Property Appraiser, government leaseholds

Number: INFORMAL

Date: July 06, 2011

The Honorable Rob Turner
Hillsborough County Property Appraiser
County Center, 16th Floor
601 East Kennedy Boulevard
Tampa, Florida 33602-4932

Dear Mr. Turner:

Through your General Counsel, Mr. William Shepherd, you have asked for this office's assistance in determining whether a county property appraiser is limited to only making "findings of fact" with regard to exemptions involving governmental leaseholds pursuant to section 196.199, Florida Statutes. Attorney General Bondi has asked me to respond to your letter.

You have also asked several questions about the powers and duties of value adjustment boards. As was communicated to Mr. Shepherd, no comment will be expressed on these matters in the absence of a request from the value adjustment board and no such request has been forthcoming. Thus, only the question relating to the duties of the property appraiser will be addressed.

Pursuant to section 196.001, Florida Statutes, all real and personal property in this state is subject to taxation "[u]nless expressly exempted from taxation[.]"[1] The broad application of taxability to property in this state extends to

"[a]ll leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state."[2]

However, section 196.199, Florida Statutes, provides a specific exemption from taxation for government property which is owned and used by governmental units and property owned by certain governmental units, but used by nongovernmental lessees. As provided in section 196.199(1)(b), Florida Statutes, "[a]ll property of this state which is used for governmental purposes shall be exempt from ad valorem taxation except as otherwise provided by law."

This section states that nongovernmental lessees of property owned by any municipality, agency, authority, or other public body of the state will be exempt from ad valorem taxation when the lessee "serves or performs a governmental, municipal, or public purpose[;]"[3] and when the leasehold is used for "literary, scientific, religious, or charitable purposes."[4] As required by subsection (5) of the statute:

"Leasehold interests in governmental property shall not be exempt pursuant to this subsection unless an application for exemption has been filed on or before March 1 with the property appraiser. The property appraiser shall review the application and make findings of fact which

shall be presented to the value adjustment board at its convening, whereupon the board shall take appropriate action regarding the application. If the exemption in whole or in part is granted, or established by judicial proceeding, it shall remain valid for the duration of the lease unless the lessee changes its use, in which case the lessee shall again submit an application for exemption. The requirements set forth in s. 196.194 shall apply to all applications made under this subsection."

The statute clearly states that the property appraiser must review the application and "make findings of fact". The general rule is that where language is unambiguous, the clearly expressed intent must be given effect, and there is no room for construction.[5] Where the statutory language is plain, definite in meaning without ambiguity, it fixes the legislative intention and interpretation and construction are not needed.[6]

Thus, in response to your inquiry, it appears that section 196.199, Florida Statutes, requires a county property appraiser to review applications for exemption and make "findings of fact" with regard to exemptions involving governmental leaseholds.[7]

Your letter cites a Florida Supreme Court decision, *Redford v. Department of Revenue*,[8] and suggests that the case conflicts with several statutes. The *Redford* case involved leaseholders at the Miami International Airport which is owned by Miami-Dade County. The issue in that case was the authority of the Department of Revenue to overrule or challenge decisions of a county property appraiser or property appraisal adjustment board (now known as the value adjustment board). A review of the case suggests that any discussion of the case necessarily involves analysis and comment on the duties of value adjustment boards. Because the value adjustment board has not joined in your request, no comment on the case is included herein.

I trust that these informal comments will be helpful. This informal advisory opinion was prepared by the Department of Legal Affairs in an effort to be of assistance to you. The opinions expressed herein are those of the writer and do not constitute a formal opinion of the Attorney General.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] Section 196.001(1), Fla. Stat.

[2] Section 196.001(2), Fla. Stat.

[3] Section 196.199(2)(a), Fla. Stat., *citing* s. 196.012(6), Fla. Stat., for the definition of "governmental, municipal, or public purpose." Section 196.012(6), Fla. Stat., defines a "[g]overnmental, municipal, or public purpose or function" as:

"Governmental, municipal, or public purpose or function shall be deemed to be served or performed when the lessee under any leasehold interest created in property of the United States, the state or any of its political subdivisions, or any municipality, agency, special district, authority, or other public body corporate of the state is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds. For purposes of the preceding sentence, an activity undertaken by a lessee which is permitted under the terms of its lease of real property designated as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration and which real property is used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed base operation which provides goods and services to the general aviation public in the promotion of air commerce shall be deemed an activity which serves a governmental, municipal, or public purpose or function. Any activity undertaken by a lessee which is permitted under the terms of its lease of real property designated as a public airport as defined in s. 332.004(14) by municipalities, agencies, special districts, authorities, or other public bodies corporate and public bodies politic of the state, a spaceport as defined in s. 331.303, or which is located in a deepwater port identified in s. 403.021(9)(b) and owned by one of the foregoing governmental units, subject to a leasehold or other possessory interest of a nongovernmental lessee that is deemed to perform an aviation, airport, aerospace, maritime, or port purpose or operation shall be deemed an activity that serves a governmental, municipal, or public purpose. The use by a lessee, licensee, or management company of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for admission. If property deeded to a municipality by the United States is subject to a requirement that the Federal Government, through a schedule established by the Secretary of the Interior, determine that the property is being maintained for public historic preservation, park, or recreational purposes and if those conditions are not met the property will revert back to the Federal Government, then such property shall be deemed to serve a municipal or public purpose. The term 'governmental purpose' also includes a direct use of property on federal lands in connection with the Federal Government’s Space Exploration Program or spaceport activities as defined in s. 212.02(22). Real property and tangible personal property owned by the Federal Government or Space Florida and used for defense and space exploration purposes or which is put to a use in support thereof shall be deemed to perform an essential national governmental purpose and shall be exempt. 'Owned by the lessee' as used in this chapter does not include personal property, buildings, or other real property improvements used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed based operation which provides goods and services to the general aviation public in the promotion of air commerce provided that the real property is designated as an aviation area on an airport layout plan approved by the Federal Aviation Administration. For purposes of determination of 'ownership,' buildings and other real property improvements which will revert to the airport authority or other governmental unit upon expiration of the term of the lease shall be deemed 'owned' by the governmental unit and not the lessee. Providing two-way telecommunications services to the public for hire by the use of a telecommunications facility, as defined in s. 364.02(15), and for which a certificate is required under chapter 364 does not

constitute an exempt use for purposes of s. 196.199, unless the telecommunications services are provided by the operator of a public-use airport, as defined in s. 332.004, for the operator's provision of telecommunications services for the airport or its tenants, concessionaires, or licensees, or unless the telecommunications services are provided by a public hospital."
[4] Section 196.199(4), Fla. Stat.
[5] *Fine v. Moran,* 77 So. 533, 536 (Fla. 1917); *M.W. v. Davis,* 756 So. 2d 90 (Fla. 2000).

[6] *McLaughlin v. State*, 721 So. 2d 1170 (Fla. 1998); *Osborne v. Simpson,* 114 So. 543 (Fla. 1927); Ops. Att'y Gen. Fla. 00-46 (2000) (where language of statute is plain and definite in meaning without ambiguity, it fixes the legislative intention such that interpretation and construction are not needed); 99-44 (1999); and 97-81 (1997).

[7] I would note that other statutory provisions require the property appraiser to make specific findings of fact in evaluating applications for exemptions. *See*, for example, s. 196.193(5)(b), Fla. Stat.

[8] 478 So. 2d 808 (Fla. 1985).