Muben-Lamar, L.P. vs Florida Department of Revenue

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS MUBEN-LAMAR VERSUS THE DEPARTMENT OF REVENUE.

MAY IT PLEASE THE COURT. MY NAME IS LARRY LEVI. I REPRESENT THE PETITIONER HERE TODAY. I WOULD LIKE TO RESERVE 5 MINUTES FOR REBUTTAL. WE ARE HERE ON CONFLICT JURIES ADDITIONS FOR TWO -- JURISDICTION ON TWO DECISIONS, ONE INVOLVING THE CIRCUIT COURT AND ONE INVOLVING THE APPELLATE COURT OF THE 1990 FLORIDA STATUTES. THERE HAS BEEN ANOTHER CASE THAT CAME OUT WHILE THIS CASE WAS PROCEEDING, AND THAT WAS THE RACE CASE, AND THE DEPARTMENT NOW ADMITS THAT IT WAS ERROR IN RACE AND RACE HAS NOW BEEN CORRECTED AND IT, ALSO, INVOLVED A STATUTE SINCE 1990. THE FACTS OF THE SITUATION WHICH GAVE RISE TO THE CONTROVERSY, THERE WAS A NEW JERSEY INSURANCE COMPANY THAT HAD EXPERIENCED SOME LOSSES IN ITS INVESTMENT PORTFOLIO IN REAL PROPERTY, THREE PARCELS OF WHICH WERE LOCATED IN FLORIDA. THESE WERE THEN TAKEN BACK TO FORECLOSURE, AS A MEANS OF TRY TRYING TO FIND A WAY TO OPERATE THESE AND KEEP THEM AS PROFIT PROPERTIES, AS MUCH AS THEY COULD. THEY DECIDED THE BEST WAY TO DO IT WAS TO CREATE A LIMITED PARTNERSHIP, TRANSFER THE PROPERTY INTO THE PARTNERSHIP. THERE WOULD BE THREE PARTNERS IN IT. ONE WOULD BE THE OWNER OF THE PROPERTY BEFORE WOULD HAVE 98 PERCENT, A WHOLLY-OWNED SUBSIDIARY 1 PERCENT, AND A THIRD WAS A COMPANY, LAMAR-EASTON, THAT HAD EXPERIENCE IN MANAGING COMMERCIAL PROPERTY, OFFICE BUILDINGS, THINGS OF THIS NATURE. IT WAS BROUGHT IN FOR ITS EXPERTISE AND GIVEN A 1 PERCENT INTEREST IN THE PARTNERSHIP. THE DEPARTMENT ASSESSED DOCUMENTARY STAMPS ON THE TRANSACTION INTO THIS LIMITED PARTNERSHIP, BASED UPON THE AMOUNT THAT WAS BID IN AT THE FORECLOSURE SALES, WHICH HAD TAKEN PLACE PRIOR TO THAT. BASED ON THE JUST VALUE OR FAIR MARKET VALUE OF THE PROPERTY UNDER THEIR INTERPRETATION OF THE STATUTE, THERE WAS NEVER ANY ACTUAL DETERMINATION MADE, AS TO WHAT THE FAIR MARKET VALUE OF THE INVOLVED PROPERTY WAS, WHAT WAS DONE. IT WAS ASSUMED WHEN IT WAS BID IN, IT WAS BID IN LIKE MANY FORECLOSURES ARE. THE MAN SAID HE PROBABLY COULD HAVE BID IT IN AT $100. HE BID IT IN AT THE AMOUNT OF THE PRINCIPLE INDEBTEDNESS OUTSTANDING. THE CONCEPT OF PUTTING THE TAX BASED ON SOMETHING, THE TRANSFER OR MOVES, IS NOVEL. THAT IS NEW. IT HAD NOT BEEN DONE BEFORE. FLORIDA HAD ALWAYS TAKEN THE POSITION, SINCE 1931 -- THE STATUTE, BY THE WAY, HAS VIRTUALLY REMAINED UNCHANGED, THAT FIRST 15 LINES IN IT, SINCE 1931. I QUOTE THE 53 STATUTE, THE '89 -- THE 1953 STATUTE, THE '89 AND THEN THE '90 AMENDMENT, ON PAGE 41 AND 42 OF MY BRIEF, AND THE FIRST 15 LINES IS THE SAME. IT HAS TO BE A TRANSFER OF REAL PROPERTY TO A PURCHASER FOR CONSIDERATION. SO YOU LOOK TO SEE WHAT THE PURCHASER IS PAYING FOR THE PROPERTY, NOT WHAT THE PROPERTY IS WORTH. THE PROPERTY MIGHT BE WORTH $50,000 AND THE PURCHASERS PAY $100,000. YOU WOULD STILL PAY THE TAX ON 1006789 SIMILARLY IF IT WAS WORTH 50 AND HE PAID 25 OR 30 FOR IT, IT WOULD BE BASED ON THE 25 OR 30. THAT IS A CONSIDERATION. THE ONLY THING THAT CHANGED DURING THAT TIME PERIOD IS THE AMOUNT OF THE TAX. ALL OF THE OTHER STUFF STAYED THE SAME AND STILL A PURCHASER FOR CONSIDERATION. WHEN THE 1990 LAW CAME INTO BEING, IT DIDN'T HAVE ANYTHING IN THE TITLE ABOUT CHANGING THE CONCEPT OF DOCUMENTARY STAMP TAX. IT WAS THE SAME THING. IT SAID WE ARE DEFINING CONSIDERATION, AND IT, ALSO, ADDRESSED A SITUATION WHERE PROPERTY WENT FROM A PARTNERSHIP TO A PARTNER AND SAID IT WILL BE TAXABLE, UNDER CERTAIN CONDITIONS. NOTHING WAS SAID ABOUT FROM PARTNERS TO A PARTNERSHIP OR CORPORATIONS OR WHATEVER, TO STOCKHOLDERS LIKE THAT IN THERE. THE CIAC --

COUNSEL --

SIR?

DIDN'T THE LIMITED PARTNERSHIP ENTITY HAVE ANY VALUE BEFORE THE TRANSFER OF THE PROPERTY?

NO, SIR. IT WAS JUST A LIMITED PARTNERSHIP. A SHELL.

IT HAD NOTHING. WAS SHELL.

YES, SIR.

AND WE HAD MULTIPLE CONTRIBUTIONS, AS I UNDERSTAND IT.

TWO.

WE HAD MULTIPLE. WE HAD MORE THAN ONE. WE HAD THE PROPERTY AND WE HAD THE PROMISSORY NOTE, SO THAT CREATED THE PARTNERSHIP DID HAVE VALUE. THAT ENTITY HAD VALUE.

AFTER THE PROPERTY WAS PUT INTO IT, RIGHT.

AND BEFORE THAT TIME, THE MANAGEMENT AS YOU DESCRIBE, IT PARTNER, HAD NO INTEREST IN THE PROPERTY. ANOTHER MANAGEMENT HAD NO INTEREST IN THE PROPERTY.

AND THEN, IN EXCHANGE, THEY WERE GIVEN OWNERSHIP INTEREST IN AN ENTITY THAT HAD NO VALUE BEFORE BUT NOW HAS A VALUE OF, BOTH, THE PROPERTY AND A VALUE OF THE NOTE.

YES, SIR.

AND I AM STRUGGLING A LITTLE BIT TO UNDERSTAND WHY, LEGALLY, THAT WOULD NOT BE CONSIDERATION, AND WHY WE WOULD NOT OR WHY WE SHOULD NOT, EVEN FROM -- AS WE LOOK AT THESE STATUTES, CONSIDER IT.

YOU WOULDN'T HAVE A PURCHASER AND YOU WOULDN'T HAVE CONSIDERATION GOING FROM THE PARTNERSHIP TO THE PEOPLE TRANSFERRING THE PROPERTY IN.

WELL, WHY WOULD WE NOT -- WHEN YOU SAY A PURCHASER, THE PARTNERSHIP OWNED NOTHING BEFORE. IT ACQUIRED THE PROPERTY IN EXCHANGE FOR THE INTEREST IN THAT PARTNERSHIP. WHY IS THAT NOT A PURCHASE OF THAT PROPERTY, FOR EXCHANGE OF THE INTEREST?

WELL, YOU STILL WOULD NOT HAVE AN ACTUAL -- I AM GOING TO SAY ANY KIND OF CONSIDERATION FLOWING. YOU HAVE, AFTER THE TRANSFER, THEN YOU HAVE A CERTAIN INTEREST WHICH ARE SET UP. AFTER THE TRANSFER, SAYING WE ARE GOING TO HAVE 98 PERCENT, THIS WHOLLY-OWNED SUBSIDIARY HAS ONE. IT GAVE NOTHING, AND LAMAR-ESE ONE, WHICH WAS -- LAMAR-EASTON, WHICH WAS A MANAGING COMPANY, HAD 1 PERCENT. THAT WAS SO HOPEFULLY THEY WOULD PROPERTY THE PROPERTY AND THEY WOULD BE ABLE TO SELL IN T IN THE FUTURE AND BE ABLE TO SHOW AN INCOME FROM IT AND GET SOME MONEY BACK ON IT. BUT YOU ESSENTIALLY HAD NOTHING. THERE WAS NO MORTGAGE. THERE WAS NO TRANSFER OF ECONOMIC DEBT. THERE WAS NO OBLIGATION ASSUMED AT ALL BY THE PARTNERSHIP, BECAUSE THERE WAS NO MORTGAGE. THERE WAS NO CASH PAID. THERE WAS NO ANYTHING OR ANYTHING LIKE THAT PAID.

HOW ABOUT IF THEY HAD GIVEN THEM GOLD COINS, RATHER THAN AN INTEREST IN THE

PARTNERSHIP?

YOU CAN GET GOLD COINS, OR HAD THERE BEEN A MORTGAGE ON IT, YOU WOULD FALL BACK ON THE ANDEAN CASE.

THAT WOULD AND PARTNERSHIP WHERE YOU WOULD NOT CONSIDER THE OWNERSHIP INTEREST, AS YOU WOULD THE TANGIBLE PERSONAL PROPERTY OF GOLD OR VALUABLE ROCKS OR WHATEVER YOU WANT TO CALL IT?

NO, SIR, I DON'T THINK SO.

COULD YOU HELP ME UNDERSTAND WHY IT COULD NOT BE?

I DON'T THINK SO. FOR ONE THING, IT IS THIS. EVERY TIME THAT ANY SITUATION HAS EVER BEEN BEFORE THIS COURT, WHERE IT SAID WE ARE GOING TO DO IT ON THE FAIR MARKET VALUE OF THE PROPERTY, THIS COURT RESQLECKTED IT. THE -- REJECTED IT. THE CULBREATH CASE, THE GREEN CASE, THE CASE THAT I JUST CITED AND THAT IS BECAUSE YOU DON'T TRANSFER IT FROM THE ENTITY. YOU DON'T GO FROM THE SELLER. YOU GO FROM THE BUYER TO WHAT THE BUYER IS GIVEN.

IF YOU CARRY YOUR ARGUMENT A LITTLE BIT FURTHER, AND I AM TRYING TO UNDERSTAND IT, TOO, BECAUSE ON THE ONE HANDY UNDERSTAND YOU TO MAKE THE ARGUMENT, I BELIEVE, THAT THE FORM OF OWNERSHIP SHOULDN'T CREATE A TAXABLE TRANSACTION. ISN'T THAT, REALLY, A LARGE PART OF YOUR --.

IF YOU ARE STATING UP SOMETHING --

NO MATTER HOW THE TITLE IS HELD, THE NET EQUITY OF THE PARTIES AND THE VALUE THAT THEY HAD ENDS UP BEING ESSENTIALLY THE SAME.

YES, SIR. ESSENTIALLY THE SAME.

BUT I AM HAVING DIFFICULTY, THOUGH, BECAUSE IF WE CARRY THIS FURTHER, AND YOU HELP ME WITH THE -- IN EFFECT, WOULDN'T YOU END UP, ALSO, IF YOU HAD A TRADE FOR INSTANCE, YOU WOULD TURN A TRADE INTO A NONTAXABLE TRANSACTION, AND WHAT I AM THINKING ABOUT IS YOU HAVE GOT A NOTE, AND YOU HAVE GOT A PIECE OF PROPERTY, AND SO THE PARTY THAT WANTS THE PIECE OF PROPERTY GIVES THE NOTE AN EXISTING OBLIGATION, YOU KNOW, THAT THEY HAVE FROM SOMEBODY ELSE. THEY TRANSFER THE NOTE TO THE OWNER OF THE PROPERTY.

YES, SIR.

AND THEY GET THE PROPERTY. THAT IS A TRADE. AND THEY, BOTH, THEY END UP --

HE GAVE SOMETHING OF VALUE.

THERE IS NO REAL -- SOMEBODY ENDS UP WITH A $50,000 NOTE, YOU KNOW, FROM SOMEBODY THAT IS PERFECTLY SOLVENT OR SOMETHING, AND THE OTHER PERSON ENDS UP WITH A $50,000 LOT OF PROPERTY, AND THAT SEEMS LIKE, WELL, THERE IS NOTHING REALLY HAPPENED THERE. THEY BOTH WALK AWAY. STILL THEY HAVE GOT $50,000 IN ASSETS, BUT WOULDN'T YOU AGREE THAT WOULD BE A TAXABLE TRANSACTION?

YOU WOULD HAVE A SITUATION, IF YOU HAD AN OBLIGATION, YOUR SAME SITUATION, SAY THERE WAS THIS 50,000 NOTE THAT, B, WANTS TO GET THE PROPERTY, IS WILLING TO ASSUME. "A" HOLDS THE NOTE. HOLDS IT TO A BANK FOR $50,000. "B" SAYS TRANSFER ME THAT PROPERTY, AND

I WILL ASSUME THE LIABILITY OF THAT NOTE, TAXABLE, BECAUSE YOU HAVE A SIFTING -- A SHIFTING OF ECONOMIC BURDEN, BUT NO SHIFTING HERE.

HERE, IN THE WAY THAT JUSTICE LEWIS HAS OUTLINED THE TRANSACTION, OF HAVING A LIMITED PARTNERSHIP THAT HAS NO VALUE, OKAY, AND NOW WE ARE PUTTING VALUE INTO IT, IN VARIOUS FORMS, HERE, WE HAVE TWO PIECES OF PROPERTY.

BUT IT IS NOT BUYING IT. IT IS JUST THEY ARE COMING INTO IT. YOU ARE CREATING AN ENTITY AND CAPITALIZING IT. YOU CAN'TIZE IT WITH MONEY. ONE OF THE EXAMPLES I USED IN THE BRIEF. YOU CAN CAPITALIZE IT WITH MONEY. THREE PEOPLE SAY I HAVE AN OLD SHELL STATION HERE. I HAVE A PRODUCE BUSINESS AND I HAVE GOT $3,000. THE TWO OF THEM -- THE THREE OF THEM FORM A PARTNERSHIP. EACH OF THEM HAS A THIRD INTEREST IN IT.

ISN'T THE INTEREST OF THIS PARTNERSHIP ENDS UP TO AN OWNERSHIP OF SOMETHING THEY DIDN'T HAVE BEFORE?

THE LIMITED -- I AM SORRY, THE GENERAL PARTNER, LAMAR LAMAR-EASTERN, WHICH IS THE COMPANY THAT IS MANAGING THE PROPERTY, THAT WAS THE ONE THAT WAS BROUGHT IN SPECIFICALLY BECAUSE IT HAS EXPERT NIECE BEING ABLE TO MANAGE -- EXPERTISE IN BEING ABLE TO MANAGE PROPERTY. THAT ONE WOULD GET A 1 PERCENT INTEREST WHEN THEY SELL THE THREE PARCELS, AND THEY NEVER HAD THAT BEFORE, BUT THE OWNER OF THE PROPERTY HAD 98 PERCENT, OR ACTUALLY 99 PERCENT, BECAUSE IT WAS A WHOLLY-OWNED SUBSIDIARY IT HAD 99 PERCENT. IT HAD 100 BEFORE, AND NOW IT HAS GOT 99 AND LAMAR-EASTERN HAS 1 PERCENT. SEVERAL YEARS IT WILL MANAGE THE PROPERTY DURING THE TIME PERIOD, AND WHEN IT IS SOLD TO RECOUP THE LOAN AND THE ORIGINAL 1 PERCENT INVESTMENT, IT WILL GET AN INTEREST OUT OF THAT. SO.

WOULD YOU SAY OR MAKE THE SAME ARGUMENT, IF WHAT HAD HAPPENED IS THAT THE GENERAL PARTNER HAD ACQUIRED 98 PERCENT INTEREST IN THE PROPERTY? IN OTHER WORDS AFTER THE LIMITED PARTNERSHIP IS CREATED, AND INSTEAD OF THE ACTUALLY OWNER RETAINING MOST OF THE OWNERSHIP, THAT MOST OF THE OWNERSHIP INTEREST WAS TRANSFERRED TO SOMEONE ELSE? WOULD NO, MA'AM. THE OWNER, BEFORE, OF 100 PERCENT, REMAINED THE OWNER AFTERWARDS, THROUGH THE PARTNERSHIP, OF 99 PERCENT.

WHAT I AM ASKING YOU IS ASSUME, HYPOTHETICALLY, THAT WHAT HAD HAPPENED WAS THE REVERSE, THAT THE OWNER BEFORE ENDED UP WITH ONLY ONE OR TWO PERCENT AND ANOTHER PARTNER, IN THIS CASE, LAMAR, ENDED UP WITH 98 PERCENT. WOULD THAT BE DIFFERENT?

I DON'T THINK SO. I THINK IT WOULD BE THE SAME ANSWER, BECAUSE, STILL, YOU WOULD NOT HAVE A TRANSFER TO A PURCHASER FOR CONSIDERATION. WHETHER -- FOR INSTANCE, THEY DECIDED, WELL, FROM NOW ON WE ARE GOING TO HAVE A THIRD, A THIRD, A THIRD, OR THE EXAMPLE OF HOW YOU USED THE LOT AND THE TRACTOR AND THE $1,000, REGARDLESS OF WHAT THEY PUT IN, THE LAND MAY BE WORTH 5,000, BUT THEIR PARTNERSHIP INTEREST THEY COULD DECIDE THERE WAS GOING TO BE A THIRD, EQUAL, OR HOWEVER THEY WANT TO DO IT. THE KEY TO IT ALL IS THERE HAS NEVER BEEN ANY CHANGE IN THE REQUIREMENT THAT THERE BE A PURCHASER FOR CONSIDERATION, AND THAT IS A VERY STRICT TAX STATUTE, STRICTLY CONSTRUED, NEVER HAS IT BEEN HELD BEFORE, AND IT HAS BEEN DISCUSSED ON OTHER CASES, CULBREATH, PALMER, GREEN. THERE IS NO AUTHORITY TO ASSESS IT ON THE FAIR MARKET VALUE OF THAT WHICH IS TRANSFERRED. YOU LOOK AT WHAT IS GIVEN. THE ANDEAN CASE IS A GOOD EXAMPLE. IT WAS A CIAC SITUATION BUT IT WAS SUBJECT TO A MORTGAGE, SO THE PARTNERSHIP THAT WAS BEING CREATED WAS SUBJECT TO A MORTGAGE, AND THE PARTNERSHIP IS BASED ON IT AS UMINGS OF THE -- ON THE ASSUMPTION OF THE MORTGAGE. THE STATUTE IN 1990 DID NOT CHANGE ANY OF THAT. IF YOU LOOK AT THE FIRST PAGE, THE FIRST 15 LINES, IT IS EXACTLY THE SAME THING. IT SAYS WHAT WE ARE DOING IS DEFINE CONSIDERATION, AND THEN

IT DEFINES IT, AND EVERYTHING THAT IT LISTS HAS ALREADY BEEN HELD BY THIS OUT CORE -- COURT OR OTHER COURTS TO BE TAXABLE CONSIDERATION. MONEY. PAID OR AGREED TO BE PAID. NOTHING NEW ABOUT THAT. IT HAS ALWAYS BEEN TAXED. THE SECOND WAS CONSIDERATION. THAT WAS THE EXAMPLE OF THE 50,000 WE JUST DISCUSSED. THAT HAS ALWAYS BEEN TAXABLE, ALWAYS CONSIDERATION. AND THE ASSUMPTION OF MORTGAGE. THERE IS NOTHING NEW ABOUT THAT. THIS IS JUST CODIFYING THE CASE LAW AND THE EXISTING CASE DECISIONS, TO PUT THEM IN A RAT FINAL FORM. THE LAST ONE SAYS IF YOU GIVE SOMETHING OTHER THAN MONEY, WE ARE GOING TO PRESUME THAT WHATEVER YOU GAVE WAS EQUAL TO THE FAIR MARKET VALUE OF THE LAND. NOW, WHAT DID YOU GIVE? THAT COVERS A SITUATION WHERE YOU HAVE -- I GIVE A TRACTOR FOR A PIECE OF LAND.

WHAT IS THE DIFFERENCE BETWEEN THE TRACTOR AND THE INTEREST IN THE PARTNERSHIP THAT WE HAVE HERE THAT IS MADE UP OF PEOPLE WHO ARE DIFFERENT? WE ARE NOT SAYING IT IS THE SAME PEOPLE. WE HAVE DIFFERENT PEOPLE. WE HAVE A COOP OF FARMERS THAT GET TOGETHER. THEY GIVE THE TRACTORS, AND YOU ARE GOING TO GET THE TRACTOR. I MEAN WHAT IS THE DIFFERENCE?

WELL, YOU HAVE A BIG DIFFERENCE. HERE YOU ARE CREATING SOMETHING WHICH NEVER EXISTED. THIS WAS NOT -- IT HAD NOTHING TO GIVE. AT THE TIME WHEN THE PARTNERSHIP WAS CREATED, IT HAD ZERO. BUT THEY ALREADY HAD THE INTEREST, BECAUSE OF THE WAY THE PARTNERSHIP WAS CREATED. YOU CAN'T TRANSFER SOMETHING TO SOMETHING THAT DOESN'T EXIST. IT WAS ALREADY IN EXISTENCE. AND IN THE EXISTENCE OF THE CREATIVE PAPERS ALL DONE THE SAME DAY, BUT IT HAD TO BE DONE FIRST, IT WOULD SET UP THE INTEREST OF THE PEOPLE IN IT AND THE ONE THAT OWNED ALL THE LAND BEFORE, CONTINUED TO OWN OR CONTROL 99 PERCENT OF IT AFTERWARDS, BUT HE WAS A LIMITED PARTNER. THE GENERAL PARTNERS, THEN, WERE THIS LAMAR EASTERN THAT IS GOING TO MANAGE IT AND THE OTHER, WHICH WAS THE WHOLLY-OWNED SUBSIDIARY.

WAS THAT A DISTINCTION? DO WE NEED, BECAUSE IT IS A LIMITED PARTNER AS OPPOSED TO A GENERAL PARTNER --

I DON'T THINK IT MAKES A BIT OF DIFFERENCE. WHAT YOU ARE TRYING TO LOOK AT IS SEE WHAT IS BEING DONE. WE ARE GOING TO CREATE AN ENTITY THAT NEVER EXISTED BEFORE. IT HAS NOTHING. IT HAS NO ASSETS. IT HAS NO LIABILITIES. IT IS NOT ASSUMING ANY LIABILITIES. THERE IS NO MORTGAGE ON THIS PROPERTY. THERE IS NO DEBT BEING ASSUMED. THERE IS NO OBLIGATION ANY PLACE. WE ARE GOING TO CREATE, IT AND ONCE WE CREATE IT, THEN WE ARE GOING TO MOVE THIS OVER INTO IT, TO GET IT CAPITALIZED. YOU HAVE TO CAPITALIZE SOMETHING BEFORE IT CAN START, AND THE MANNER THEY HAVE CHOSEN TO CAPITALIZE WAS TO MOVE THE REAL PROPERTY, THE NOTE, WHICH IS UNSECURED TENURE, WHICH IS JUST ROUGHLY 1 PERCENT OF WHAT THE INTEREST WAS GOING TO BE. I THINK I HAVE COVERED THE STATUTE. I RESERVE THE REST OF MY TIME FOR REBUTTAL.

THANK YOU. MR. DIKMAN.

MAY IT PLEASE THE COURT. MY NAME IS JEFFREY DIKMAN. I AM AN ASSISTANT ATTORNEY GENERAL. I REPRESENT THE FLORIDA DEPARTMENT OF REVENUE IN THIS CASE. BEFORE I STATE THE ISSUE, I WOULD JUST LIKE TO FOLLOW UP ON JUSTICE LEWIS'S COMMENT THAT I THINK THAT IS ENTIRELY CORRECT, IN THAT YOU HAVE, IN ESSENCE, THE PETITIONERS TAKING THE AND ONLYLOUS POSITION THAT I THINK IS SOMEWHAT OF AN ABSURD RESULT THAT, IF YOU GIVE A 20-DOLLAR GOLD COIN FOR LAND THAT, THAT IS CONSIDERATION, BUT IF YOU GIVE $22 MILLION IN PARTNERSHIP INTEREST, THAT IS FOR SOME REASON I HAVE YET TO FATHOM, THAT THAT DOES NOT CONSTITUTE CONSIDERATION, BUT I THINK THAT THE LARGER ISSUE BEFORE THIS COURT IS NOT WHETHER $22 MILLION IN PARTNERSHIP INTEREST CONSTITUTES CONSIDERATION. I THINK THE ISSUE IS WHETHER CONTRIBUTIONS TO THE CAPITAL OF AN ARTIFICIALENT ENTITY OF

TAXABLE, AND -- OF AN ARTIFICIAL ENTITY ARE TAXABLE, AND THAT IS WHERE THIS COURT HAS CONFLICT JURISDICTION. IN THE FIRST AND SECOND DISTRICTS COURTS OF APPEAL, THEY ARE IN DIRECTLY IN CONFLICT ON THIS. YOU HAVE THE SECOND DISTRICT COURT OF APPEAL EXPRESSLY AND UNEQUIVOCALLY DECLARING THAT A CONTRIBUTION TO THE CAPITAL OF AN ARTIFICIAL ENTITY DOES NOT CONSTITUTE CONSIDERATION. ON THE OTHER HAND, THE FIRST DISTRICT COURT OF APPEAL, THE MAJORITY OF THE COURT, IS EXPRESSLY VOICED A DIFFERENT VIEW.

COULD WE NOT DISTINGUISH THESE TWO CIRCUMSTANCES THOUGH? DO WE REALLY HAVE CONFLICT? BECAUSE WE ARE LOOKING AT ONE WHERE WE HAVE A FAMILY THAT OWNS PROPERTY. IT IS TRANSFERRED TO A CORPORATION THAT THEY ALREADY OWN, AND THEY HAVE NOTHING DIFFERENT AT THE END OF THE DAY THAT THEY DIDN'T HAVE ANY AT THE BEGINNING OF THE DAY, BUT HERE WE HAVE INJECT ADD STRANGER INTO IT, AND IT IS A LITTLE DIFFERENT STRUCTURE, SO DO WE REALLY HAVE THAT CONFLICT THAT WE ARE LOOKING TO?

YES. AND YES. YES. THE CASES CAN BE FACTUALLY DISTINGUISHED. AND, YES, WE DO HAVE A CONFLICT, BECAUSE THE CONFLICT IS NOT BETWEEN THE FACTS OF THE TWO CASES, WHICH ARE DISSIMILAR. THE CONFLICT IS BETWEEN THE DECISION OR THE OPINIONS OF THE TWO COURTS 678. ONE COURT HAS VOICED THE OPINION THAT A CONTRIBUTION TO THE CAPITAL OF AN ARTIFICIAL ENTITY IS NOT TAXABLE. ANOTHER COURT HAS VOICED A DIRECTLY CONTRARY OPINION, THAT A CONTRIBUTION TO THE CAPITAL OF AN ARTIFICIAL ENTITY IS TAXABLE.

SO YOUR POSITION IS THAT THIS COURT SHOULD AFFIRM THE FIRST DISTRICT COURT HERE AND QUASH THE SECOND DISTRICT OR DISAPPROVE THE SECOND DISTRICT AND CURE IT.

YES.

FOR EVERY INSTANCE IN WHICH THERE WOULD BE A TRANSFER OF A FAMILY FARM WOULD BE SUBJECT TO THIS DOCUMENTARY TAX.

IT IS INTERESTING THAT YOU MENTION A FAMILY FARM, BECAUSE JUDGE LAWRENCE MENTIONED THAT IN ORAL ARGUMENT BELOW. IT IS INTERESTING, AND I WANT TO FOLLOW UP ON THAT. THIS IS A REAL HAVE YOUR CAKE AND EAT IT, TOO, SITUATION. HAVING A FARM OR SMALL FAMILY BUSINESS. THEY SET UP ESTATE PLANNING AND PUT LAND INTO AN ARTIFICIAL ENTITY. THEY TELL THEIMENT RS THAT THIS IS A -- THEY TELL THE I.R.S. THAT THIS IS A BONA FIDE ARTIFICIAL TRANSACTION, THAT, WHERE THE VALUE OF THE LAND MAY BE $20 MILLION, THEY WILL PAY ESTATE TAX ON TEN MILLION, TAKING THE POSITION WE DON'T OWN ANY LEGAL INTEREST IN THE LAND. THAT IS OWNED, NOW, BY THE CORPORATION. WE JUST OWN THESE PARTNERSHIP INTERESTS, AND THEY ARE ONLY WORTH HALF OF WHAT THE LAND IS WORTH, AND THEY GET A $20 MILLION STATE INSTEAD OF A $10 MILLION STATE, AND WHEN IT COMES TIME TO DOC STAMP IT, FOR ESTATE-PLANNING PURPOSES, IT IS A BONA FIDE TRANSACTION, OR IF YOU ARE SUED, YOU ARE GOING TO SAY, HEY, IT IS NOT ME. SUE THE COMPANY. IN EVERY PLACE IT IS A BONA FIDE TRANSACTION EXCEPT FOR SOME REASON IN DOC STAMPS, THAT YOU COULD BE PERMITED TO TAKE AN INCONSISTENT POSITION AND SAY IT IS NOT A BONA FIDE TRANSACTION.

COULD YOU ADDRESS THE UNDERLYING POLICY BEHIND HAVING A DOC STAMP, TO BEGIN WITH? IN OTHER WORDS WHAT WAS THE POLICY OF THE LEGISLATURE, IN SAYING WE SHOULD HAVE A TAX, NOW WHEN WE HAVE THESE TRANSACTIONS? WHAT IS THE CORE VALUE THAT IS BEING REPRESENTED HERE? COULD YOU ARTICULATE THAT FOR ME?

YES. TO RAISE REVENUE. AS IN EVERY TAX, THE PURPOSE OF THE TAX IS TO RAISE REVENUE. YOU NEED IT FOR ESSENTIAL --

BUT IT IS TO CREATE REVENUE IN LIMITED CIRCUMSTANCES, IS IT NOT?

YES.

WHAT IS GOING ON THAT IS SEEKING TO BE TAXED HERE? IN OTHER WORDS --

TO DISTINGUISH DISTINGUISH PURE -- TO DISTINGUISH PURE GIFTING TRANSACTIONS FROM GENUINE EXCHANGES, AND SO, FOR INSTANCE, NEITHER OF THESE CASES NEITHER CORONA NOR THE CASE THAT IS INVOLVED INVOLVE SALES THERE. IS NO TANGIBLE GIFT INVOLVED IN EACH CASE OR LOSS OF TRUE WEALTH IN THIS CASE. IN THIS CASE THE TRANSFERER LOSES WEALTH. WHETHER HE GIVES IT TO A SON, DAUGHTER, OR A FINANCIAL CHARITY HIS FINANCIAL WORTH GOES DOWN $20 MILLION. THAT IS NOT THE CASE IN EITHER OF THESE TWO TRANSACTIONS. IN BOTH OF THESE TRANSACTIONS THERE IS NO LOSS OF WEALTH INVOLVED WITH A TRANSACTION. AS IN THE CASE WITH A MILLION DOLLARS' LAND FOR A MILLION DOLLARS' CASH, THERE IS A REVENUE-NEUTRAL EFFECT. THERE IS AN EXCHANGE.

BUT THIS STATUTE IS BUILT AROUND THE CONCEPT OF CONSIDERATION, CORRECT?

YES, YOUR HONOR.

NOT ON THE CONCEPT OF FAIR MARKET VALUE.

YES, AND THERE IS NO FAIR MARKET VALUE ISSUE IN THIS CASE.

IN CURO, WAS THERE -- WHAT WAS THE THEORY BEHIND THERE BEING CONSIDERATION GIVEN THERE?

THE THEORY THAT WAS ARTICULATED, BOTH IN THE DEPARTMENT'S RULES, THAT IS ENTITLED, WE THINK, TO DEFERENCE THAT THE THEORY IS THAT, IS THE THEORY THAT WAS EXPRESSED BY THIS COURT, IN DIMARIA. IN DIMARIA, THIS COURT SAID THAT THERE IS A PURCHASER WHENEVER THERE IS CONSIDERATION. THAT THE TWO ARE SYNONYMOUS, AND THAT THE CONSIDERATION IS ANY EXCHANGEABLE VALUE. USE A DICTIONARY DEFINITION FOR THAT, AND THE EXCHANGEABLE VALUE IN CURO IS THAT YOU GIVE UP LAND WHICH YOU RECEIVE IN EXCHANGE IS AN INCREASED INTANGIBLE ASSET BASE. IN ESSENCE, EXCHANGING LAND FOR INTANGIBLE ASSETS, LAND FOR SHARES, AND WHETHER YOU ALREADY OWN THE SHARES, WHETHER YOU SIMULTANEOUSLY EXCHANGE THE SHARES, OR WHETHER YOU ALREADY OWN THE SHARES, AND THOSE SHARES GO FROM BEING VALUE LESS SHARES IN A SHELL COMPANY, TO BEING VALUABLE SHARES WORTH MILLIONS OF DOLLARS, THAT YOU ARE IN ESSENCE AND IN SUBSTANCE, AS YOU ARE EXCHANGING REALTY FOR PERSONALITY, AND WHAT THE SECOND DISTRICT COURT --

THAT REALLY DOES HAVE A HARD TIME WITH THE CONCEPT OF CONSIDERATION, IN THAT, IN THIS LIMITED PARTNERSHIP HERE, THIS LIMITED PARTNERSHIP HAS NO VALUE CORRECT? SO IT HAS NOTHING OF VALUE TO EXCHANGE FOR THE PROPERTY. AS I UNDERSTOOD, UNDERSTAND, IF YOU LOOK AT THIS, IF YOU DROPPED IN HERE FROM MARS, AND YOU WERE READING THIS, AND THEY WERE TALKING ABOUT CONSIDERATION, I WOULD ANTICIPATE THAT WE WOULD BE SAYING, WELL, I EVER GOT $5 AND -- I HAVE GOT $5 AND YOU HAVE GOT A PIECE OF LAND, AND SO I AM GOING TO GIVE YOU MY $5, AND YOU ARE GOING TO GIVE ME YOUR PIECE OF LAND. I MEAN, THAT IS WHAT CONSIDERATION IS ALL ABOUT, ISN'T IT?

WELL, THE STATUTE COULD NOT BE MORE CLEAR, THAT -- AND IT HAS BEEN CLARIFIED TO BE QUITE CLEAR THAT CONSIDERATION, I DON'T BELIEVE CONSIDERATION WAS EVER LIMITED TO MONEY, BUT THAT THE STATUTE COULD NOT BE MORE CLEAR NOW, AND IT WAS IN EFFECT AT ALL PERTHNENT TIMES FOR THAT CONSIDERATION -- PERTINENT TIMES FOR THAT CONSIDERATION NOT LIMITED TO MONEY. LANGUAGE STATUTE IS INCLUDED BUT NOT LIMITED TO MONEY, AND THERE IS NO LOGICAL REASON THAT THE LEGISLATURE SHOULD HAVE LIMITED IT TO MONEY, AND WHEN THEY USED THE WORDS, IN THE STATUTE, "INCLUDED BUT NOT LIMITED TO THE EXPRESS", IT WAS NOT LIMITED, AND THAT IS THE DEPARTMENT'S POSITION IN ITS VOICE IN REACHING A SIMILAR VIEW.

HOW DO YOU DISAGREE WITH THE COUNSEL'S OPPOSING VIEW THAT YOU HAVE GOT THE SHELL CORPORATION HERE AND ALL THAT IS HAPPENING IS THAT IT IS BEING CAPITALIZED BY WHAT GOES INTO IT. IT HAD NOTHING BEFORE, AND DO YOU AGREE THAT THAT IS WHAT IS HAPPENING?

IN CURO?

IN BEING CAPITALIZED?

IN CURO, THAT WAS --

IS THAT TAXABLE? THAT TRANSACTION?

YES, YOUR HONOR. I THINK IT SHOULD BE TAXABLE, BECAUSE YOU ARE, IN ESSENCE, EXCHANGING REALTY FOR PERSONALITY -- FOR PERSONALTY.

YOU HAVE TO INDULGE A PRESUMPTION TO GET THERE. IS THAT CORRECT? THAT WHATEVER IS GOING IN THERE IS PRESUMED TO HAVE VALUE WITH THE PROPERTY OR HOW DOES THIS PRESUMPTION, OR IS THERE A PRESUMPTION THAT PLAYING INTO IT?

THERE ARE TWO SEPARATE THINGS TO LOOK AT. THE FIRST THING IS, IS THERE CONSIDERATION AT ALL, AND I WOULD SUBMIT THAT EXCHANGING REALTY FOR PERSONALTY IS CONSIDERATION, AND THE SECOND ISSUE IS HOW DO YOU VALUE? WHAT IS THE VALUE OF THE CONSIDERATION? THAT IS WHERE THE '90 STATUTE HAS SOMETHING NEW TO SAY. I THINK CONSIDERATION ON THE FIRST QUESTION OF WHETHER CONSIDERATION IS LIMITED TO MONEY, I THINK IT NEVER WAS LIMITED TO MONEY, BUT ON THE SECOND QUESTION OF HOW DO YOU VALUE THE CONSIDERATION, I THINK THE '90 STATUTE IS QUITE CLEAR THAT THERE WAS THIS PRESUMPTION THAT IT IS EQUAL TO THE VALUE OF THE LAND. AND THERE IS A PRESUMPTION THAT PEOPLE ENGAGE IN ARM'S LENGTH TRANSACTIONS.

AREN'T YOU COMING DANGEROUSLY CLOSE, THOUGH, NOW, TO TAXING, IN THIS FORM, EVERY TRANSACTION WHERE THERE IS ANY CHANGE IN FORM OF OWNERSHIP?

OKAY. WELL, I THINK THAT THAT -- NO. NO. I THINK, IF YOU HAVE A TRANSFER FROM -- LET ME GIVE AWE EXAMPLE. YOU TRANSFER FROM YOUR SELF TO A CORPORATION THAT IS OWNED BY YOUR DAUGHTER, AND YOU SET UP, INSTEAD OF GIVING A GIFT TO YOUR DAUGHTER, YOU SET UP A CORPORATION FOR YOUR DAUGHTER, AND YOU GIVE THE LAND TO YOUR DAUGHTER'S CORPORATION. THERE, FOR INSTANCE, YOU ARE NOT HAVING -- YOU ARE NOT RECEIVING ANYTHING IN EXCHANGE. YOU ARE NOT RECEIVING SHARES BACK OR AN INCREASE IN THE VALUE OF YOUR SHARES. EVERYTHING YOU HAVE, AS IN A GIFT, YOUR NET WORTH GOES DOWN. YOU HAVE MADE A GIFT. THERE IS A TRUE GIFTING INTENT. OR YOU GIVE LAND TO A CHARITABLE ORGANIZATION, WHICH IS A CORPORATION, AND EVEN I WOULD SUBMIT IF YOU HAVE A TRANSFER BETWEEN SIBLING ENTITIES, THAT THAT MIGHT INVOLVE DIFFERENT ISSUES AS WELL.

IF JUSTICE SHAW AND I, FOR INSTANCE, OWN LOTS THAT ARE ADJACENT TO ONE ANOTHER, AND WE THINK SOMEWHERE DOWN THE ROAD IN THE FUTURE THAT, IT MAY BE FINANCIALLY EASIER AND MORE LUCRATIVE, IF WE COMBINE THOSE TWO LOTS, INSTEAD OF HOLDING THEM SEPARATELY, LIKE THIS, BUT WE DON'T WANT TO DO ANYTHING WITH THEM RIGHT NOW, OTHER THAN TO FORM A PARTNERSHIP BETWEEN THE TWO OF US, AND TO PUT THOSE TWO LOTS THAT ARE IDENTICAL SHAPE AND VALUE, INTO THAT PARTNERSHIP, IN TERMS OF PLANNING DOWN THE ROAD, FOR SOMETHING THAT WE HOPE MIGHT TURN OUT TO BE LUCRATIVE, THAT OUR CONTEMPLATION IS THAT WE HAVE GOT, REALLY, IN ESSENCE, THE SAME THING, AFTER FORMING THE PARTNERSHIP, THAT WE HAD BEFORE. THAT IS WE ARE NOT SELLING THE PROPERTY OR GETTING SOME GAIN FROM THIS LIKE THAT, BUT THAT CLEARLY WOULD BE A TAXABLE TRANSACTION, WOULD IT NOT? IF WE PUT THE TWO LOTS IN A PARTNERSHIP, WHERE WE HAVE

EQUAL PARTNERSHIP INTEREST IN IT. IS THAT CORRECT?

YES. I THINK THE ONLY DIFFICULT THING IN THAT FACTUAL SCENARIO FOR ME IS IN THE SCENARIO, YOUR HONORS ARE THE ONES THAT WOULD BE SUBJECT TO THE TAX. I THINK THAT WOULD BE THE DIFFICULT ASPECT OF THE HYPOTHETICAL, BUT BEYOND THIS, I HAVE NO DIFFICULT WIT CONCEPT THAT EXACTLY THE FACT PATTERN THAT YOU HAD IN CARPENTER VERSUS WHITE THAT IS CITED, WHERE A FEDERAL COURT SAID THAT THAT WAS CONSIDERATION, AND THIS COURT, IN CHOCTAHAHCHEE, SAID THAT THE FLORIDA DOC STAMP ACT IS PATTERNED UPON THE ACT THAT, THOSE SHOULD BE LOOKED AT FOR GUIDEENS.

WHAT WOULD -- FOR GUIDANCE.

WHAT WOULD BE THE TALL VAL EW THAT YOU WOULD TAX THAT ON THOUGH?

WHEN TWO PEOPLE TRANSFER LAND TO AN ARTIFICIAL ENTITY, LET'S SAY THE TWO LANDS ARE EQUIVALENT VALUE AND THE TWO PARCELS OF LAND ARE CONTRIBUTED INTO ONE ENTITY, AS I UNDERSTAND THE SCENARIO, AND EACH TREVORER GETS 50 PERCENT INTEREST IN THE TWO PARCELS, WHEREAS BEFORE THEY EACH OWNED 100 PERCENT OF TWO SEPARATE PARCELS, IN EXCHANGE YOU ARE JUST EXCHANGING NOT ONLY LAND FOR PERSONALTY, BUT I WOULD EVEN SUBMIT IN THAT EXAMPLE, THE UNDERLYING INTERESTS ARE DIFFERENT, BECAUSE BEFORE EACH PERSON OWNED ONE PIECE OF LAND. AFTERWARD THEY EACH OWNED PARTNERSHIP INTEREST, THE UNDERLYING VALUE OF WHICH IS EQUAL TO A 50 PERCENT INTEREST IN TWO PARCELS OF LAND.

IF, SO, BACK TO JUSTICE ANSTEAD'S QUESTION, THOUGH, AS FAR AS WHETHER THE STATE OF FLORIDA DEPARTMENT OF REVENUE IS TAKING THE POSITION THAT ANY TIME THERE IS A CHANGE OF OWNERSHIP INLAND, IN THE TITLE, THAT IT IS TAXABLE, YOU -- YOUR ONLY PROVISO IS THAT THAT IS CORRECT, UNLESS IT IS A GIFT TO SOMEONE ELSE.

EXACTLY.

SO IF I GO AHEAD AND I HAVE A PIECE OF LAND AND I PUT IT INTO A CORPORATION, AND THEN A WEEK LATER I SELL THE CORPORATION -- THE CORPORATION SELLS IT TO ANOTHER ENTITY, AS FAR AS THE STATE OF FLORIDA IS CONCERNED, THERE IS TWO TAXABLE EVENTS, BOTH AS IF THE LAND WAS WORTH THE $22 MILLION, AS IT IS HERE, WHERE THERE WOULD BE DOC STAMPS PAID OF THE $200,000 FOR EACH EVENT. SO IT IS, IN ESSENCE, THE STATE OF FLORIDA LOOKING AT THIS TRANSACTION AS IF IT WAS EQUIVALENT TO A SALE OF THIS LAND.

YES, YOUR HONOR.

AND I GUESS WHAT I AM HAVING TROUBLE WITH, IT SEEMS TO ME THAT WHAT YOU ARE SAYING IS THAT PEOPLE WILL GO AHEAD AND PUT THEIR LAND IN ARTIFICIAL ENTITIES FOR DIFFERENT REASONS. THERE MAY BE TAX REASONS. THERE MAY BE, AS YOU SAY, IMMUNITY FROM LAWSUIT REASONS. BUT HOW DOES THAT, THE REASONS THAT THEY MIGHT PUT IT INTO ANOTHER ENTITY, HOW DOES THAT FIGURE INTO THE POLICY OF THE STATE, AS FAR AS WHAT THEY ARE GOING TO TAX AND WHAT THEY ARE NOT GOING TO TAX? CAN YOU -- THAT IS WHAT I AM HAVING -- I AM ALSO HAVING TROUBLE, AS FAR AS THAT BEING A POLICY REASON, THAT EVERY TIME SOMEBODY CHANGES THE LEGAL OWNERSHIP, EVEN THOUGH IT IS NOT A SALE, AS WE WOULD THINK OF IT, THAT IT IS TAXED THE SAME WAY, BECAUSE SOMEHOW WE ARE GETTING SOME OTHER TYPE OF BENEFIT THAT THERE FOR THEY OUGHT TO BE TAXED THE FULL VALUE OF THE PROPERTY.

RIGHT. I THINK THE TAX, YOU START WITH THE PROPOSITION THAT THE TAX, YOU DESIGN THE RANGE REVENUE, AND YOU DESIGN THAT BY TAXING THE PRIVILEGE OF EXECUTING A DEED, UNLESS THE DEED IS ONE THAT IS ISSUED AS A GIFTING SITUATION FOR NO CONSIDERATION. AND IF YOU HAVE SOMEONE THAT ENGAGES IN MULTIPLE DEEDS, THEN THEY ARE GOING TO OWE A

SEPARATE TAX ON EACH DEED, IF THEY ARE A SEPARATE CONSIDERATION IN EACH TRANSACTION.

ISN'T THE TRANSACTION IDEA, THOUGH, REALLY TIED TO THE IDEA WE HAVE A MARKETPLACE OUT THERE, AND THAT THERE REALLY IS A MARKET TRANSACTION GOING ON, AT THE TIME THAT WE ARE GOING TO DECIDE TO TAX THE TRANSACTION? AND IN THE EXAMPLE THAT YOU HEARD FROM JUSTICE PARIENTE, WHERE YOU SAY BOTH TRANSACTIONS WOULD BE TAXABLE, AND YET THAT REALLY IS ONLY BEING DONE AT AN ADVANCE. THAT IS OF PUTTING IT INTO A CORPORATE FORM, BEFORE THEN HAVING THE MARKET TRANSACTION SUBSEQUENT TO THAT, AND I AM HAVING DIFFICULTY UNDERSTANDING THE POLICY BEHIND TAXING THAT TWICE, WHEN IT IS DECIDED THAT THE WAY WE WANT TO STRUCTURE THIS TRANSACTION IS YOU END UP OWNING ALL THE OWNERSHIP OF STOCK IN A CORPORATION, FOR INSTANCE, AND THAT IS HOW YOU ARE GOING TO GET THIS PARTICULAR LAND.

I THINK THE DECISIONS IN MARKS VERSUS GREEN, MULLIN VERSUS PROPERTIES, AND REGAL KITCHENS ADDRESS THAT POLICY. IN MARKS VERSUS GREEN, SOMEONE SET UP A CORPORATION, AND THEY PUT THE LAND INTO THE CORPORATION, AND -- NOT LAND. IT WAS SHARES. THEY PUT SHARES INTO A CORPORATION FOR CONVENIENCE. AND THEY WERE SUBJECT TO AN INTANGIBLE TAX. NOT ONLY WAS THE CORPORATION SUBJECT TO TAX ON ITS SHARES, BUT THE INDIVIDUAL WAS SUBJECT TO INTANGIBLE TAX ON ITS SHARES IN THE CORPORATION, SO -- AND THEY SAID THIS IS DOUBLE TAXATION. WE ARE BEING TAXED FOR OWNERSHIP OF SHARES, AND IN THE CORPORATION, IT IS BEING TAXED FOR THESE SAME SHARES, AND THE COURT SAID, NO, YOU SET UP A CORPORATION FOR LEGITIMATE PURPOSES, WHATEVER THEY MAY BE, AND YOU TAKE THE GOOD WITH THE BAD, AND WHEN YOU SET UP AN ARTIFICIAL ENTITY, YOU ARE BEING TAXED ON YOUR SHARES TO THE CORPORATION YOU OWN, A SEPARATE AND DISTINCT LEGAL ENTITY, IT IS GOING TO BE TAXED ON ITS SHARES. SAME THING IN REGAL KITCHEN. YOU HAD TWO ENTITIES THAT ARE ENGAGED WITH LEGAL OWNERS. THEY ENGAGE --

WE ARE NOT TALKING ABOUT DIFFERENT TAXES IN THIS CASE HERE THAT ARE DESIGNED FOR DIFFERENT -- IN OTHER WORDS THE INTANGIBLE TAX, IN A SENSE, IS A TAX ON WEALTH, AND IN A PARTICULAR FORM OF OWNERSHIP, AS OPPOSED TO TRANSACTION TAX, AND WITH CONSIDERATION, AND IN THE EXAMPLE THAT JUSTICE PARIENTE GAVE TO YOU, THERE REALLY IS NO MARKET TRANSACTION THAT TAKES PLACE INITIALLY, WHEN THE FORM OF OWNERSHIP OF THE LAND IS PUT INTO THE CORPORATE FORM, IS THERE?

NO. THERE IS NO EXEMPTION IN THE STATUTE, EITHER, FOR TRANSACTIONS WHICH ARE NOT BETWEEN RELATED PARTIES.

THAT IS A MARKET TRANSACTION.

THE STATUTE MAKES NO DISTINCTION BETWEEN TRANSACTIONS BETWEEN TWO ENTITIES WHICH ARE UNRELATED AND TWO ENTITIES WHICH ARE RELATED, AND THE WAY THAT CURO, I BELIEVE, CIRCUMVENTED THE STATUTE, WAS THAT 2 SET UP A -- IT SET UP FICTION THAT THE RELATED CORPORATION HAD SOME TRUST --

THE POLICY BEHIND THIS HAS NOTHING TO DO WITH A MARKET TRANSACTION.

THE POLICY BEHIND THIS HAS TO DO STRICTLY WITH RAISING REVENUE FOR THE EVERGLADES AND OTHER PURPOSES AND RAISING THE REVENUE AND, I MIGHT ADD, WE ARE TALKING ABOUT CLOSE TO $50 MILLION IN LOST REVENUE HERE ON THE CURO.

COULD I ASK ONE QUESTION?

ANNUALLY.

MAY I ASK JUST ONE QUESTION?

ALL RIGHT.

I AM TRYING TO UNDERSTAND YOUR ARGUMENT. ARE YOU SAYING THAT, IF THIS COURT IS NOT PREPARED TO OVERRULE THE SECOND DISTRICT'S POSITION ON THIS, THAT THE DEPARTMENT LOSES IN THIS CASE?

IT WILL HAVE WON A VERY SMALL BATTLE AND LOSS AT VERY LARGE WAR.

I AM TRYING TO UNDERSTAND WHERE YOUR POSITION IS HERE, BECAUSE IF THAT IS THE POSITION THAT YOU TAKE, BECAUSE YOU ARE ARGUING A CASE THAT DOESN'T APPEAR BEFORE US TODAY, WHICH CAN IS A DIFFERENT CASE, AND THAT IS WHY I AM TRYING TO UNDERSTAND, LEGALLY WE CAN'T GET THERE THEN.

I HOPE THE COURT ACCEPTS THE PROPOSITION, AS IT DID WHEN IT ACCEPTED JURISDICTION INITIALLY, THAT THE TWO COURTS ARE IN DISAGREEMENT. TAKE THIS OPPORTUNITY TO RESOLVE THAT CONFLICT. WE TRIED TO GET UP, CURO ORIGINALLY TRIED TO GET UP AND WE HAD NO CONFLICT. NOW WE HAVE AN EXPRESS DISAGREEMENT BETWEEN TWO DISTRICT OPINIONS. WE HOPE THE COURT TAKES THE CONFLICT, CONTINUES TO TAKE THE CONFLICT, ISSUES A RULING AND QUASHEST DECISION IN CURO, AND LIKE I SAY, IT IS GOING TO UNDERMINE THE ENTIRE DOC STAMP, BECAUSE YOU CAN ALSO DO THINGS LIKE PUT LAND INTO A CORPORATION UNDER CURO, UNDER THE JUDICIALLY JUDICIALLY-CREATED EXEMPTION IN CURO. YOU HAVE AVOIDED THE TAX ON THAT THAT. YOU CAN SELL THE SHARES AND THAT IS NOT TAXABLE. YOU CAN DISTRICT THE SHARES AND THEN, ONCE IT IS SOLD, YOU CAN THEN DISTRICT OUT THE LAND, THE BUYER WHO BOUGHT THE SHARES CAN THEN DISTRIBUTE THE LAND TO HIMSELF, AND UNDER THE DECISION IN GREEN DECISION, THAT IS NOT TAXABLE, AND YOU TRANSFERRED A TO B WITH NO TAX.

YOUR TIME IS UP. THANK YOU. MR. LEVI.

LET ME ADDRESS TWO OR THREE POINTS. NUMBER ONE, THIS IS A TAX STATUTE. YOU DON'T LOOK TO SEE WHAT IS EXEMPT. YOU HAVE TO FIND OUT IS IT TAXABLE WITHIN THE FOUR CORNERS OF THE STATUTE, AND THAT STATUTE PART OF IT, HAS NOT CHANGED SINCE 19316789 IT DOES NOT TAX CIAC. THERE IS NOTHING IN THE TITLE OF THE STATUTE, NEITHER THE AMENDMENT, REFERENCEING CIAC. THE ONLY PLACE YOU FIND IT IS IN THE RULES.

WHAT ABOUT THE HYPOTHETICAL THAT HE GAVE US AT THE VERY END THERE? SOMEBODY CREATES A CORPORATION AND STOCK OR WHATEVER AND THEN ENDS UP TRANSFERRING THE STOCK AND DOESN'T HAVE A TAXABLE TRANSACTION AND VOIDS, IN ESSENCE, AS A RESULT OF THAT? COULD YOU HANDLE THAT --

I DIDN'T REALLY FOLLOW ALL OF HIS HYPOTHETICAL. I AM SORRY. BUT YOU GO BACK. THE WHOLE THING IS WE ARE GOING TO ASSESS MARKET TRANSACTION TRANSFERS OF DEEDS. WE ARE NOT GOING TO TAX EVERY TIME THERE IS A TRANSFER. IF YOU LOOK AT RACE, THAT IS WHAT THE DEPARTMENT TRIED TO DO IN RACE THERE. IS A DEED. IT SHOWS A TRANSFER FROM THE HUSBAND TO THE HUSBAND AND WIFE, AND THEY SAID IT IS TAXABLE. PICK UP EVERYTHING. THAT IS WHAT THEY DID IN RACE. NOW THEY ADMIT RACE WAS WRONG. THIS LAW, AS I SAID, CIAC WAS NOT IN THE TITLE. NOTHING IN THE TITLE SUGGESTS WE ARE GOING TO CHANGE THE CONCEPT AND TAX BASED ON WHAT IS TRANSFERRED INSTEAD OF WHAT IS GIVEN. IT IS NOT LIKE THAT. BUT IT IS IN THE RULES. NOW, YOU CAN'T HAVE RULES THAT EXPAND A STATUTE. SO THE CIAC NOT BEING IN THE STATUTE CAN'T BE TAXED, THE FIRST 15 LINES ARE EXACTLY THE SAME AS THEY HAVE BEEN SINCE '31. TWICE THIS COURT HAS SAID YOU DO NOT TAX, BASED ON FAIR MARKET VALUE OF THE THING BEING TRANSFERRED. AS I SAID, YOU READ THE STATUTE. YOU DON'T SAY WHERE IT IS EXEMPTED UNDER THE STATUTE. YOU HAVE GOT TO FIND WHERE IT IS TAXED. IT IS A TAXING STATUTE. IT SAYS THESE ITEMS ARE TAXABLE WHERE YOU HAVE A

TRANSFER TO A PURCHASER, MARKET TRANSACTION FOR A CONSIDERATION AND THEY PAY FOR IT. THAT IS WHAT THE TAX HAS ALWAYS BEEN. THAT IS WHAT IT IS STILL. THE 1990 LAW DID NOT CHANGE THAT BECAUSE THEY KEPT THE FIRST 15 LINES EXACTLY THE SAME AND THEN CODIFIED WHAT THIS COURT AND OTHER COURTS HAD ALREADY HELD TO BE CONSIDERATION, WHICH IS MORTGAGES, AND WE ALREADY KNEW THAT ALREADY. RASPBERRY DISTINGUISHED BETWEEN THE FEDERAL AND THE STATE DOC STAMP LAW. THE FEDERAL DIDN'T PICK UP MORTGAGES. STATE DOES. THE CONCEPT OF GETTING OUTSIDE, WHERE YOU HAVE TO LOOK AT WHETHER IT IS A MARKET TRANSACTION, THAT IS WHAT IS TYPICALLY THOUGHT OF. WHEN YOU LIST CONSIDERATION IN A STATUTE AND THEN YOU PUT SOME LANGUAGE AFTER THIS, YOU PICK UP A DOCTRINE CALLED ADJUSTUM GENERIS, AND THIS MEANS CONSIDERATION OF THE SAME TYPE THAT WE HAVE ALREADY REFERRED TO BEFORE, THIS SAME TYPE THINGS. AND ASSIGNMENT OF A LEASE, EARLY ON THIS COURT HAS HELD THAT IS NOT TRANSFERABLE, ALTHOUGH IT MIGHT BE A MORTGAGE OR MIGHT BE OTHER PROPERTY, IT IS NOT TAXABLE. THE SAME THING FROM FATHER TO SON.

IF THIS PROPERTY HAD BEEN WORTH $100 AND IT IS TRANSFERRED IN, AND THE GENERAL PARTNER TRANSFERS IN, HAS GREAT EXPERTISE. THIS IS A $100 PIECE OF PROPERTY. IT IS WORTH NOTHING, UNLESS WE HAVE REALLY GOOD DEVELOPMENT, AND YOU HAVE AGREED TO COME IN AND PUT IN A HALF MILLION DOLLARS PLUS DEVELOP IT. YOU ARE GOING TO TAKE CARE OF THAT PROPERTY. AND AS A RESULT, THIS NEW ENTITY IS WORTH A HALF A MILLION PLUS $100. IS THAT TAXABLE, WHEN THAT PROPERTY COMES IN?

NO, SIR, BECAUSE YOU HAVE A CIAC SITUATION. YOU ARE CREATING AENTITY WHICH HAS NOTHING, TO BEGIN WITH. IT IS NOT A MARKET WHERE THIS ENTITY IS BUYING ANYTHING. YOU ARE GOING TO CREATE. YOU HAVE GOT TO CAPITALIZE IT SOME WAY. ONE OF THE JUSTICES, I THINK JUSTICE SHAW SAID YOU HAVE GOT TO CAPITALIZE IT. JUSTICE WELLS SAID YOU HAVE GOT TO CAPITALIZE ANYTHING YOU START OUT WITH. THAT IS HOW IT IS CAPITALIZED, AND IT IS NOT A MARKET SALE OR MARKET TRANSACTION. I WILL ANSWER ANY QUESTIONS YOU HAVE. THE -- I DO, I THINK, EXCUSE ME. I DO WANT TO MAKE IT VERY CLEAR THAT YOU ARE DEALING WITH A TAXING STATUTE. REPEATEDLY THIS COURT HAS SAID TAXING STATUTES ARE STRICTLY CONSTRUED SPECIFICALLY ON THE DOC STAMP LAW. YOU DON'T LOOK TO WHAT IS EXEMPTED. YOU LOOK TO WHERE DOES IT FIT IN THE FOUR CORNERS OF WHAT IS THERE. IT IS NOT A QUESTION OF FINDING OUT, WELL, WHERE IS IT EXEMPTED. THANK YOU. MR. CHIEF JUSTICE: THANK, COUNSEL. APPRECIATE YOUR ASSISTANCE IN THIS CASE.