

MEMORANDUM

FROM: SHELL, FLEMING, DAVIS & MENGE
TO: PENSACOLA BEACH RESIDENTIAL LESSEES BEING REPRESENTED BY
THE LAW FIRM
SUBJECT: STATUS REPORT
DATE: June 19, 2006

We have filed the Motion for Summary Final Judgment and a Request for the Court to take Judicial Notice of certain matters in the commercial lessee lawsuit. Copies of the Motion and Request to take Judicial Notice have been posted on the residential lessee website. The motion was supported by depositions we have taken and several affidavits we obtained from persons having personal knowledge of the allegations in the Complaint.

We are prepared to file a similar Motion for Summary Final Judgment and a Request for the Court to take Judicial Notice of certain matters in the residential lessees' lawsuit, but are delaying the filing of such motion and request until after the hearing on the motion and request we have filed in the commercial lessee lawsuit.

The Liaison Committee and our firm continue to receive requests from various lessees regarding what they should do if their mortgagees request them to pay the real property taxes that have been assessed against their leasehold improvements or to escrow funds to pay such taxes. We addressed that issue in our Memorandum dated May 20, 2005, which is posted on the residential lessee website:

www.pbeachtaxsuit.com

The Court has entered a Stipulated Order suspending all further procedures to collect the 2005 real property taxes assessed on the leasehold improvements of the lessees who are plaintiffs in the lawsuit we filed contesting the 2005 real property taxes assessed on their leasehold improvements. Thus, our Memorandum dated May 20, 2005 also applies to the 2005 real property taxes that mortgagees are requesting be paid. A copy of that Stipulated Order is being posted to the website along with this status report. We are also reposting a copy of our Memorandum of May 20, 2005, along with a copy of this status report to the website.

A number of residential lessees have also asked what they should do regarding the real property taxes assessed on their leasehold improvements if they sell their leasehold estates. We suggest such lessees attempt to have the closing agent escrow the taxes that have been assessed. If the closing agent or the mortgagee providing financing for the purchaser is unwilling to escrow the taxes, you should have the closing agent advise the tax collector that the taxes are being paid under protest. We further suggest that the selling lessee write a separate letter to the tax collector Janet Holley,

213 Palafox Place, Pensacola, FL 32502, advising that office that the taxes are being paid under protest.

Several plaintiffs in the 2004 lawsuit were not named as plaintiffs in the 2005 lawsuit because no real property taxes were assessed on their leasehold improvements on the 2005 tax roll. Those lessees whose leasehold improvements were destroyed by Hurricane Ivan or whose leased improvements were so heavily damaged by the hurricane that they were not habitable as of January 1, 2005, should not have had any real property taxes assessed on their leasehold improvements.

Some 2004 plaintiffs who were not named as 2005 plaintiffs have received notices this year that the 2005 tax roll erroneously failed to list them and their leasehold improvements and they were sent delinquent notices for the 2005 real property taxes assessed on their leasehold improvements subsequent to publication of the 2005 tax roll. We advise against paying the 2005 real property taxes in these circumstances. Danny Kepner of this firm is presently working with the attorneys representing the property appraiser and tax collector to determine how many of the 2004 plaintiffs were sent tax notices reflecting 2005 real property taxes to be owed after the tax roll was certified. If any 2004 plaintiff received a tax notice reflecting 2005 real property taxes to be owed after having been previously advised by the tax collector that no taxes were due for 2005, please contact a member of the Residential Lessee Liaison Committee and provide that member with copies of the previous tax notice reflecting no taxes to be due and of the "corrected" tax notice indicating that real property taxes are owed for 2005.

Remember that if your Governmental Leasehold Intangible Personal Property Taxes are \$60.00 or more you need to be filing the annual Governmental Leasehold Intangible Personal Property Tax return and paying the intangible personal property taxes that are owed.

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

ALVIN'S STORES, et al.,

Plaintiffs

vs.

CASE NO: 2004-CA-2281

DIVISION: "A"

CHRIS JONES, PROPERTY
APPRAISER FOR ESCAMBIA COUNTY,
FLORIDA, and JANET HOLLEY, TAX
COLLECTOR FOR ESCAMBIA COUNTY,
FLORIDA,

Defendants.

PLAINTIFFS' MOTION FOR SUMMARY FINAL JUDGMENT

Plaintiffs move this Court for entry of Summary Final Judgment in their favor in the above captioned case on the grounds that there are no disputed issues of fact and Plaintiffs are entitled to Summary Final Judgment in their favor as a matter of law.

In support of Plaintiffs' motion, Plaintiffs would show unto this Court that:

(1) Plaintiffs are the lessees or sublessees of various properties, including the land and the permanent improvements erected thereon, on Pensacola Beach, Escambia County, Florida, by virtue of commercial leases issued by the Santa Rosa Island Authority ("SRIA"), on behalf of Escambia County, Florida.

(2) Title to the land on Pensacola Beach leased by SRIA to Plaintiffs and title to Plaintiffs' leasehold improvements erected on the land is vested in Escambia County, Florida, and Escambia County, Florida, is the legal and

equitable owner of the land and of all buildings and improvements erected or placed on the land at Pensacola Beach which are leased to Plaintiffs.

(3) Plaintiffs' possessory interests in their leasehold estates, including the buildings and improvements erected or placed on the leased land, have been classified as intangible personal property and are to be taxed only as intangible personal property.

(4) Defendant Chris Jones, as Property Appraiser of Escambia County, Florida, has appraised Plaintiffs' leasehold improvements as real property on Escambia County's 2004 tax roll, and Defendant, Janet Holley, as Tax Collector for Escambia County, Florida, has sought to collect real property taxes for 2004 on said leasehold improvements.

(5) Defendant Chris Jones, as Property Appraiser for Escambia County, Florida, has no authority to appraise Plaintiffs' leasehold improvements, which have been classified as intangible personal property by the Florida Legislature as real property, and Defendant, Janet Holley, as Tax Collector for Escambia County, Florida, has no authority to collect real property taxes on the appraised value of Plaintiffs' leasehold improvements.

(6) The Defendant, Janet Holley, as Tax Collector for Escambia County, Florida, has no authority to issue tax certificates to collect any taxes levied on the improvements owned by Escambia County, and leased to Plaintiffs, and the Defendant, Janet Holley, has no authority to create liens on Plaintiffs' leasehold improvements to collect such taxes.

(7) Plaintiffs are entitled to judgment declaring the real property taxes levied on their leasehold improvements invalid and enjoining the Defendants from appraising their leasehold improvements as real property, levying real property taxes on such improvements, issuing tax certificates to collect such taxes, and creating liens on Plaintiffs' leasehold improvements to collect such taxes. Plaintiffs are also entitled to a refund of any real property taxes paid by Plaintiffs for 2004 taxes levied on their leasehold improvements.

(8) The allegation that leaseholders on Pensacola Beach were the "equitable" or "beneficial" owners of their leasehold improvements was raised and litigated in the Bell v. Bryan cases.

(9) The attempt by Defendants to convert Plaintiffs into "equitable owners" of the improvements is based on a doctrine that is not applicable to the facts in this case. The Plaintiffs are not the equitable owners of the improvements that the Defendants have appraised and taxed as real property.

(10) Defendants are barred by the doctrine of *stare decisis* from relegating issues which have previously been settled by the judicial decisions rendered by this Court and the First District Court of Appeal in the Bell v. Bryan cases. The Bell v. Bryan cases form a precedent to be followed in the instant case.

(11) Defendants are barred by the doctrine of *res judicata* from raising issues in the instant case that were raised or could have been raised in the Bell v. Bryan cases. The judgments rendered in the Bell v. Bryan cases are

conclusive regarding the issues and affirmative defenses that Defendants have raised in their pleadings. The issue of "equitable ownership" and the constitutional challenges raised by Defendants, were raised or could have been raised in the Bell v. Bryan cases.

(12) Defendants are barred by the doctrine of collateral estoppel from relitigating issues which were determined by this Court and the First District Court of Appeal in the Bell v. Bryan cases. The issue of "beneficial" or "equitable" ownership was raised and determined in the Bell v. Bryan cases.

(13) Defendants are equitably estopped from appraising Plaintiffs' leasehold improvements as real property and from collecting real property taxes on such improvements. The Defendants notified Plaintiffs in August of 2004 that they intended to impose real property taxes on their leasehold improvements retroactive to January 1, 2004. Such delayed decision created substantial hardships for the Plaintiffs and was inequitable.

(14) Defendants lack standing to challenge the constitutionality of the Florida statutes defining Plaintiffs' leasehold interests in the land and improvements owned by Escambia County, Florida, as intangible personal property and directing that such leasehold interests be taxed only as intangible personal property.

(15) The Florida statutes enacted by the Florida Legislature defining Plaintiffs' leasehold interests as intangible personal property, and directing that

such leasehold interests be taxed only as intangible personal property are constitutional.

In support of this Motion for Summary Final Judgment, Plaintiffs rely upon the depositions of Chris Jones, as Property Appraiser for Escambia County, Florida, and Janet Holley, as Tax Collector for Escambia County, Florida, previously filed with this Court, the leases under the terms of which Plaintiffs derive their leasehold interests in the land and improvements owned by Escambia County, Florida, the affidavits of Mary B. Bolman, W. O. Wedel, Merrell Fairchild, June B. Guerra, James M. Sheffer and Richard Brosnaham filed with this Court, the documents and matters which Plaintiffs have requested this Court to take judicial notice, the Florida statutes and case law applicable to the issues raised by the Plaintiffs and Defendants in this case, and such other affidavits and evidence that Plaintiffs may file with this court prior to the final hearing on Plaintiffs' Motion for Summary Final Judgment.

WHEREFORE, Plaintiffs pray this Court will enter Summary Final Judgment in their favor in this matter.

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Motion for Summary Final Judgment and of the Affidavits of Mary B. Bolman, W. O. Wedel, Merrell Fairchild, June B. Guerra, James M. Sheffer and Richard Brosnaham have

been furnished to Elliott Messer and Thomas M. Findley, of Messer, Caparello & Self, P.A., 215 S. Monroe Street, Suite 701, Tallahassee, FL. 32302, by U.S. Mail, this ^{9th} ~~7th~~ day of June, 2006.



M. J. MENGE

Bar No: 54275

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Pensacola, Florida 32502

Telephone 850-434-2411

Attorneys for Plaintiffs

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

ALVIN'S STORES, et al.,

Plaintiffs

vs.

CASE NO: 2004-CA-2281

DIVISION: "A"

CHRIS JONES, PROPERTY
APPRAISER FOR ESCAMBIA COUNTY,
FLORIDA, and JANET HOLLEY, TAX
COLLECTOR FOR ESCAMBIA COUNTY,
FLORIDA,

Defendants.

PLAINTIFFS' REQUEST FOR COURT TO TAKE JUDICIAL NOTICE

Pursuant to the applicable provisions of Chapter 90, Florida Statutes (2005), Plaintiffs request that this Court take judicial notice of the following matters:

(1) The deed from the United States of America to Escambia County, State of Florida, dated January 15, 1947, and recorded in Deed Book 248 at Page 161 of the public records of Escambia County, Florida, which deed conveyed title to certain properties on Santa Rosa Island, including Pensacola Beach to Escambia County, Florida.

(2) The leases from Santa Rosa Island Authority through which the Plaintiffs derive their leasehold interests in the properties on Pensacola Beach. Copies of these leases are attached to the affidavit of Mary B. Bolman, Administration, Lease and Marketing manager for the Santa Rosa Island Authority.

(3) Resume of the meeting of the Property Appraisal Adjustment Board held on March 19, 1981.

(4) The decision of the Property Appraisal Adjustment Board denying the petition of Ruepert D. Bryan and the "Findings of Fact; Conclusions of Law" supporting the Board's decision.

(5) The pleadings and proceedings in the case of R.D. Bryan, et al. v. Matt Langley Bell, III, Tax Collector for Escambia County, Florida, et al., Case No: 84-1911-CA-01, including:

- a) The amended complaint of plaintiffs.
- b) The memorandum filed on behalf of the defendant tax collector in opposition to plaintiffs' motion for summary judgment.
- c) The transcript of the hearing before Judge John Parnham on the defendant tax collector's motion to dismiss for failure to join an indispensable party.
- d) The Summary Final Judgment entered in the case by Judge John Parnham.

(6) The opinions issued by the First District Court of Appeal in Bell v. Bryan, 505 So.2d 690 (Fla. 1st DCA 1987), rev. den., 513 So.2d 1060 (Fla. 1987), and the motions filed with the Court, including:

- a) The initial opinion issued by the Court.

- b) The motion for rehearing, rehearing en banc or certification filed on behalf of the appellants.
- c) The substitute opinion issued by the Court.

(7) The pleadings and proceedings in the case of Matt Langley Bell, III, Tax Collector for Escambia County, Florida v. R.D. Bryan, et al., Case No: 86-678-CA-01, including:

- a) The initial complaint of the tax collector.
- b) The motion to intervene filed on behalf of John R. Jones, as property appraiser for Escambia County, Florida.
- c) The order granting the property appraiser's motion to intervene.
- d) Judge M.C. Blanchard's order dismissing the complaint but allowing the plaintiffs leave to amend.
- e) The amended complaint of the tax collector.
- f) The memorandum filed on behalf of the tax collector in opposition to the leaseholders' motion to dismiss the amended complaint.
- g) Judge M.C. Blanchard's Final Judgment of dismissal.

(8) The opinion issued by the First District Court of Appeal in Bell v. Bryan, 519 So.2d 1024 (Fla. 1st DCA 1988).

(9) The proceedings in the case of Lewis Y. and Betty T. Ward, et al. v. Gregory S. Brown, Property Appraiser of Santa Rosa County, Florida, et al, in Santa Rosa County, Case No: 01-892-CA-01-DJ, including:

- a) Judge Paul Rasmussen's Order Granting Defendants' Amended Motion for Summary Judgment and Entry of Final Summary Judgment.
- b) Transcription of the hearing on the parties counter motions for summary judgment.

(10) The opinion issued by the First District Court of Appeal in Ward v. Brown, 919 So.2d 462 (Fla. 1st DCA 2005).

(11) Final Judgment rendered by Judge Tarbuck in Service Metro Corporation v. Matt Langley Bell, as Tax Collector of Escambia County, Florida, et al., Escambia County, Case No: 94-1756.

(12) Chapter 24,500, Special Acts, Laws of Florida.

(13) Chapter 25,810, Special Acts, Laws of Florida.

(14) Chapter 76-361, Special Acts, Laws of Florida.

(15) Chapter 76-362, Special Acts, Laws of Florida.

(16) Chapter 76-368, Special Acts, Laws of Florida.

(17) The policies adopted by the Santa Rosa Island Authority, including:

- a) Commercial Lease Policy establishing a standard to be used for lease fees and terms for new, amended, modified or

renegotiated commercial leases, including standard terms and conditions.

- b) Policy providing a definition for the types of operations constituting a business.
- c) General lease policy applicable to all new leases, and existing leases/modifications.
- d) Hurricane Ivan Damage Restoration Policy.
- e) Lease Enforcement Alternative Policy.
- f) Notification Policy.
- g) Reporting of Commercial Rental Income.

(18) Correspondence from the Santa Rosa Island Authority or its legal counsel to commercial leaseholders deemed to be in violation of terms in their respective leases.

WHEREFORE, Plaintiffs request that this Court take judicial notice of the foregoing matters.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiffs' Request for Court to take Judicial Notice has been furnished to Elliott Messer and

Thomas M. Findley, of Messer, Caparello & Self, P.A., 215 S. Monroe Street, Suite
701, Tallahassee, FL. 32302, by U.S. mail this 9th day of June,
2006.



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Telephone 850-434-2411
Attorneys for Plaintiffs

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

22 VIA DE LUNA, LLC, et al,

Plaintiffs

vs.

CASE NO: 2005-CA-2331

DIVISION: A

CHRIS JONES, PROPERTY
APPRAISER FOR ESCAMBIA COUNTY,
FLORIDA, and JANET HOLLEY, TAX
COLLECTOR FOR ESCAMBIA COUNTY,
FLORIDA,

Defendants.

STIPULATED ORDER GRANTING PLAINTIFFS' MOTION FOR STAY

The parties having stipulated to the entry of an order staying all procedures for the collection of real property taxes levied on the improvements that are the subject matter of this litigation, and the Court finding that:

1. Section 194.171(3), Florida Statutes (2005), mandates that all procedures for the collection of taxes contested by a taxpayer shall be suspended pending final disposition of the litigation contesting the imposition of the taxes at issue, provided the taxpayer pays the taxes admittedly due and owing and timely files an action contesting the collection of the taxes.

2. The Plaintiffs have alleged in good faith they do not owe any of the taxes at issue in this case, and the Defendants have stipulated that this action contesting the taxes at issue was timely filed.

Accordingly, its is hereby **ORDERED AND ADJUDGED** as follows:

1. All procedures for the collection of the real property taxes levied by the Tax Collector for Escambia County on the improvements that are the subject matter of this litigation are hereby suspended pending final disposition of this action through all appeals, pursuant to Section 194.171(3), Florida Statutes (2005).

DONE AND ORDERED in chambers, in Pensacola, Escambia County, Florida, this 14th day of February, 2006.



NICKOLAS P. GEEKER, CIRCUIT JUDGE

Copies furnished to:

M.J. Menge, Esquire
Elliott Messer, Esquire
Thomas M. Findley, Esquire

MEMORANDUM

FROM: Shell, Fleming, Davis & Menge

TO: Pensacola Beach Residential Lessees being represented
by the law firm

SUBJECT: Mortgagee payments of contested 2004 real property taxes
assessed on leasehold improvements

DATE: May 20, 2005

We continue to receive numerous calls from lessees whose Mortgagees have advised them that they are paying the 2004 real property taxes assessed on the leasehold improvements on Pensacola Beach. This issue is beyond the scope of our firm's employment by the beach residential lessees to pursue litigation against the taxing authorities to have the real property taxes declared null and void. What is stated in this Memorandum is not to be considered legal advice, because the law firm has not been retained to render advice on this issue. The facts in each case may be different and we have not undertaken to investigate or render opinions as to any particular set of facts regarding Mortgagees.

That said, the following information is provided as a public service. Those lessees whose mortgage lenders are paying the taxes may desire to download the Stipulated Order on Plaintiffs' Motion for A Stay dated April 21, 2005, suspending all procedures for the collection of the contested taxes pending final disposition of the lawsuit and furnish that copy to their Mortgagees.

Those lessees may also desire to furnish their Mortgagees with copies of the following which we are attaching to this memorandum:

1. The Summary Final Judgment entered in the case of R.D. Bryan, et al v. Matt Langley Bell, III, on January 13, 1986, enjoining the Tax Collector for Escambia County from issuing tax certificates for delinquent taxes assessed on the Pensacola Beach leaseholds, including buildings and other improvements on the leased premises.
2. Section 196.199(8)(a), Florida Statutes (2004), stating that taxes assessed on leasehold interests in governmentally owned properties (such as those on Pensacola Beach) shall not become a lien on same or the property itself.

3. Section 197.432(9), Florida Statutes (2004), stating that 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.

Finally, those lessees may desire to bring to the Mortgagees' attention the case of State Dept. of Revenue v. Gibbs, 342 So.2d 562 (Fla. 1st DCA 1977), in which it was held that the Tax Collector for Escambia County could not issue tax certificates to collect delinquent taxes owed by lessees on Pensacola Beach. The Court stated that the Florida Legislature had established an exclusive procedure for collection of taxes levied on all private leaseholds of governmentally owned real property through its enactment of Section 196.199.

The Mortgagees' only interest in the payment of the 2004 real property taxes assessed on the leasehold improvements should be to protect the status of their liens on the leaseholds. If those taxes do not create liens on the leaseholds, the Mortgagees are assuming a considerable risk in paying the contested taxes.

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

R. D. BRYAN, et al,

Plaintiffs,

Case No. B4-1911-CV-01

vs.

Division "K"

MATT LANGLEY BELL, III, Tax
Collector for Escambia County,
Florida, et al,

Defendants.

SUMMARY FINAL JUDGMENT

THIS CAUSE having come on before the Court for hearing on plaintiffs' Motion for Summary Judgment, the Court having considered the pleadings and the affidavit filed herein on behalf of plaintiffs, and argument of counsel, the Court makes the following findings:

1. Pursuant to the residential leases entered into between plaintiffs and the defendant, Santa Rosa Island Authority, title to all buildings and other improvements of a permanent character situated on the premises leased by plaintiffs is vested in Escambia County, Florida, subject to the term of years and the option to renew contained in the plaintiffs' respective leases. These improvements, subject to the leases, are owned by Escambia County, Florida.

2. The leasehold estates, including the buildings and other improvements of a permanent character, of the plaintiffs created by the residential leases from the defendant, Santa Rosa Island Authority, have been classified as intangible personal property by the Florida Legislature.

3. The tax certificates issued by the defendant, Matt Langley Bell, III, as Tax Collector for Escambia County, Florida, for delinquent taxes on plaintiffs' leased property and/or improvements thereon leased by the defendant, Santa Rosa Island Authority, to plaintiffs under their respective residential leases, were issued contrary to existing law.

RECORDED BY: *[Signature]* 1989

ERLIE LEE BARBARA, CLERK
CIRCUIT COURT AND COUNTY COURT
BY: *[Signature]*
DEPUTY CLERK

4. There is no genuine issue as to any material fact and the plaintiffs are entitled to judgment as a matter of law.

It is, therefore, ORDERED AND ADJUDGED as follows:

1. It is hereby declared that the language of the Santa Rosa Island Authority residential leases to plaintiffs vest title to all buildings and other improvements of a permanent character erected or placed on the demised premises in Escambia County, Florida, subject to the term of years and the option to renew of the respective leases. These improvements, subject to the leases, are owned by Escambia County, Florida.

2. Any and all tax certificates issued by the defendant, Matt Langley Bell, III, as Tax Collector for Escambia County, Florida, for delinquent taxes on plaintiffs' leased property and/or improvements thereon leased by the defendant, Santa Rosa Island Authority, to plaintiffs under their respective residential leases, are hereby adjudged to be invalid and unenforceable.

3. The defendant, Matt Langley Bell, III, as Tax Collector for Escambia County, Florida, is hereby permanently enjoined from issuing tax certificates for delinquent taxes assessed on, or against, the lessees on the demised premises of lessees, including the buildings and other improvements of a permanent character situated thereon, leased by the defendant, Santa Rosa Island Authority, to plaintiffs under its residential leases.

DONE AND ORDERED in Chambers in Pensacola, Escambia County, Florida, this 13th day of January, 1986.

[Signature]

CIRCUIT JUDGE

Copies to:
M. J. Menge, Esquire
Thomas F. Condon, Esquire
John D. Ayres, Jr., Esquire
Thomas R. Jenkins, Esquire
Mr. R. J. Hooton

3935

RECORDED IN
PUBLIC RECORDS OF
ESCAMBIA COUNTY, FLA.

0 18 JAN 1986

APRICE NOTED ABOVE
CITRUS COUNTY RECORDER
CAMPBELL COUNTY

REPRODUCED TO BE A TRUE COPY
ORIGINAL ON FILE IN THIS OFFICE
-RECEIVED HARD COPY OFFICIAL SEAL
ERNIE LEE WALKER, CLERK
CIRCUIT COURT, ESCAMBIA COUNTY
ESCAMBIA COUNTY, FLORIDA
12-17-84

WITNESS MY HAND AND OFFICIAL SEAL:
DATE: *[Signature]*, 1986

ERNIE LEE WALKER, CLERK
CIRCUIT COURT, ESCAMBIA COUNTY
BY: *[Signature]*
DEPUTY CLERK

196.1985 Labor organization property exemption. Real property owned and used by any labor organization which has a charter from a state or national organization, which property is used predominantly by such organization for educational purposes, is hereby defined as property within the purview of s. 3, Art. VII of the State Constitution and shall be exempt from ad valorem taxation to the extent of such use pursuant to s. 196.192(2). Any portion of such property used for nonexempt purposes may be valued and placed upon the tax rolls separately from any portion entitled to exemption pursuant to this section.

History.—s. 1, ch. 77-459.

196.1986 Community centers exemption.—

(1) A single general-purpose structure represented as a community center owned and operated by a private, nonprofit organization and used predominantly for educational, literary, scientific, religious, or charitable purposes is hereby defined as property within the purview of s. 3(a), Art. VII of the State Constitution and shall be exempt from ad valorem taxes imposed by taxing authorities. However, no use shall be considered to serve an exempt purpose if, in conjunction with that use, alcoholic beverages are served or consumed on the premises. Any portion of such property used for nonexempt purposes may be valued and placed upon the tax roll separately from any portion entitled to exemption pursuant to this section.

(2) This exemption shall not apply to condominium common elements and shall not apply to any structure unless it is generally open and available for use by the general public.

History.—s. 1, ch. 80-253.

196.199 Government property exemption.—

(1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions:

(a) All property of the United States shall be exempt from ad valorem taxation, except such property as is subject to tax by this state or any political subdivision thereof or any municipality under any law of the United States.

(b) All property of this state which is used for governmental purposes shall be exempt from ad valorem taxation except as otherwise provided by law.

(c) All property of the several political subdivisions and municipalities of this state or of entities created by general or special law and composed entirely of governmental agencies, or property conveyed to a nonprofit corporation which would revert to the governmental agency, which is used for governmental, municipal, or public purposes shall be exempt from ad valorem taxation, except as otherwise provided by law.

(2) Property owned by the following governmental units but used by nongovernmental lessees shall only be exempt from taxation under the following conditions:

(a) Leasehold interests in property of the United States, of the state or any of its several political subdivisions, or of municipalities, agencies, authorities, and other public bodies corporate of the state shall be exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal, or pub-

lic purpose or function, as defined in s. 196.012(6). In all such cases, all other interests in the leased property shall also be exempt from ad valorem taxation. However, a leasehold interest in property of the state may not be exempted from ad valorem taxation when a nongovernmental lessee uses such property for the operation of a multipurpose hazardous waste treatment facility.

(b) Except as provided in paragraph (c), the exemption provided by this subsection shall not apply to those portions of a leasehold or other interest defined by s. 199.023(1)(d), subject to the provisions of subsection (7). Such leasehold or other interest shall be taxed only as intangible personal property pursuant to chapter 199 if rental payments are due in consideration of such leasehold or other interest. If no rental payments are due pursuant to the agreement creating such leasehold or other interest, the leasehold or other interest shall be taxed as real property. Nothing in this paragraph shall be deemed to exempt personal property, buildings, or other real property improvements owned by the lessee from ad valorem taxation.

(c) Any governmental property leased to an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes shall be exempt from taxation.

(3) Nothing herein or in s. 196.001 shall require a governmental unit or authority to impose taxes upon a leasehold estate created, extended, or renewed prior to April 15, 1976, if the lease agreement creating such leasehold estate contains a covenant on the part of such governmental unit or authority as lessor to refrain from imposing taxes on the leasehold estate during the term of the leasehold estate; but any such covenant shall not prevent taxation of a leasehold estate by any such taxing unit or authority other than the unit or authority making such covenant.

(4) Property owned by any municipality, agency, authority, or other public body corporate of the state which becomes subject to a leasehold interest or other possessory interest of a nongovernmental lessee other than that described in paragraph (2)(a), after April 14, 1976, shall be subject to ad valorem taxation unless the lessee is an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes.

(5) 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.

(6) No exemption granted before June 1, 1976, shall be revoked by this chapter if such revocation will impair any existing bond agreement.

(7) Property which is originally leased for 100 years or more, exclusive of renewal options, or property which is financed, acquired, or maintained utilizing in whole or in part funds acquired through the issuance of bonds pursuant to parts II, III, and V of chapter 159, shall be deemed to be owned for purposes of this section.

(8)(a) 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 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.

(b) Nonpayment of any such taxes by the lessee shall result in the revocation of any occupational license of such person or the revocation, upon certification hereunder by the property appraiser to the Department of State, of the corporate charter of any such domestic corporation or the revocation, upon certification hereunder by the property appraiser to the Department of State, of the authority of any foreign corporation to do business in this state, as appropriate, which such license, charter, or authority is related to the leased property.

(9) Improvements to real property which are located on state-owned land and which are leased to a public educational institution shall be deemed owned by the public educational institution for purposes of this section where, by the terms of the lease, the improvement will become the property of the public educational institution or the State of Florida at the expiration of the lease.

(10) Notwithstanding any other provision of law to the contrary, property held by a port authority and any leasehold interest in such property are exempt from ad valorem taxation to the same extent that county property is immune from taxation, provided such property is located in a county described in s. 9, Art. VIII of the State Constitution (1885), as restated in s. 6(e), Art. VIII of the State Constitution (1968).

History.—s. 11, ch. 71-133; s. 1, ch. 76-283; s. 1, ch. 77-174; ss. 1, 2, ch. 80-368; s. 4, ch. 82-388; s. 16, ch. 83-215; s. 30, ch. 85-342; s. 1, ch. 86-141; s. 61, ch. 86-152; s. 81, ch. 86-130; s. 47, ch. 91-45; s. 160, ch. 91-112; s. 1, ch. 96-288; s. 1, ch. 96-323.

196.1993 Certain agreements with local governments for use of public property; exemption.—Any agreement entered into with a local governmental authority prior to January 1, 1969, for use of public property, under which it was understood and agreed in a written instrument or by special act that no ad valorem real property taxes would be paid by the licensee or lessee, shall be deemed a license or management agreement for the use or management of public property. Such interest shall be deemed not to convey an interest in the property and shall not be subject to ad valorem real property taxation. Nothing in this section shall be deemed to exempt such licensee from the ad valorem intangible tax and the ad valorem personal property tax.

History.—s. 9, ch. 80-368.

196.1994 Space laboratories and carriers exemption.—

(1) Notwithstanding other provisions of this chapter, modules, pallets, racks, lockers, and their necessary associated hardware and subsystems owned by any person and intended for use as space laboratories launched into space aboard the space shuttle for the primary purpose of conducting scientific research in space or as cargo carriers launched into space aboard the space shuttle for the primary purpose of transporting or storing cargo are deemed to carry out a scientific purpose and are exempt from ad valorem taxation.

(2) This section is repealed July 1, 2004.

History.—s. 53, ch. 94-353; s. 22, ch. 99-256.

196.1995 Economic development ad valorem tax exemption.—

(1) The board of county commissioners of any county or the governing authority of any municipality shall call a referendum within its total jurisdiction to determine whether its respective jurisdiction may grant economic development ad valorem tax exemptions under s. 3, Art. VII of the State Constitution if:

(a) The board of county commissioners of the county or the governing authority of the municipality votes to hold such referendum; or

(b) The board of county commissioners of the county or the governing authority of the municipality receives a petition signed by 10 percent of the registered electors of its respective jurisdiction, which petition calls for the holding of such referendum.

(2) The ballot question in such referendum shall be in substantially the following form:

Shall the board of county commissioners of this county (or the governing authority of this municipality, or both) be authorized to grant, pursuant to s. 3, Art. VII of the State Constitution, property tax exemptions to new businesses and expansions of existing businesses?

___ Yes—For authority to grant exemptions.

___ No—Against authority to grant exemptions.

(3) The board of county commissioners or the governing authority of the municipality which calls a referendum within its total jurisdiction to determine whether its respective jurisdiction may grant economic development ad valorem tax exemptions may vote to limit the effect of the referendum to authority to grant economic development tax exemptions for new businesses and expansions of existing businesses located in an enterprise zone. In the event that an area nominated to be an enterprise zone pursuant to s. 290.0055 has not yet been designated pursuant to s. 290.0065, the board of county commissioners or the governing authority of the municipality may call such referendum prior to such designation; however, the authority to grant economic development ad valorem tax exemptions will not apply until such area is designated pursuant to s. 290.0065. The ballot question in such referendum shall be in substantially the following form and shall be used in lieu of the ballot question prescribed in subsection (2):

197.416 Continuing duty of the tax collector to collect delinquent tax warrants; limitation of actions.—It shall be the duty of the tax collector issuing a tax warrant for the collection of delinquent tangible personal property taxes to continue from time to time his or her efforts to collect such taxes for a period of 7 years from the date of the issuance of the warrant. After the expiration of 7 years, the warrant will be barred by this statute of limitation, and no action may be maintained in any court. A tax collector or his or her successor shall not be relieved of accountability for collection of any taxes assessed on tangible personal property until he or she has completely performed every duty devolving upon the tax collector as required by law.

History.—s. 172, ch. 85-342; s. 1017, ch. 95-147.

197.417 Sale of personal property after seizure.—

(1) When personal property is levied upon for delinquent taxes as provided for in s. 197.413, at least 15 days before the sale the tax collector shall give public notice by advertisement of the time and place of sale of the property to be sold. The notice shall be posted in at least three public places in the county, one of which shall be at the courthouse, and the property shall be sold at public auction at the location noted in the advertisement. The property sold shall be present if practical. At any time before the sale the owner or claimant of the property may release the property by the payment of the taxes, plus delinquent charges, interest, and costs, for which the property was liable to be sold. In all cases, immediate payment for the property shall be required. In case such a sale is made, the tax collector shall be entitled to the same fees and charges as are allowed sheriffs upon execution sales.

(2) If the property levied upon is sold for more than the amount of taxes, delinquent charges, interest, costs, and collection fees, the surplus shall be returned to the person who had possession of the property when the levy was made or to the owner of the property.

(3) If the property levied upon cannot be located in the county or is sold for less than the amount of taxes, delinquent charges, interest, costs, and collection fees, the deficit shall be a general lien against all the taxpayer's other personal property situated in the county. The other property may be seized and sold in the same manner as property on which there is a specific lien for delinquent taxes.

History.—s. 173, ch. 85-342.

197.432 Sale of tax certificates for unpaid taxes.—

(1) On the day and approximately at the time designated in the notice of the sale, the tax collector shall commence the sale of tax certificates on those lands on which taxes have not been paid, and he or she shall continue the sale from day to day until each certificate is sold to pay the taxes, interest, costs, and charges on the parcel described in the certificate. In case there are no bidders, the certificate shall be issued to the county. The tax collector shall offer all certificates on the lands as they are assessed.

(2) A lien created through the sale of a tax certificate may not be enforced in any manner except as prescribed in this chapter.

(3) Delinquent real property taxes of all governmental units due on a parcel of land in any one year shall be combined into one certificate.

(4) A tax certificate representing less than \$100 in delinquent taxes on property that has been granted a homestead exemption for the year in which the delinquent taxes were assessed may not be sold at public auction or by electronic sale as provided in subsection (16) but shall be issued by the tax collector to the county at the maximum rate of interest allowed by this chapter. The provisions of s. 197.502(3) shall not be invoked as long as the homestead exemption is granted to the person who received the homestead exemption for the year in which the tax certificate was issued. However, when all such tax certificates and accrued interest thereon represent an amount of \$100 or more, the provisions of s. 197.502(3) shall be invoked.

(5) Each certificate shall be struck off to the person who will pay the taxes, interest, costs, and charges and will demand the lowest rate of interest, not in excess of the maximum rate of interest allowed by this chapter. The tax collector shall accept bids in even increments and in fractional interest rate bids of one-quarter of 1 percent only. If there is no buyer, the certificate shall be issued to the county at the maximum rate of interest allowed by this chapter.

(6) The tax collector shall require immediate payment of a reasonable deposit from any person who wishes to bid for a tax certificate. A person who fails or refuses to pay any bid made by, or on behalf of, him or her is not entitled to bid or have any other bid accepted or enforced by the tax collector until a new deposit of 100 percent of the amount of estimated purchases has been paid to the tax collector. When tax certificates are ready for issuance, the tax collector shall notify each person to whom a certificate was struck off that the certificate is ready for issuance and payment must be made within 48 hours from the mailing of such notice or the deposit shall be forfeited and the bid canceled. In any event, payment shall be made before delivery of the certificate by the tax collector.

(7) The form of the certificate shall be as prescribed by the department. Upon the cancellation of any bid, the tax collector shall resell that certificate the following day or as soon thereafter as possible, provided the certificate is sold within 10 days after cancellation of such bid.

(8) The tax collector shall make a list of all the certificates sold for taxes, showing the date of the sale, the number of each certificate, the name of the owner as returned, a description of the land within the certificate, the name of the purchaser, the interest rate bid, and the amount for which sale was made. This list shall be known as the "list of tax certificates sold." The tax collector shall append to the list a certificate setting forth the fact that the sale was made in accordance with this chapter.

(9) 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 col-

lected 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.

(10) Any tax certificates issued pursuant to this section after January 1, 1977, which are void due to an error of the property appraiser, the tax collector, any other county official, or any municipal official and which are subsequently canceled, or which are corrected, pursuant to this chapter or chapter 196 shall earn interest at the rate of 8 percent per year, simple interest, or the rate of interest bid at the tax certificate sale, whichever is less, calculated from the date the certificate was purchased until the date the refund is ordered. Refunds made on tax certificates that are corrected or void shall be processed in accordance with the procedure set forth in s. 197.182, except that the 4-year time period provided for in s. 197.182(1)(c) does not apply to or bar refunds resulting from correction or cancellation of certificates and release of tax deeds as authorized herein.

(11) When tax certificates are advertised for sale, the tax collector shall be entitled to a commission of 5 percent on the amount of the delinquent taxes and interest when actual sale is made. However, the tax collector shall not be entitled to any commission for the sale of certificates made to the county until the commission is paid upon the redemption or sale of the tax certificates. When a tax deed is issued to the county, the tax collector shall not receive his or her commission for the certificates until after the property is sold and conveyed by the county.

(12) All tax certificates issued to the county shall be held by the tax collector of the county where the lands covered by the certificates are located.

(13) Delinquent taxes on real property may be paid after the date of delinquency but prior to the sale of a tax certificate by paying all costs, advertising charges, and interest.

(14) The holder of a tax certificate may not directly, through an agent, or otherwise initiate contact with the owner of property upon which he or she holds a tax certificate to encourage or demand payment until 2 years have elapsed since April 1 of the year of issuance of the tax certificate.

(15) Any holder of a tax certificate who, prior to the date 2 years after April 1 of the year of issuance of the tax certificate, initiates, or whose agent initiates, contact with the property owner upon which he or she holds a certificate encouraging or demanding payment may be barred by the tax collector from bidding at a tax certificate sale. Unfair or deceptive contact by the holder of a tax certificate to a property owner to obtain payment is an unfair and deceptive trade practice, as referenced in s. 501.204(1), regardless of whether the tax certificate is redeemed. Such unfair or deceptive contact is actionable under ss. 501.2075-501.211. If the property

owner later redeems the certificate in reliance on the deceptive or unfair practice, the unfair or deceptive contact is actionable under applicable laws prohibiting fraud.

(16) The county tax collector may conduct the sale of tax certificates for unpaid taxes pursuant to this section by electronic means. Such electronic sales shall comply with the procedures provided in this chapter. The tax collector shall provide access to such electronic sale by computer terminals open to the public at a designated location. A tax collector who chooses to conduct such electronic sales may receive electronic deposits and payments related to the tax certificate sale.

*History.—*s. 174, ch. 85-342; s. 9, ch. 90-343; s. 4, ch. 91-295; s. 1, ch. 93-106; s. 101B, ch. 95-147; s. 10, ch. 96-139; s. 2, ch. 98-167; s. 1, ch. 99-141; s. 1, ch. 2003-22.

197.4325 Procedure when checks received for payment of taxes or tax certificates are dishonored.—

(1)(a) Within 10 days after a check received by the tax collector for payment of taxes is dishonored, the tax collector shall notify the maker of the check that the check has been dishonored. The tax collector shall cancel the official receipt issued for the dishonored check and shall make an entry on the tax roll that the receipt was canceled because of a dishonored check. Where practicable, the tax collector shall make a reasonable effort to collect the moneys due before canceling the receipt.

(b) The tax collector shall retain a copy of the canceled tax receipt and the dishonored check for the period of time required by law.

(2)(a) When a check received by the tax collector for the purchase of a tax certificate is dishonored and the certificate has not been delivered to the bidder, the tax collector shall retain the deposit and resell the tax certificate. If the certificate has been delivered to the bidder, the tax collector shall notify the department, and, upon approval by the department, the certificate shall be canceled and resold.

(b) When a bidder's deposit is forfeited, the tax collector shall retain the deposit and resell the tax certificate.

1. If the tax certificate sale has adjourned, the tax collector shall readvertise the tax certificate to be resold. When the bidder's deposit is forfeited and the certificate is readvertised, the deposit shall be used to pay the advertising fees before other costs or charges are imposed. Any portion of the bidder's forfeit deposit that remains after advertising and other costs or charges have been paid shall be deposited by the tax collector into his or her official office account. If the tax collector fails to require a deposit and tax certificates are resold, the advertising charges required for the second sale shall not be added to the face value of the tax certificate.

2. If the tax certificate sale has not been adjourned, the tax collector shall add the certificates to be resold to the sale list and continue the sale until all tax certificates are sold.

*History.—*s. 12, ch. 99-139.