless suit is instituted within sixty days from the time the assessment roll is certified as provided by law. F.S. Section 194.151, F.S.A. But **even as to property not subject to taxation at all because of its immunity** or exempt status it is our view that if the tax assessed is paid, suit must be brought by the taxpayer against the county within one year after such payment to recover the amount paid pursuant to F.S. Section 95.08, F.S.A.; **or if tax certificates or tax deeds for such taxes are issued thereon, suit to cancel the same must be brought within the time allowed by F.S. Chapter 197, F.S.A. for such purpose**. The policy involved in such limitations and laches is that there must be a

> time when tax processes and procedures that have been completed should not be judicially disturbed; for examples, where tax funds received have been allocated or expended or intervening rights have accrued from tax delinquency enforcement proceedings prior to any authorized claim or suit being filed or instituted by the taxpayer.

Lake Worth Towers v. Gerstung, 262 So.2d 1, 4-5 (Fla. 1972). (emphasis supplied)

Bass, and *Lake Worth,* show that the law of the State of Florida is considerably different than the law of the State of California as set out in *Doe.* Thus *Doe* cannot be instructive to this court on matters of Florida law.

B. There is an Adequate Statement of Legislative Intent That Section 194.171 may be Applied to Divest The State of Property That is Otherwise Immune from Taxation.

Again in this section the AMICUS like the STATE asserts legal doctrine not present in Florida law. AMICUS asserts that the STATE may not be deprived of its property unless there is a statute that manifests a clear intent to deprive the STATE of its property because of its failure to pay taxes that were assessed in error. This attempted statement of the law is totally at odds with this court's opinions in *Trustees of Internal Improvement Trust Fund v. Bass,* 67 So.2d 433 (Fla. 1953) and *Lake Worth Towers v. Gerstung,* 262 So.2d 1 (Fla. 1972).

In *Bass,* there was no statute which manifested a clear intent to deprive the STATE of its property because of its failure to pay taxes that were assessed in error. Yet this court, in *Bass,* ruled that STATE could be divested of its property

because it failed to timely file suit. The court did not base its ruling on any statutory provision, general or specific. Rather the court based its ruling on the common law doctrine of equitable estoppel showing that under Florida law no statute manifesting clear intent is required for the STATE to loose its property through the ad valorem tax process.

In *Lake Worth,* the court ruled that certain general statutes of limitations applied to the STATE in seeking to cancel tax certificates and tax deeds. The statutes at issue did not specifically reference the state or any public body but this court found them to be applicable to the STATE.

The cases cited by the AMICUS, refer to the need for a direct statement of intent for the STATE to be subject to ad valorem taxation. These cases do not address the issue of whether such a direct statutory statement is required for the STATE to be bound by general non-claim statutes in bringing suits to cancel allegedly erroneously issued tax certificates and tax deeds. Only *Bass,* and *Lake Worth,* speak to this issue and they hold that such general statutes may bind the STATE.

AMICUS further asserts that Section 197.432(9), Florida Statutes applies to the instant situation as a statutory prohibition against the creation of any lien in

STATE property. AMICUS's reliance on Section 197.432(9), Florida Statutes is misplaced. This statute reads as follows:

> 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 lease of the property to a nongovernmental lessee. The delinquent taxes shall be enforced and collected in the manner provided in s. 196.199(8). However, the ad valorem real property taxes levied on a leasehold that is taxed as real property under s. 196.199(2)(b), and for which no rental payments are due under the agreement that created the leasehold or for which payments required under the original leasehold agreement have been waived or prohibited by law before January 1, 1993, must be paid by the lessee. If the taxes are unpaid, the delinquent taxes become a lien on the leasehold and may be collected and enforced under this chapter.

§ 197.432(9), Fla. Stat. (Emphasis supplied)

AMICUS ignores the fact that this statute is limited on its face to instances where government property is leased to a non-governmental lessee. In this case the lease is to the STATE, so this statute cannot apply.

AMICUS further argues that Section 11.066(5), Florida Statutes bars the creation of a lien in any property of the STATE in this case. This cannot be correct because Section 11.066(5), Florida Statutes was not created until 2001. Ch. 2001-266, § 1, Laws of Fla. This act sets its effective date as July 1, 2001. Ch. 2001-266, § 150, Laws of Fla. The tax certificates at issue herein were sold in 1997 and 1998. (R, V-I, 46-48) If the lien of the taxes attached to the property, it attached

as of January 1, of the year the taxes were due. Section 197.122(1), Florida Statutes Therefore, Section 11.066(5), Florida Statutes was enacted too late to affect whether the tax lien attached to the subject property.

C. Case Law Has Held That the State is Subject to General Limitations of its Ability to Bring Suit to Contest Tax Assessments.

The Petitioner relies upon the arguments made in the Initial Brief for this section except for the AMICUS's contention that a tax deed may be set aside at any time due to a void assessment. AMICUS cites several cases for this proposition all of which are inapplicable because they pre date the non-claim statute at issue herein except one. AMICUS cites *Cape Atlantic v. County of Volusia,* 581 So.2d 1384 (Fla. 5th DCA 1991) for the proposition that a tax deed based on a void assessment may be set aside at any time. This citation is in error. *Cape Atlantic,* did not involve a situation where the assessment was even at issue. In *Cape Atlantic,* the court held:

> The plaintiff complained primarily about the lack of notice under section 197.343(2), Florida Statutes. That subsection requires notice by registered mail to be given to the owner of the fee that taxes are delinquent on the subsurface rights that are being taxed separately from the fee simple interest. We conclude that the subsection contemplates a situation such as exists in this case where the subsurface rights and the fee are owned by different parties. The subsection also shows a preference for reunification of the fee and the subsurface rights in giving the fee owner preferential treatment in

> purchasing the tax certificate. The failure to provide the statutory notice denied plaintiff the opportunity to purchase the certificates and to merge the titles to the two classes of property rights if a tax deed could later be obtained.

Cape Atlantic, at 1386. (Emphasis supplied)

Thus in *Cape Atlantic,* the Plaintiff was complaining of a lack of notice, not the validity of the assessment.

Finally, the tax deed process is the only process available to the tax certificate holder to enforce his claim. Section 197.122(2), Florida Statutes; Section 197.432(2), Florida Statutes Therefore if a tax deed could not be issued based upon a void assessment and the validity of the assessment could be attacked after the issuance of the tax deed, then the property owners in the cases of *Markham v. Neptune,* 527 So.2d 814 (Fla. 1988) and *Ward v. Brown,* 894 So.2d 811 (Fla. 2004) fought those cases needlessly. Under AMICUS's theory, those property owners simply could have waited until the issuance of the tax deed and filed suit to set aside the tax deed based on a void assessment. They did not do this though because unlike AMICUS they knew that they must challenge the assessment during the time required under the non-claim statute or not at all.

D. Public Policy Favors the OTTINGERS's Position.

The OTTINGERS assert that the public policy as expressed by this court in the case of *Lake Worth Towers v. Gerstung,* 262 So.2d 1 (Fla. 1972) should control. That policy was expressed by this court after it held that the STATE was subject to general statutes of limitations concerning setting aside tax deeds and tax certificates saying:

> The policy involved in such limitations and laches is that there must be a time when tax processes and procedures that have been completed should not be judicially disturbed; for examples, where tax funds received have been allocated or expended or intervening rights have accrued from tax delinquency enforcement proceedings prior to any authorized claim or suit being filed or instituted by the taxpayer.

Lake Worth, at 4-5.

The above quote from *Lake Worth,* was reasserted by the court recently in *Ward v. Brown,* 894 So.2d 811, 815 (Fla. 2004)

Further the threatened "fiscal injury and disruption of public policy" raised by the STATE here are similar in nature to the arguments which would be made against subjecting the STATE to general statutes of limitations. "If the STATE were bound to bring its actions within the same time limits as the general public, human error could result in a loss to the STATE." However, the Legislature has resolved these policy concerns against the STATE and in favor of making the

STATE subject to the same limitations as the general public. Section 95.011, Florida Statutes.

VII. The Doctrine of Legal Estoppel Has No Application to this Case.

The OTTINGERS do not cite *Trustees of Internal Improvement Trust Fund v. Bass,* 67 So.2d 433 (Fla. 1953) for the proposition that legal estoppel applies in this case. The OTTINGERS do cite Bass, for the proposition that no specific statute is required to divest the STATE of its property through the ad valorem tax process.

CONCLUSION

The certified question should be answered in the affirmative, the decision of the District Court of Appeal should be quashed and the trial court's Final Summary Judgment should be reinstated in all respects.

Respectfully submitted,
DAVIS, SCHNITKER, REEVES
& BROWNING, P.A.

By:________________________________

George T. Reeves
Fla. Bar No. 0009407
Post Office Drawer 652
Madison, Florida 32341
(850) 973-4186
Fax No. (850) 973-8564

ATTORNEY FOR THE
PETITIONERS - OTTINGERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished to:

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

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

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

ATTORNEYS FOR THE RESPONDENT

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

ATTORNEYS FOR P. DEWITT CASON

Leandra Johnson
Norris & Johnson, P.A.
Post Office Drawer 2349
Lake City, Florida 32056-2349

ATTORNEYS FOR THE COLUMBIA COUNTY SCHOOL BOARD

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

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

ATTORNEYS FOR THE STATE OF FLORIDA AS AMICUS CURIAE

by regular U.S. mail this 19th day of December, 2005.

____
George T. Reeves

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Fla.R.App.P. 9.210(a)(2).

____
George T. Reeves