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Marc D. Sarnoff v. Florida Dep't of Highway Safety & Motor Vehicles

NEXT CASE ON THE ORAL ARGUMENT CALENDAR IS SARNOFF VERSUS FLORIDA DEPARTMENT OF HIGHWAY SAFETY.

THANK YOU. MAY IT PLEASE THE COURT. I AM ALAN WACHS. WITH ME IS KATIE KING OF JACKSONVILLE OFFICE OF HOLLAND & KNIGHT. WE ARE HERE ON BEHALF OF THE 5 MILLION MEMBERS OF THE CLASS WHICH THE TRIAL COURT CERTIFIED IN ITS CAUSE, SEGREGATING SIX OF FLORIDA'S 67 COUNTIES. THE FIRST DISTRICT COURT OF APPEAL REVERSED A PORTION OF THE TRIAL COURT'S CERTIFICATION ORDER AND SPECIFICALLY HELD TO COUNT ONE OF OUR AMENDED COMPLAINT, THAT WE CAN ONLY MAKE A CLASS OF THOSE PERSONS WHO HAVE FIRST APPLIED FOR A REFUND WITH THE COMPTROLLER, UNDER SECTION 215.26 AND BEEN DENIED THAT REFUND. WE URGE THIS COURT TO REVERSE THE DISTRICT COURT OF APPEAL'S OPINION --

YOUR ATTACK ON THIS \$10 FEE IS NOT, IS UNCONSTITUTIONAL, IS THAT CORRECT?

ALL. WE HAVE A PORTION OF THE FEE THAT THOSE GROUNDS ARE INCLUDED ON. UNLAWFUL USE OF THE AUTHORITY TO TAX, AND CHARGING A TAX IN A TARGETED LOCALE, WITHOUT AUTHORITY OF GENERAL LAW.

WELL, THE ALLEGATIONS OF YOUR COMPLAINT, REALLY, BOTTOM, THOUGH, ON WHETHER THERE WAS STATUTORY AUTHORIZATION TO LEVY THIS \$10 FEE. WHICH WOULD COVER, AS YOU ALLEGE MORE THAN THE ADMINISTRATIVE COST OF PROCESSING THE APPLICATION. ISN'T THAT YOUR BOTTOM LINE?

IF I AM UNDERSTANDING YOUR HONOR'S QUESTION CORRECTLY, THEN NO, SIR, BECAUSE THE LEGISLATURE CLEARLY AUTHORIZED THE CHARGE OF A FEE. WE DON'T DISPUTE THAT. WHAT WE DISPUTE AND WHAT WE ALLEGE IS THAT THE AGENCY, INITIALLY, WITHOUT LAW AND THEN BY THE LEGISLATURE, WHEN IT AMENDED THE STATUTE, THE AGENCY CHARGED A FEE THAT IT KNEW WOULD GENERATE EXCESS REVENUE, SOLELY FOR THE PURPOSE OF MAKING UP GENERAL REVENUE SHORTFALLS, AND TARGETED THAT FEE IN SIX COUNTIES, THAT IT, THEN, USED FOR ITS STATEWIDE OPERATIONS IN ALL 67 COUNTIES, AND IT IS THAT CONDUCT, AT LEAST AS TO COUNT ONE, THAT WE CHALLENGE. WE LATER, IN COUNT II, CHALLENGE THE SUBSEQUENT STATUTE.

IN TERMS OF UNDERSTANDING WHETHER THIS IS INTERTWINED, COUNT II CHALLENGED THE 1998 STATUTE WHICH, THEN, MANDATED THE \$10 FEE.

CORRECT.

AND YOU ARE SAYING THAT IS PENDING AS A CONSTITUTIONAL OR A CHALLENGE, AND YOU DON'T HAVE TO DO ANYTHING ADMINISTRATIVELY, AS TO THAT COUNT.

THAT'S CORRECT. THAT IS WHAT THE DISTRICT COURT HELD.

IS IT FEASIBLE, IN TERMS OF YOUR OVERALL CHALLENGE TO THE STATUTE ON EQUAL PROTECTION GROUNDS, THAT WHATEVER DUE PROCESS GROUNDS, THAT THIS COURT COULD END UP SAYING THE WHOLE STATUTE WAS UNCONSTITUTIONAL, AS OF 1995? THEN THE ISSUE OF THE FEE, WHETHER IT WAS \$7, \$10, WOULD BE SORT OF THAT CONSTITUTIONAL ISSUE WOULD SUPERSEDE WHETHER THEY SHOULD HAVE CHARGED \$10 OR \$7.

IF I UNDERSTAND YOUR HONOR'S QUESTION, I DON'T THINK, UNFORTUNATELY, WE COULD GET THERE FROM HERE. I THINK THAT --

SO THEN GOING BACK TO JUSTICE WELLS'S QUESTION AS TO COUNT I, THE AGENCY MADE A DETERMINATION OF HOW MUCH MONEY TO CHARGE UP TO \$10.

CORRECT.

SO WHY ISN'T THAT SOMETHING THAT SHOULD BE, THEN, DETERMINED IN THE ADMINISTRATIVE SETTING? THAT IS WHETHER IT WAS TOO HIGH A FEE OR NOT? CAN'T THAT BE CORRECTED, IN THE ADMINISTRATIVE REALM?

WELL, I THINK FIRST, FROM A LEGAL STANDPOINT, WE HAVE AN ENTITLEMENT AS THE PLAINTIFF, UNDER SECTION 27.012 OF THE FLORIDA STATUTES, WHICH GRANT CIRCUIT COURTS SUBJECT MATTER JURISDICTION, AND UNDER ARTICLE V SECTION 20 OF THE FLORIDA CONSTITUTION, WHICH SIMILARLY GRANTS THE JURISDICTION, IT MAKES A GRANT TO THE CIRCUIT COURT OF EXCLUSIVE JURISDICTION, IN ALL CASES CHALLENGING THE LEGALITY OF A TAX ASSESSMENT.

BUT THIS IS A RULE IMPLEMENTING A STATUTE. I MEAN THERE WOULDN'T BE, YOU ARE NOT, YOU ARE SAYING THAT ANYTHING THAT HAS TO DO WITH A CHARGE DOESN'T HAVE TO GO THROUGH, AND A RULE THAT IS GENERATED BECAUSE OF A CHARGE, WOULD BE EX-IES I FEEL VESTED IN THE -- WOULD BE SCHRUFEL VESTED IN A -- EXCLUSIVELY VESTED IN A CIRCUIT COURT?

ANY TIME WE HAVE A FEE, WE ARE DEALING WITH A REALITY WITH AN AGENCY THAT HAS DECIDED TO LIVE I TAX THAT, WHENEVER THAT OCCURS, WHEN AND IF I WANT TO CHALLENGE THAT THAT OCCURRED, THE CIRCUIT COURT HAS EXCLUSIVE JURISDICTION OVER THAT.

YOU ARE SAYING IT HAS EXCLUSIVE JURISDICTION BECAUSE AFTER STATUTE OR A CONSTITUTION?

I AM SAYING THE CONSTITUTION, ARTICLE V SECTION 20, THE STATUTE 4.012 OF THE FLORIDA STATUTES, ADDITIONALLY THIS COURT'S DECISION IN THE AMRAP CASE HELD THAT CHAPTER 120 CONCEPTS TO DO NOT APPLY TO DISPUTES WHERE YOU ARE CHALLENGING THE LEGALITY OF A TAX ASSESSMENT.

BUT WHY ISN'T THIS, REALLY, JUST MORE OR LESS MORE OR LESS A GUARD -- A GARDEN VARIETY STATUTORY CONSTRUCTION MATTER AS TO THE PROPER CONSTRUCTION OF 215.26, AS TO WHETHER THERE WAS AN OVERPAYMENT OF AN ACCOUNT DUE?

WELL, WE AGREE THAT THIS, IN EFFECT, IS A STATUTORY CONSTRUCTION, BUT WE DON'T THINK IT FITS WITHIN THE OVERPAYMENT SCHEME OF THIS STATUTE. 215.26 --

IF IT IS A STATUTORY CONSTRUCTION MATTER, THEN CERTAINLY IT DOESN'T COME WITHIN NEMA.

WE THINK THAT IT DOES COME IN NEMAN.

WE THINK IT DOES COME WITHIN NEMAN. ONE OF THE THINGS THAT THE COMPTROLLER ADDED IT ON, IT IS NOT A TAX. THE COMPTROLLER IS NOT AUTHORIZED TO AUTHOR AN UNCONSTITUTIONALLY --

YOU ARE SAYING, YOUR CLAIM, OR CERTAINLY AT LEAST PART OF IT THAT YOU HAVE CONCEDED HERE, IS BASED ON STATUTORY CONSTRUCTION, SO FOR INSTANCE, IF YOU HAVE A CLAIM THAT THE AGENCY, IN ENACTING RULES TO CARRY OUT THE STATUTE, CLEARLY VIOLATED THE STATUTE, IN OTHER WORDS THE STATUTE SAYS YOU CAN DO ABC AND YOU CAN'T DO DEF, AND

NOW YOU MAKE A CLAIM THAT THE AGENCY DID DD-E-F, THEN WHY COULDN'T THAT BE DECIDED IN AN ADMINISTRATIVE PROCEEDING?

I THINK, AND MAYBE I AM NOT MAKING MYSELF CLEAR. WHEN I AM SAYING STATUTORY CONSTRUCTION, I AM TALKING ABOUT CONSTRUCTION OF 215.26 OF THE STATUTES WHICH GRANTS THE COMPTROLLER THE AUTHORITY TO GRANT REFUNDS, AND MY COMPUTATION IS THAT NONE OF THE AUTHORITY TO GRANT REFUNDS APPLIES TO THE CASE HERE.

YOU WOULDN'T BE ENTITLED TO A REFUND, IF YOU WERE ABLE TO DEMONSTRATE, IN AN ADMINISTRATIVE PROCEEDING, A CLEAR VIOLATION OF THE STATUTE, BY THE AGENCY CHARGED WITH ENFORCING IT?

I BELIEVE, AS 215.26 IS DRAFTED, IF THE REASON FOR THE REQUEST FOR THE REFUND IS A, NOT AN OVERPAYMENT BUT THAT A PORTION OF THE FEE, ITSELF, WAS UNCONSTITUTIONALLY LEVIED, THEN I DON'T THINK THE COMPTROLLER, AS THAT STATUTE IS WRITTEN, HAS AUTHORITY --

YOU KEEP MIXING, THOUGH, YOU START OUT WITH STATUTORY CONSTRUCTION, IN THAT THEY WEREN'T AUTHORIZED TO DO THAT, BECAUSE THE STATUTORY CONSTRUCTION, BUT THEN YOU SHIFT OVER AND SAY THAT IT WAS DONE UNCONSTITUTIONALLY, SO WE ARE -- I AM AFRAID WE ARE HAVING DIFFICULTY, REALLY, UNDERSTANDING WHAT YOUR CLAIM IS HERE, AS TO WHETHER IT IS D ON, IN OTHER WORDS ARE YOU SAYING THAT, IF THE STATUTE WAS INTERPRETED CORRECTLY, THAT THEY WOULDN'T HAVE BEEN AUTHORIZED TO CHARGE THE FEE AND COLLECTED IT IN A WAY THAT THEY DID IN THE OVERALL SCHEME, OR ARE YOU SAY SAYING THAT THE STATUTE, AND THEN COMBINED WITH THE WAY THAT THEY HAVE ENFORCED IT, IS UNCONSTITUTIONAL? THAT IS THAT, AND SO YOU ARE TALKING STRICTLY ABOUT A CONSTITUTIONAL CLAIM HERE.

MY CLAIMS, AND I THINK I UNDERSTAND, NOW, WHERE WE TALKED PAST EACH OTHER, AND I APOLOGIZE FOR CAUSING CONFUSION. MY CLAIMS, IN COUNT I, ARE SOLELY CONSTITUTIONAL.

WHAT IS THE ALLEGATION IN COUNT I, THEN, THAT TELLS US, IN VERY CLEAR TERMS AND LANGUAGE?

I THINK THE AMENDED COMPLAINT SPECIFIES THAT, WHAT THE AGENCY DID WAS, THE AGENCY WENT AHEAD AND USURPED ITS AUTHORITY AND CHARGED WHAT WAS, IN EFFECT A TAX, LEVIED A TAX, THEN THE AGENCY WENT AHEAD AND TOOK THAT TAX FROM JUST SIX COUNTIES, WHERE THE PEOPLE THAT WERE PAYING THE TAX, HE EVEN AMONGST THOSE SIX COUNTIES, WERE PAYING ARBITRARILY, BASED ON WHERE THEY LIVE, AND THE EFFORT TO REFUND IT, WE SUBMIT THAT THE ENTIRE SCHEME WAS UNCONSTITUTIONAL WITHIN COUNT I. WE DO IT, I THINK, VERY EXPLICITLY WITHIN THE AMENDED COMPLAINT AND RAISE ONLY CONSTITUTIONAL CHALLENGES.

WHEN YOU SAY THE AGENCY DID THIS, THEY DID IT PURSUANT TO THEIR RULE-MAKING AUTHORITY, AND I GUESS MAYBE WE HAVE TWO THINGS THAT ARE GOING ON HERE THAT ARE MIXED UP. ONE IS WHETHER YOU HAD TO APPLY FOR THE REFUND, AND THE 215 CHALLENGE. THE PART THAT I THINK I AM HEARING THAT JUSTICE ANSTEAD IS ASKING ABOUT IS WY WOULDN'T THE APPROPRIATE WAY TO ATTACK THAT, THAT IS THAT IF SOMEBODY IS CHARGING A FEE THAT IS EHAN THEY SHOULD HAVE OR DOING THAT THROUGH THE ADMINISTRATIVE PROCEDURE REALM, BECAUSE IF AN AGENCY IS ACTING IMPROPERLY, DOESN'T THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES GIVE THE AGENCY THE FIRST CHANCE TO HAVE THAT CORRECTED THROUGH THAT PROCESS.

WELL, I --

IS THAT TWO DIFFERENT THINGS, THAT IS WHETHER THE COMPTROLLER CAN GIVE YOU A REFUND BUT YOU HAD TO DO THAT BEFORE COMING TO COURT, VERSUS WHETHER IT SHOULD BE

PURSUED THROUGH THE ADMINISTRATIVE ROUTE.

I WOULD LIKE TO ADDRESS THE EXHAUSTION OF ADMINISTRATIVE REMEDIES ISSUE, BECAUSE I AGREE THESE ARE TWO DIFFERENT ISSUES GOING ON HERE, BUT ON THE EXHAUSTION OF ADMINISTRATIVE REMEDIES, THAT DOESN'T APPLY FOR TWO REASONS. FIRST, THAT DOCTRINE, WHICH SMYVEN AND ITS PROGENY, APPLIES TO DISPUTES WITHIN THE SCOPE OF CHAPTER 120. IT IS OUR CONTENTION THAT, AS A LEGAL MATTER, UNDER AMRATH AND ITS PROGENY, THE FLORIDA EXPO CASE, THE WJA REALTY CASE, BOTH OF WHICH WERE DISCUSSED IN OUR BRIEFS, THERE HAS BEEN A GRANT FROM THE CONSTITUTION AND THE LEGISLATURE THAT PUTS, WITHIN THE EXCLUSIVE JURISDICTION OF THE CIRCUIT COURTS, SUBJECT MATTER JURISDICTION TO HEAR THESE KINDS OF TAX DISPUTES, AND THAT SUBJECT MATTER JURISDICTION IS EXCLUSIVE, EVEN AS AGAINST AGENCIES, SO I DON'T HAVE TO EXHAUST ADMINISTRATIVE REALMTIS -- REMEDIES AS A LEGAL MATTER.

THIS ISN'T IN THE FIRST DISTRICT OPINION OR IS IT?

IT IS NOT ANYWHERE WITHIN THEIR OPINION. THEY ADDRESSED THE ISSUE. IT WAS IN OUR BRIEFS BEFORE THE CIRCUIT COURT.

THIS WHOLE THING SHOULD HAVE BEEN BROUGHT UP IN THE CONTEXT OF A CLASS CERTIFICATION.

RIGHT. THAT WAS ADDRESSED IN OUR INITIAL BRIEF AS WELL AND AT THE ORAL ARGUMENT AT THE FIRST DISTRICT COURT OF APPEAL. I DO PERCEIVE THERE TO BE AN APPELLATE JURISDICTION AT THE FIRST DISTRICT COURT OF APPEAL, BUT I WOULD LIKE TO ADDRESS THE EXHAUSTION OF THE ADMINISTRATIVE REMEDIES DOCTRINE ON THE MERITS. LETS E THAE WERE GOING TO APPLY KEY HAVEN AND ITS PROGENY. I THINK FACTUALLY, ON THIS CASE, KEY HAVEN IS AN INAPPROPRIATE ANALYSIS, BECAUSE THAT CASE SAYS WE HAVE TO EXHAUST ADMINISTRATIVE REMEDIES WHERE THE LITIGANT CAN GET, IN THE ADMINISTRATIVE FORUM, THE SAME RELIEF THAT THEY ARE TRYING TO GET IN THE CIRCUIT COURT, AND WE CAN'T. WE ARE ASKING FOR A REFUND ON BEHALF OF EVERYBODY UNDER 1.220, BECAUSE WHEN YOU ARE TALKING ABOUT A \$1 TO \$4 OVERCHARGE AS TO ANY ONE PERSON THAT AGO GATES TO AWFUL LOT OF MUST NOT -- THAT AGGREGATES TO AN AWFUL LOT OF MUSCLE, 1.2440, IS AN ADMINISTRATIVE REMEDY, WE HAVE NO PROCESS TO GET A REFUND, THAT WE KNOW OF, ON BEHALF OF THE ENTIRE CLASS OF PEOPLE. A REFUND COULD HAVE EXCEEDED THE RULE. THE RULE DOESN'T EXIST ANYMORE, BECAUSE THE PROGRAM IS ENDED, BUT IF ALL I SUCCEEDED IN WAS SETTING ASIDE THAT RULE, I WILL HAVE LOST FOR MY CLIENTS. MY CLIENTS, AS FRAMED WITHIN OUR COMPLAINT, ARE TRYING TO GET THEIR MONEY BACK FOR ALL 5 MILLION PEOPLE. TO MAKE A CLASS OF ONLY THOSE DILIGENT SOULS WHO HAVE THE TIME AND WHEREWITHAL TO ASK FOR A CLAIM REFUND OVER \$1 TO \$4, BEING AT ISSUE IN ANY GIVEN YEAR --.

WHY CAN'T THE LEGISLATURE DO THAT? I MEAN, THE LEGISLATURE, IT SEEMS TO ME, HAS THE POWER TO PROTECT THE STATE TREASURY, IN SUCH A WAY THAT IT CAN SET UP AN ADMINISTRATIVE PROCEDURE, IN WHICH THERE IS GOING TO BE AN ORDERLY ONE-ON-ONE APPLICATION FOR A REFUND, RATHER THAN THE STATE BE CONFRONTED WH PEOPLE GOING IN ANDTRYIO MAKE THIS TYPE OF CLASS DETERMINATION FOR 5 MILLION OR 14 MILLION PEOPLE. I MEAN, CAN'T THE LEGISLATURE DO THAT?

WELL, THEY CAN, BUT IT IS OUR CONTENTION THEY HAVEN'T, AND THAT THIS IS, RULE 1.220 IS THE ONLY REAL-WORLD PRACTICAL REMEDY MY CLIENTS HAVE AS A GROUP, AND THAT THE ADMINISTRATIVE PROCESS DOES NOT RECOGNIZE THAT. WE THINK THAT CLASS ACTIONS ARE UNIQUE CREATURE OF THE CIRCUIT COURTS OF FLORIDA. MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME.

JUST BRIEFLY, I WOULD, ALSO, POINT OUT THAT WE CONTEND THAT, UNDER THIS COURT'S DECISION IN ROTH, THIS COURT SAID THAT, WHERE THE ADMINISTRATIVE ISSUES AND THE CONSTITUTIONAL ISSUES ARE COMPLETELY INTERTWINED, THAT YOU CAN DO AWAY WITH THE APPLICATION OF THE KEY HAVEN DOCTRINE AND ALLOW THE CASE TO GO DIRECTLY TO CIRCUIT COURT RESOLUTION. WE CONTEND THAT, WHERE THE CIRCUIT COURT IS FACED WITH STILL ADDRESSING TWO OF OUR THREE COUNTS ON THE CONSTITUTIONAL GROUNDS AND THE FACT PATTERN IS THE SAME FOR ALL THREE COUNTS, THAT WE OUGHT TO BE ABLE TO GO AHEAD, EVEN WITH THE APPLICATION OF THE KEY HAVEN DOCTRINE, AND GET IT ALL RESOLVED BY THE TRIAL COURT. THANK YOU. MR. CHIEF JUSTICE

MR. TAYLOR.

MAY IT PLEASE THE COURT. I AM ERIC TAYLOR, ASSISTANT ATTORNEY GENERAL FOR THE STATE OF FLORIDA, REPRESENTING THE RESPONDENT IN THIS CASE, THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.

MR. TAYLOR -- GO AHEAD.

I WAS GOING TO ASK, ARE YOU GOING TO ADDRESS WHY WE HAVE JURISDICTION HERE? I GUESS YOU HAD SAID --

JURISDICTION --

WHAT IS THE BASIS FOR OUR JURISDICTION TO TAKE THIS CASE?

I DIDN'T KNOW THAT WAS AN ISSUE. I AM LOST. WHAT DO YOU MEAN --

IS THIS CASE IN CONFLICT WITH NEMAN?

I SEE WHAT YOU MEAN. NO. ABSOLUTELY NOT. YOU THREW ME FOR A LOOP, BECAUSE I DIDN'T KNOW THERE WAS ANOTHER JURISDICTIONAL ISSUE. NO. IT IS NOT IN CONFLICT WITH NEMO AND THESE IS CONSISTENT WITH AMRAC, BECAUSE WE HAVE TO LOOK, FIRST OF ALL, WHY WOULD THE PLAINTIFFS, THE PETITIONERS HERE, BE IN COURT? HOW WOULD THEY GET HERE, JURISDICTIONALLY WEISS? BECAUSE THIS IS BASED, NOT THIS IS AN ASSESSMENT CASE. THIS IS A CLAIM FOR A REFUND, SO THE ONLY WAY THEY CAN GET TO A REFUND, UNDER SECTION 26.0122-E IS THE EXCLUSIVE JURISDICTION. IT SAYS DENIAL AFTER REFUND. SO IT MEANS YOU APPLY UNDER --

WAIT A MINUTE, MR. TAYLOR. LET ME GO AND ASK YOU TO EXPLAIN PAW IT IS TROUBLING TO ME -- TO EXPLAIN, BECAUSE WHAT IS TROUBLING TO ME IS IT DOESN'T LOOK LIKE 220.6 DOESN'T FIT THIS TYPE SITUATION -- OF 215.26 DOESN'T FIT THIS LANGUAGE, BECAUSE IN 215.26, THERE IS AN OVERPAYMENT OF ANY TAX, LICENSE OR ACCOUNT DUE. NOW, OR A PAYMENT WHERE NO TAX, LICENSE OR ACCOUNT IS DUE, ANY PAYMENT MADE IN THE STATE TREASURY IN ERROR. NOW, THE CLAIM IS NOT THAT THIS WAS A PAYMENT THAT WAS MADE IN ERROR. AND WHAT THEIR BASIS FOR IT IS THAT THIS WAS AN UNLAWFUL TAX, AND SO WHAT I AM HAVING A HARD TIME, SO IT COULDN'T AND OVERPAYMENT.

YES, IT CAN.

OKAY.

THAT IS OUR POINT. FIRST OF ALL, I THINK WE HAVE TO UNDERSTAND THAT 215, THE LEGISLATURE SAYS RECOVERS -- COVERS ALL REFUNDS OF MONIES PAID, COVERS ALL REFUND CLAIMS OF MONIES PAID IN THE STATE TREASURY.

WHERE DOES IT SAY THAT, ALL REFUNDS?

WELL, THE REFUND STATUTE, IT IS AFFECTING ALL MONIES PAID INTO THE STATE TREASURY.

BUT IT LISTS THREE PARTICULAR TYPE OF PAYMENTS THAT IT IS COVERING.

WELL, YOUR HONOR, BECAUSE IT DOESN'T SAY THE WORD "FEE", DOESN'T MEAN THAT A FEE IS NOT COVERED OR THE PAYMENT OF A FEE IS NOT COVERED BY 215 --

WHAT I AM ASKING YOU IS TO POINT OUT WHERE IT SAYS "ALL REFUNDS".

IT IS THE POSITION OF THE ATTORNEY GENERAL'S OFFICE WE HAVE TAKEN CONSISTENTLY THAT 215 COVERS EVERY REFUND REQUEST OF ANY MONIES, NO MATTER HOW YOU TITLE IT, THAT IS PAID INTO THE STATE TREASURY.

IS THERE ANY AUTHORITY THAT YOU HAVE BEEN ABLE TO LOCATE THAT WOULD PERMIT THAT, THE REFUND OF OVERPAYMENTS RESPECT BASED UPON CONSTITUTIONAL CHALLENGES THOUGH?

YES. THIS COURT HAS ADDRESSED, THAT ISSUE IS NOT, THAT QUESTION DIDN'T COME UP IN THE BRIEFING, BUT THERE ARE CASES BACK IN THE 1940s AND '50s, WHERE OVERCHARGES, I BELIEVE IT WAS TAMPA ELECTRIC BACK IN THE 1940s THIS COURT HAD BEFORE IT THE ISSUE OF WHETHER OR NOT AN OVERPAYMENT TO THE STATE WAS COVERED IN 215.26 IN A CONSTITUTIONAL CHALLENGE, AND THE ANSWER WAS YES.

SO YOU CAN USE THAT FOR A CONSTITUTIONAL CHALLENGE IS THE POSITION THEY ARE MAKING HERE FOR THE STATE.

THE CHALLENGE --

THE QUESTION IS THAT GOES BACK TO THE FUNDAMENTAL ISSUE. WHETHER IT IS VALID OR NOT, I GUESS, IS THE NEXT STEP, BUT THE ISSUE IS WHETHER YOU CAN USE THAT STATUTE, WHETHER YOU CAN USE THE BASIS THAT WILL DECLARE THIS UNCONSTITUTIONAL IN THIS REFUND ACTION AND THEREFORE WE WILL REFUND YOU THE AMOUNT YOU PAID.

THAT'S CORRECT. THAT'S CORRECT. IN 215, IT IS THERE, THE REQUIREMENT THAT IT SAYS ALL MONIES PAID IN THE STATE TREASURY AND EACH PERSON MUST APPLY, MEANING EVERY PARTY MUST APPLY. THEN CAME THE EXCEPTION OF THIS COURT IN NEMOTH, WHEREBY WE ARE INTERPRETING, AND I AM NOT SURE WHETHER THIS COURT HAS EVER THOUGHT OF IT IN THIS ASPECT, BUT IT WAS AN ACCESS TO COURTS ISSUE, IN THAT WHERE THEY FOUND 215, BECAUSE THIS COURT IN NEMOTH, UPHELD 215 IN ALL ASPECTS, EXCEPT WHETHER IT WAS ENTITLED TO GO TO THE COMPTROLLER. THEY ARE SAYING THE LAW OF THIS STATE --

BUT ISN'T THAT FUTILE TO GO THROUGH THE COMPTROLLER, BECAUSE HE HAS NO AUTHORITY TO DECLARE --

THAT IS THE WHOLE POINT OF THIS CASE. THEY ARE NOT CHALLENGING FACIAL VALIDITY. WE REASONED, AND THAT IS WHAT THIS -- WE READ, AND THAT IS WHAT THIS COURT HAS TO DECIDE AND WHAT THE FIRST DCA AND SECOND DCA HAS RENDERED IS WHETHER NEMOTH REQUIRES A FACIAL VALIDITY, BECAUSE GRANTED THE SUPREME COURT CANNOT DECLARE A STATUTE AS UNCONSTITUTIONAL. HOWEVER, THIS COURT SHOULD INTERPRET THEIR OWN PRACTICES AND NOT REACH CONSTITUTIONAL QUESTIONS. WE HAVE A SET BY AN AGENCY RULE, AND THE AGENCY WHO WROTE THE RULE CAN UNWRITE IT AND ISSUE A REFUND, THEN IT SHOULD GO THROUGH THE ADMINISTRATIVE PROCESS.

ISN'T IT JUST AS FUTILE TO GO THROUGH THE ADMINISTRATIVE PROCESS, IF THE ACT IS FACIALLY

-- UNCONSTITUTIONAL AS APPLIED, AS IT IS WHEN IT IS FACIALLY UNCONSTITUTIONAL?

NO, SIR.

WHY NOT?

FACIALLY MEANS, UNDER NO CIRCUMSTANCES OF LAW CAN IT STAND, THAT THERE ARE NO SET OF FACTS KNOWN THAT CAN SUPPORT IT. FACIALLY, AS APPLIED, MEANS HOW THE AGENCY AND THE STATE IS INTERPRETING THE LAW OR WRITING ITS RULES. IN OTHER WORDS, IF THEY CAN CHANGE THEIR INTERPRETATION TO COME WITHIN THE SCOPE OF A CONSTITUTIONAL INTERPRETATION, THAT IS ACTION THAT CAN BE ADDRESSED BY THE AGENCY AND THE STATE OFFICIALS.

ISN'T IT MISLEADING, WHEN YOU USUALLY THINK OF AN APPLIED CONSTITUTIONAL CHALLENGE, IT IS SOMETHING THAT IS STILL A MATTER OF WHAT, HOW A STATUTE IS WORKING, OUTSIDE OF THE ADMINISTRATIVE PROCESS. GO, IF THIS IS, IN FACT, THE STIONIS, WHEN IT IS INVOLVING A CHALLENGE TO A RULE, IS THERE, DOES THEM OUGHT AND THOSE CASES -- DOES NEMOTH AND THOSE CASES DIDN'T INVOLVE CHALLENGES TO THE RULE.

THAT'S CORRECT.

WHAT CASES FROM THE SUPREME COURT OF THIS STATE HAVE INTERPRETED HOW 215 OPERATES IN CONJUNCTION WITH RULES THAT HAVE BEEN PROMULGATED, PURSUANT TO STATUTE?

WE HAVE CASES ALL THE TIME, YOUR HONOR, THAT COME BEFORE THE CIRCUIT COURTS, THE COURTS OF APPEAL AND THIS COURT, SEEKING A REFUND THROUGH AN ADMINISTRATIVE PROCEDURE. ALL THE TIME.

WHAT HAPPENS IS THAT EACH -- IF THIS, IF THE FIRST DISTRICT OPINION STANDS, THEN DO ALL 5 MILLION TAXPAYERS HAVE TO GO AND FILE INDIVIDUALLY, WITH THE COMPTROLLER? IS THAT THE FIRST STEP?

THAT IS THE FIRST STEP, BECAUSE THAT IS WHAT THE LEGISLATURE MANDATES.

IT WOULD BE ALREADY BARRED, BECAUSE IT IS MORE THAN THREE YEARS SINCE THE FEES WERE IMPOSE IMPOSEED?

MOST LIKELY YES.

SO, SO WE TALK ABOUT THE REAL LIFE.

THAT'S CORRECT.

WHAT DO YOU MEAN MOST LIKELY? THIS WAS FROM 1995 THROUGH 1998. RIGHT?

SEE, 1998, NOW, WOULD BE BARRED. AT THE START OF THE LITIGATION, SOME PEOPLE --

WE ARE TALKING ABOUT THE COUNT IS GONE. ASSUMING THERE IS SOME WAY TO SAY NO AND WE WILL GO BACK TO THE FIRST DISTRICT, THE DAY OF THE OPINION, SO THAT YOU WOULD REQUIRE EVERY PERSON, THEN, WHO WANTS A REFUND TO HAVE TO FILE INDIVIDUALLY.

THAT IS WHAT THE LEGISLATURE REQUIRES.

AND THEN THE COMPTROLLER CAN'T DO ANYTHING. THEY SAY THAT WAS A RULE OF THE DEPARTMENT OF MOTOR VEHICLES.

WELL, YOUR HONOR, LET ME INFORM YOU THAT THERE IS A RULE, WITHIN THE COMPTROLLER'S OFFICE THAT, WHEN A REFUND COMES IN FROM ANY AGENCY, WHETHER IT IS DMV, WHETHER IT IS DEPARTMENT OF REVENUE, THAT REFUND CLAIM IS HEARD BY THE AGENCY. THE COMPTROLLER DOESN'T TAKE THAT POSITION. HANDS OFF.

WHEN YOU SAY THE COMPTRR DOESN'T HAVE THE AUTHORITY TO DO SOMETHING, THAT IS TRUE AS YOU ARE ATTACKING THE STATUTE BUT NOT WHEN YOU ARE ATTACKING A RULE.

THAT'S CORRECT. I DON'T KNOW THE RULE CITE, BUT I CAN TELL THAT YOU THE RULE SAYS THAT ANY AGENCY THAT ADMINISTERS A TAX, FEE OR SURCHARGE, IS THE ONE RESPONSIBLE FOR RECEIVE THE REFUND REQUEST AND RULE UPON IT AND THEREFORE SEND THE INFORMATION TO THE COMPTROLLER FOR PAYMENT.

WHAT ABOUT THEIR ARGUMENT THAT THERE IS REALLY, THAT CHAPTER 120 DOESN'T APPLY, BECAUSE THIS IS A CHALLENGE TO A LEGAL TAX, AND THIS EXCLUSIVE JURISDICTION IN THE CIRCUIT COURT.

THERE IS NO TAX INVOLVED IN THIS CASE, YOUR HONOR. THERE IS NO CHALLENGE. THE SEMANTICAL THING, OUR POINT IS FIRST OF ALL THERE IS NO FACIAL CHALLENGE. THE 325.214, WHICH SAID YOU CAN CHARGE UP TO \$10. NO FACIAL CHALLENGE TO THAT. THE DEPARTMENT --

IN COUNT II THERE IS.

COUNT II. WE ARE ONLY TALKING ABOUT COUNT I HERE. THEN THE AGENCY SET THE FEE AT \$10. THE --

WHAT IS THE FACIAL CHALLENGE TO THE 316 THAT SAYS WHAT? WHAT IS THE FACIAL CHALLENGE IN THE OTHER COUNTIES?

THE -- IN THE OTHER COUNTS? ANOTHER OTHER COUNT, COUNT II, IS THE REENACTED AMENDED TO 325.214 SUBSECTION 2 IS UNCONSTITUTIONAL, THAT THE LEGISLATURE CAN JUST NOT SAY \$10. THAT IS COUNT II. THEY REMOVED --

CAN YOU ADDRESS THE ROUGH ISSUE, WHICH IS WHY AREN'T THESE CASES INTERTWINED? IT IS THE SAME \$10 FEE. THE CIRCUIT COURT SHOULD HEAR THESE ISSUES, BECAUSE IT IS THE SAME.

THEY ARE NOT THE SAME ISSUES. ONE IS A FACIAL CHALLENGE TO THE STATUTE, COUNT II. THE FIRST ONE IS NOT A FACIAL CHALLENGE TO A STATUTE, AND THAT IS WHERE 215, IN NEMOTH, DOES, IN FACT, COME INTO PLAY, BECAUSE THEY ARE SEEKING A REFUND HERE. WHERE THE DIFFERENCE IS, IS THAT VER WAS SET, NO MATTER WHAT WAS BY THE AGENCY, BY THEIR ADMINISTRATIVE ACTIONS, IN THAT IS A MATERIAL DIFFERENCE BETWEEN THE TWO, BECAUSE AS I SAID, THEY ARE NOT CHALLENGING, IN COUNT I, THAT THE LEGISLATURE COULD NOT SAY UP TO \$10. THEY ARE SAYING, WHEN YOU DID THAT, WE ALLEGED THAT YOU ARE CHARGING TOO MUCH. THE OVERCHARGE IS WHAT I REFER TO, JUSTICE WELLS, IS AN OVERCHARGE, DOES NOT ELEVATE IT TO A TAX. NO AGENCY HAS THE RIGHT TO MAKE A TAX. YOU CANNOT -- THEY ARE CHARGING TOO MUCH, BUT THAT DOES NOT ELEVATE IT TO BE A TAX AND A TAX CHALLENGE.

THAT IS THE REASON, THOUGH, THAT I COME BACK TO WHETHER THIS 215.26 -- I MEAN, CLEARLY, THIS COURT, IN GWYNN LIEN, DID NOT -- IN QUINLAN, DID NOT FEEL THAT THE REFUND STATUTE APPLIED. IT DID NOT REQUIRE THE REFUND STATUTE.

CORRECT.

SO THIS COURT CAME ALONG, THEN, IN NEMOTH AND MADE THAT EXPRESS THAT, IT DID NOT APPLY WHERE YOU HAD, THE COMPTROLLER IN A POSITION THAT HE COULD NOT MAKE THE

DETERMINATION THAT THERE HAD, THE STATUTE WAS UNCONSTITUTIONAL. I RECOGNIZE IT DIDN'T USE THE WORD FACIAL OR, AND THAT TYPE OF ARGUMENT, BUT 215.26, REALLY, DOESN'T SAY ANYTHING ABOUT AN OVERCHARGE. IT SAYS AN OVERPAYMENT. ISN'T THERE A DIFFERENCE?

NO. I DON'T REALLY THINK THERE -- I THINK THE CRUX THAT WE HAVE TO COME TO A DECISION IN THIS COURT IS A COUPLE OF THINGS. ONE, WHAT IS THE SCOPE OF 215. IS THE SCOPE OF 215 COVERING EVERYTHING PAID INTO THE STATE TREASURY? WE BELIEVE IT DOES. IT BECOMES SEMANTICAL, WHETHER IT IS AN OVERPAYMENT, OVERCHARGE OVERCHARGE. IT IS A STATUTE BY WHICH THE LEGISLATURE SAID, IF YOU, A PERSON IN FLORIDA, PAID MONEY INTO THE STATE TREASURY, THIS IS OW YGET O, NO MATTER HOW YOU DO IT.

I AM SORRY TO KEEP INTERRUPTING, BUT TO HAVE THAT TYPE OF INTERPRETATION OF 215, WE WOULD HAVE TO RECEDE FROM QUINLAN AND NEMOTH, BECAUSE EVERYTHING THAT WENT IN THE STATE TREASURY THAT WAS NOT REFUNDED OUTDID NOT COME UNDER 215.26.

YOU DID NOT HAVE TO RECEDE, BECAUSE YOUR POINT THERE WAS, FIRST OF ALL YOU DID FIND THE TIME LIMITS IN 215 CORRECT AND OTHER INSTANCES IN FOOTNOTE 6 APPLY, BUT WHAT YOU FOUND AND THIS IS WHERE WE STARTED EARLIER THAT, SAYING THIS IS ALMOST LIKE AN ACCESS TO COURTS ISSUE THAT CAME UP IN NEMOTH, IS IT WOULD HAVE BEEN FUTILE TO THEM AS WITH MR. QUINLAN, TO ASK THE COMPTROLLER TO DO SOMETHING IT CAN'T DO. THAT WAS THE COURT'S RULING IN BOTH CASES, WAS THAT IT IS BASED ON FUTILITY, AND LOOKING OVER DECISIONS, AGAIN, WHERE THIS COURT SAID THE TAXPAYERS CLAIM BEING SOLELY THAT THE TAX IS UNCONSTITUTIONAL, THAT THE TAX STATUTE IS UNCONSTITUTIONAL, IT IS AN EXCEPTION GRANTED, AND NOT TO HAVE TO DO IT, BECAUSE HOW WOULD YOU RECEDE AND THEN SAY THAT IT IS NOT FUTILE? STILL THE PROBLEM WITH LIE THAT, THE COMPTROLLER WOULD FIND IT TO BE FUTILE TO FACIALLY ADDRESS A STATUTE, BUT IN THIS SITUATION WE HAVE THE AMOUNT OF THE FEE SET BY THE AGENCY, DONE BY RULE. AND THEREFORE, THE AGENCY, IT IS NOT FUTILE, UNLESS THIS COURT WANTS TO GO AS FAR AS SAYING THAT THE AGENCY, HAVING SET THE RULE, IS UNWILLING TO UNWRITE ITS RULE AND GIVE A REFUND.

NOW, UNDER THE OLD STATUTE, THE AGENCY SET THE ORIGINAL STATUTE, THE AGENCY SET THE \$10 FEE, THAT YOU COULD DO IT UP TO \$10.

THAT IS CORRECT.

UNDER THE REVISED STATUTE, THE FEE WAS \$10, THE STATUTE SAID.

THAT'S CORRECT, UNDER COUNT II.

SO UNDER BOTH OF THESE CS WHAE 5 MILLION PEOPLE ARE SEEKING IS A REFUND OF THAT PORTION OF THE FEE THAT IS IN EXCESS OF THE ADMINISTRATIVE COSTS. CORRECT?

THAT IS COUNT I, AS I UNDERSTAND IT, IF YOU FACIALLY CHALLENGE COUNT II, THEY GET IT ALL BACK, ALL \$10, BECAUSE THAT IS SAYING THAT, UNDER NO CIRCUMSTANCES, COULD YOU SET \$10 WHATSOEVER.

SO I MEAN, DOESN'T IT, REALLY STILL COME DOWN TO, EVEN IN COUNT II, THAT THAT \$10 IS IN EXCESS OF WHAT IT COST TO ADMINISTER THE PROGRAM?

I BELIEVE THAT IS THEIR ALLEGATION, YES.

SO MY QUESTION, THEN, COMES TO THIS. WHY, THEN, ISN'T IT, WOULDN'T IT BE, UNDER THE CIRCUMSTANCES OF THIS CASE, MORE APPROPRIATE TO HAVE A CIRCUIT COURT HEAR IT ALL BECAUSE IN ESSENCE, BOTHNTS, THEPEOPLE WANT WHAT IS IN EXCESS OF THE ADMINISTRATIVE

COSTS OF ADMINISTERING THIS PROGRAM.

WE WOULD HAVE TO EXTEND THE EXCEPTION IN NEMOTH TO INCLUDE NONFACIAL CHALLENGES TO STATUTES.

BUT NEMOTH DOES, IN FACT, SAY CONSTITUTIONAL CHALLENGES. CORRECT?

IT DOES SAY STATUTE IN THERE IN THE TAX. TAX CAN ONLY BE SET BY STATUTE. IT TALKS ABOUT TAX IN STATUTES.

WHEN YOU READ COUNT I AND COUNT II, WE REALLY ARE TALKING ABOUT THIS STATUTE WHICH ALLOWS THE IMPOSITION OF THIS FEE, CORRECT? I AM JUST WONDERING WHY IT WOULDN'T BE, IN THIS CASE, A BETTER --

IT IS JUST --

-- SOLUTION, TO HAVE THE CIRCUIT COURT HEAR IT ALL, SINCE YOU AGREE THE CIRCUIT COURT, IN FACT, HAS JURISDICTION OVER TWO OF THE COUNTS, CORRECT?

CORRECT, IN THE FACIAL CHALLENGE OF THE STATUTES, BUT, YOUR HONOR, OUR POINT IS, ALSO, TO DEFEND 215.26, AND KEEP IT AS TIGHT AS POSSIBLE, BECAUSE THE LEGISLATURE HAS SAD ONLY IF YOU FOLLOW 215, YOU GET A CHANCE TO A REFUND. THESE PEOPLE HAVE NOT FOLLOWED 215.26, AND THIS COURT HAS WRITTEN AN EXCEPTION. WE SAY THAT EXCEPTION IS NARROW AND ONLY APPLIES TO FACIAL CHALLENGES OF STATUTES, AND WHERE IT IS FUTILE, AND THIS IS A CASE WHERE IT IS NOT FUTILE TO GO FORWARD TO THE AGENCY. TO GO, TO DO AS YOU WANT MAY SOUND NICE FOR CONVENIENCE, BUT IT, ALSO, OPENS THE EXCEPTION TO LARGER CLASSES OF PEOPLE NOT HAVING TO GO THROUGH 215, WHICH IS WHAT THE LEGISLATURE DICTATES DICTATES.

IS THERE ANOTHER POLICY ISSUE WHICH IS WHETHER, SO THEY HAVE THE ABILITY, WHEN THIS RULE WAS FIRST PASSED, TO CHALLENGE THE RULE AT THE TIME, RATHER THAN TO WAIT AFTER THE FACT, AFTER THE MONEY HAS BEEN COLLECTED?

THEY COULD HAVE DONE IT EITHER WAY, YOUR HONOR. THERE IS A RULE CHALLENGE COULD HAVE BEEN HAD BEFORE THE RULE WAS ACTUALLY IMPLEMENTED, PRIOR, DURING THE PUBLIC PROCESS, AFTER IT WAS PUT INTO EFFECT, SOMEONE COULD HAVE SAID WAIT A MINUTE, I WANT TO CHALLENGE THE RULE, AND THEY COULD APPLY FOR A REFUND, BY GOING IN AND SAYING, TO THE HIGHWAY SAFETY, I AM FILING A REFUND CLAIM, UNDER 215.26. MY GROUNDS ARE, ARE YOU ARE CHARGING TOO MUCH, BECAUSE YOUR PROGRAM IS REALLY NOT AS EXPENSIVE AS YOU ARE CHARGING ME.

AND THEN WHAT WOULD HAPPEN FROM THERE?

THAT WOULD GO THROUGH THE AGENCY, TO, AS THIS COURT HAS RECOGNIZED IN OTHER CASES, IT ALLOWS THE AGENCY TO PRESENT ITS CASE, SHOW ITS RECORD WHY IT IS OUT THERE.

AND THEN THE AGENCY COULD, IN FACT, CHANGE THEIR RULE AND SAY OOPS, YOU ARE RIGHT. THIS \$10 CHARGE THAT WE HAVE BEEN CHARGING IS REALLY TOO MUCH. IT SHOULD ONLY BE \$4.

CORRECT. AND IT COULD, IT HAS THE AUTHORITY, UNDER THE COMPTROLLER'S RULE, WHICH I REFERRED TO EARLIER, TO ORDER A REFUND BE PAID. THAT HAS NEVER BEEN IN QUESTION. NO ONE IN THE PETITIONERS ARE SAYING THAT THAT POLICY, WHICH WE HAVE ARGUED FROM DAY ONE, IS NOT IN PLACE. SO I THINK I WILL END IT HERE, UNLESS THERE ARE ANY FURTHER QUESTIONS, BY SAYING THIS IS WHAT THE COURT HAS TO ADDRESS, ESPECIALLY JUSTICE WELLS, UR QUESTION OF WHAT IS GOING TO BE THE SCOPE OF NEMOTH IN 215, AND HOW IS IT

LIING IN THERE WITH THE FUTILITY AND THE ABILITY OF AN AGENCY TO CHANGE ITS MIND AND CORRECT ITS ERRORS.

LET ME GET BACK TO MY JURISDICTIONAL QUESTION THAT I STARTED WITH. SO WHAT YOU ARE REALLY SAYING IS IN FACT WE WOULD HAVE TO EXPAND THOSE TWO OPINIONS, TO EMBRACE THE CHALLENGE THAT IS BEING MADE HERE, AND THAT, REALLY, THAT IS WHY THERE IS NOT CONFLICT JURISDICTION IN BOTH CASES.

THAT IS MY ANSWER. ABSOLUTELY YES. YOU WOULD HAVE TO EXPAND THOSE TWO CASES, IN LARGE EXCEPTION, TO COVER THIS SITUATION. THANK YOU.

THANK YOU, MR. TAYLOR.

MR. TAYLOR SAID THAT A TAX CAN ONLY BE SET BY STATUTE. I THINK IT IS MORE ACCURATE TO SAY A TAX CAN ONLY BE LAWFULLY SET BY STATUTE.

WOULD YOU ADDRESS BRIEFLY WHAT CASES, WHAT CASE THE FIRST DISTRICT CASE IS IN CONFLICT WITH.

THE FIRST DISTRICT CASE IS IN CONFLICT WITH NEMOTH, BECAUSE THE NEMOTH CASE SAID THAT 215.26 DOESN'T AUTHORIZE THE COMPTROLLER TO GRANT A REFUND FOR A CONSTITUTIONAL CHALLENGE.

DO YOU AGREE THAT THOSE CASES INVOLVED A STATUTE THAT WAS BEING DECLARED NOT A RULE?

I AGREE IN BOTH OF THOSE CASES, IN BOTH NEMOTH AND AMRAC, YOU HAD FACIAL CHALLENGES. I THINK THAT THE UNDERLYING RATIONALES.

CORRECT.

BUT THE UNDERLYING RATIONALES NEMOTH BASED ON 215.26. THERE IS NO LOGICAL SOLUTION AS TO WHY WE ARE GOING TO TREAT IT DIFFERENTLY THAN A FACIAL CHALLENGE. THE COMPTROLLER --

WOULD IT HAVE BEEN DIFFERENT IN 1996, IF A TAXPAYER HAD APPLIED FOR A REFUND, THAT MR. TAYLOR WOULD HAVE BEEN CORRECT IN THAT WHAT WOULD HAVE BEEN DONE IS IT WOULD HAVE BEEN REFERRED TO THE PROCESS TO DETERMINE THE VALIDITY FOR THE REQUEST?

I DON'T KNOW WHAT THE COMPTROLLER WOULD HAVE DONE. I KNOW THAT THERE ARE RULES THAT GRANT THE COMPTROLLER TO ACTOR NOT ACT. HE IS NOT GIVEN THE AUTHORITY TO ACT ON A CONSTITUTIONAL CLAIM. AN OVERPAYMENT IS DIFFERENT THAN AN OVERCHARGE.

BUT IF A FEE IS TOO HIGH, THERE IS NOTHING WITHIN THE ADMINISTRATIVE REALM THAT SAYS OOPS, WE WERE CHARGING \$10 BUT WE REALLY SHOULD BE CHARGING \$8. THEY CAN'T CORRECT THAT THEMSELVES?

NO, MA'AM, I AM NOT SAYING THAT. I BELIEVE THAT THE AGENCY, CERTAINLY A RULE CHALLENGE, N THEORY COULD HAVE BEEN BROUGHT. CERTAINLY SOMEBODY COULD SAY THE FEE IS TOO HIGH, BUT THE RULE CHALLENGE DOES NOT GIVE ME CLIENTS THE ADMINISTRATIVE PROCESS THEY SEEK.

BUT IT IS TOO CUMBERSOME, YOU SAY, FOR 5 MILLION PEOPLE TO APPLY FOR A REFUND, BUT CAN'T THE LEGISLATURE DECIDE THAT THAT IS EXACTLY WHAT IS GOING TO HAVE TO HAPPEN?

WELL, THE LEGISLATURE COULD, BUT THERE IS NO STATUTORY BASIS. THERE IS NOTHING IN CHAPTER 120, WHICH, AGAIN, WE CLAIM WITHIN AMRAC WE ARE IN CONFLICT WITH, BUT THERE IS NOTHING UNDER CHAPTER 120 THAT AUTHORIZES THE GROUP REFUND. I WOULD LIKE TO ADDRESS, THOUGH, THIS NOTION, IF I COULD BRIEFLY, THAT MR. TAYLOR BROUGHT OUT THAT THIS IS NOT A TAX. TO PER A PHRASE GERTRUDESTEIN, A TAX IS -- GERTRUDE STEIN, A TAX IS A TAX IS A TAX, AND IN THE PORT ORANGE CASE MOST POINTEDLY, IT DOESN'T MATTER WHETHER IT IS A FEE OR A LICENSE OR WHAT HAVE YOU, IF IT COSTS MORE TO RUN A PROGRAM OR, IF IN FACT THE CITY IS ENGAGED IN REVENUE MAKING, WE CAN LOOK AT THE UNDERLYING BASIS AND TREAT IT AS A TAX. WE HAVE TO, ON THE PROCEDURAL POSTURE I AM HERE ON, EXCEPT THE PROCESS AS TRUE, BECAUSE IT IS AIN'TER LOCKTORY APPEAL.

HOW DO YOU DEAL WITH SECTION 4 OF 215.26, WHICH SAYS THIS SECTION IS THE EXCLUSIVE PROCEDURE AND REMEDY FOR REFUND CLAIMS BETWEEN INDIVIDUAL FUNDS AND ACCOUNTS IN THE STATE TREASURY? I MEAN, ISN'T THAT, MR. TAYLOR'S ARGUMENT, THAT IF YOU ARE GOING TO GET A REFUND, EXCEPT WITHIN THE LIMITED EXCEPTION, THAT THIS COURT MADE IN NEMOTH, WHERE IT IS SOLELY BASED UPON A CONSTITUTIONAL CHALLENGE, THAT YOU HAVE GOT TO GO THH 215.26?

I DISAGREE, AND I WOULD SAY TO YOUR HONOR, THE FLORIDA EXPORT CASE WHICH WE ADDRESS WITHIN OUR BRIEF, WHILE THIS MAY BE THE POLICY OF THE ATTORNEY GENERAL, TO TAKE THE POSITION THAT THAT IS WHAT THE STATUTE MEANS, THAT IS NOT HOW THE COURTS HAVE INTERPRETED IT, AND THE LEGISLATURE HASN'T CHANGED IT. IN FLORIDA, EXPORT THE FIRST DISTRICT COURT OF APPEAL EXPRESSLY HELD THE COMPTROLLER DID NOT HAVE JURISDICTION. THAT WAS A REFUND ACTION, AS WELL, AND THAT THE CIRCUIT COURT DID. THAT WAS A SLIGHTLY DIFFERENT ISSUE. THE ISSUE THERE WAS SUBJECT MATTER JURISDICTION. MR. CHIEF JUSTICE

YOU HAVE USED YOUR TIME. THANK YOU VERY MUCH. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE. THE COURT WILL TAKE ITS MORNING RECESS.