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**Alvin Mazourek v. Wal-Mart Stores, Inc.**

MR. CHIEF JUSTICE

GOOD MORNING AND WELCOME TO THE TUESDAY ORAL ARGUMENT CALENDAR AT THE FLORIDA SUPREME COURT. THE FIRST CASE ON THE ORAL ARGUMENT CALENDAR IS MAZOUREK VERSUS WAL-MART. MR. WOOD.

MAY IT PLEASE THE COURT. WE ARE GAYLORD HAYWOOD, JR., AND B JORDAN STEWART, REPRESENTING THE -- AND B JORDAN STUART, REPRESENTING THE PETITIONER, AND MARK ALIFF OF THE ATTORNEY GENERAL'S TAX DEPARTMENT REPRESENT THE PETITIONER, THE FLORIDA DEPARTMENT OF REVENUE. THIS CASE PROBABLY HAS THE GREATEST IMPACT ON THE HOMEOWNERS AND PROPERTY OWNERS OF FLORIDA OF ANY CASE - CHIEF JUSTICE

MR. WOOD, LET ME START OFF BY ASKING YOU THIS. IN MY MEMORY, FLORIDA ADOPTED THE SALES TAX IN 1989 AND WERE FOREWARNED -- THE PROPERTY TAX -- IS THIS A CHANGE BY THE PROPERTY APPRAISERS IN WHAT THEY DO WITH THE SALES TAX AS WITH PROPERTY APPRAISALS?

IT IS NOT, YOUR HONOR. THE PROPERTY APPRAISERS OF FLORIDA AND OUR OFFICE HAS REPRESENTED PROPERTY APPRAISERS SINCE 1969, AND UNIFORMLY SINCE THAT TIME, EVEN UNDER WHEN THE COMPTROLLER HAD SUPERVISION OF THE PROPERTY APPRAISERS, ALL OF THE COSTS THAT ARE REQUIRED TO BRING PROPERTY TO A TAXPAYER'S PLACE OF BUSINESS AND TO PUT IT IN PLACE HAS ALWAYS BEEN A PART OF THE ASSESSMENT.

IS THERE ANY PAPER TRAIL HISTORICALLY, TO ESTABLISH THAT THAT HAS BEEN UNIFORM OF PROPERTY APPRAISERS ACROSS THE STATE?

FROM MY MEMORY, I KNOW THAT THIS IS SO. I WOULD HAVE TO THINK ABOUT IT A BIT AS TO WHAT THE OLD COMPTROLLERS MANUAL SAID, BECAUSE I FRANKLY WAS NOT EXPECTING THAT QUESTION, JUSTICE ANSTEAD.

WELL, BUT IN THE MANUAL THAT WAS IN EFFECT, AS I UNDERSTAND IT, THERE 1997, IT SAYS THE SALES TAX IS NOT TO BE INCLUDED. NOW, AS I UNDERSTAND IT, THE POSITION OF THE TAX APPRAISERS ARE THAT THE TAX APPRAISERS CAN TAKE INTO CONSIDERATION, BOTH THE MARKET DATA APPROACH, THE COST APPROACH, AND TAKE INTO CONSIDERATION ALL EIGHT FACTORS IN THE STATUTE, AND THEN MAKE DETERMINATION AS TO WHAT IS THE PROPER APPRAISED VALUE. IS THAT CORRECT?

THAT IS CORRECT, YES.

SO IN ONE OF THESE, THE MANUAL SAID THAT YOU DON'T USE THE SALES TAX. I MEAN, YOU DEDUCT THE SALES TAX OUT. ISN'T THAT RIGHT?

THE MANUAL THAT WAS PROMULGATED IN 1971 AND WHICH WAL-MART INCORRECTLY CHARACTERIZES AS HAVING BEEN PROMULGATED BY THE FLORIDA ADMINISTRATIVE CODE, WHICH IT WAS NOT, WAS REVISED EXTENSIVELY, IN ABOUT A TWO-YEAR PROCESS THAT THE DEPUTY OF REVENUE UNDER -- THAT THE DEPARTMENT OF REVENUE UNDERTOOK AND REPLACED IT DECEMBER 31, 1997. THOSE REVISED GUIDELINES HAVE NO MENTION WHATSOEVER OF SALES TAX, EXCEPT TO STATE THAT IN A COST APPROACH THAT THEY SHOULD DEFINITELY BE

INCLUDED. THE LANGUAGE --

WHERE DOES THAT SAY THAT IN THE MANUAL, THAT IT DEFINITELY -- I CAN'T FIND THE WORD SALES TAX IN THE COST-APPROACH MANUAL.

LET ME READ IT TO YOU, YOUR HONOR. THIS IS FROM THE DEPARTMENT OF REVENUE REVISED STANDARD MEASURES OF VALUE. IT SAYS --

WHAT DATE IS THAT?

THIS IS DECEMBER 31, '97.

OKAY. DECEMBER 31, '97. BUT PRIOR TO DECEMBER 31, '97, DID IT USE THE WORD "SALES TAX" IN THAT MANUAL?

I THINK THAT THE, MY RECOLLECTION OF THE OLD MANUAL IS THAT IT SAID THAT ALL COSTS WERE TO BE CONSIDERED IN THE COST APPROACH. IT HAD THAT UNFORTUNATE LANGUAGE ABOUT THE MARKET APPROACH, WHICH WAS TAKEN OUT, BECAUSE IT WAS AT VARIANCE WERE FOUND APPRAISAL PRACTICE.

THIS PROPERTY THAT WE ARE HAVING TO DEAL WITH TODAY, WAS APPRAISED AS OF JANUARY 1, '97.

THAT'S CORRECT, YOUR HONOR.

PRIOR, A YEAR BEFORE THE NEW MANUAL CAME OUT. ISN'T THAT RIGHT?

THAT'S CORRECT. NOW, BOTH THE LEGISLATURE AND THE FORMER MANUAL STATE THAT THE DEPARTMENT OF REVENUE GUIDELINES ARE -- GUIDELINES ARE THE BENEFIT OF PROPERTY APPRAISERS. THEY ARE TO AID AND ASSIST THE PROPERTY APPRAISERS.

WHEN WE TALK ABOUT COST APPROACH, WE'RE TALKING ABOUT WHAT THE APPROVED BUYER WOULD PAY FOR THE PROPERTY AND WHEN YOU ARE DETERMINING THAT FACT DO YOU NORMALLY INCLUDE SALES TAX?

YES, JUSTICE QUINCE. THE REASON IS, IN A COST APPROACH, FOR EXAMPLE, THE FIFTH DISTRICT COURT OF APPEAL RECOGNIZED THAT THE STORE FIXTURES THAT WE ARE TALKING ABOUT IN THE WAL-MART SUPERSTORE WERE THREE MONTHS OLD. THERE IS NO USED MARKET ANYWHERE IN THE UNITED STATES IN THREE-MONTH-OLD STORE FIXTURES, SO OF NECESSITY, THE PROPERTY APPRAISER CONSIDERED ALL OF THE COSTS NECESSARY FOR THE TAXPAYER TO ACQUIRE THE PROPERTY AND BRING IT TO ITS LOCATION ON CORTEZ BOULEVARD IN BROOKSVILLE.

WELL, BUT, THE NEXT STEP TO THIS IS THAT, WHEN YOU ARE PRAISING -- WHEN YOU ARE APPRAISING THIS KIND OF PROPERTY ARE YOU APPRAISING THE INTRINSIC VALUE OF THAT PROPERTY?

THAT IS EXACTLY WHAT THE EIGHT CRITERIA AND THE LEGISLATURE HAS SET OUT AND WHAT THIS COURT SAID, AS EARLY AS 1943, IN THE KNIGHT AND WALL CASE, THAT WHEN THERE IS NO MARKET, YOU HAVE TO LOOK AT ALL THE FACTORS, THE INTRINSIC FACTORS GOING INTO THE VALUE OF THE PROPERTY.

I GUESS MY FINAL QUESTION IS, THEN, IS THERE SOME PROBLEM, PROBABLY, WITH USING THE COST APPROACH IN EVALUATING THIS KIND OF PROPERTY, IF THE PROPERTY IS SUPPOSED TO BE EVALUATED JUST FOR ITS INTRINSIC VALUE, AND IF THE COST APPROACH INCLUDES THE SALES TAX, WHICH YOU KNOW, ORDINARY PERSON WOULD NOT THINK WOULD BE A PART OF THE

INTRINSIC VALUE OF THE PROPERTY.

WELL, JUSTICE QUINCET IS THE VALUE OF THE PROPERTY AT ITS LOCATION, NOT IN A DEALER'S SHELF. IF YOU WERE APPRAISING WHAT IS THE MARKET VALUE OF THIS PROPERTY ON SOME DEALER'S SHELF, WHICH IS WHAT THE WAL-MART'S PROPERTY APPRAISER TOOK IN THE TRIAL COURT, BUT WE HAVE TO VALUE THE PROPERTY AT ITS MARKET VALUE IN USE, AND THIS MEANS ALL OF THE INSTALLATION, RIGGING, DEBUGGING, FOUNDATIONS, ALL OF THE THINGS THAT WE MENTIONED IN OUR BRIEF THAT EVERY APPRAISAL ORGANIZATION IN AMERICA AND EVEN WAL-MART'S OWN APPRAISER, MR. MILES, ADMITTED THAT ALL OF THESE COSTS, INCLUDING SALES TAX ARE VALID COSTS IN THE COMES APPROACH. THERE IS ABSOLUTELY NO RECORD TO SUPPORT THE FIFTH DISTRICT DETERMINATION THAT SALES TAX, AS ONE OF THESE COSTS, SHOULD BE EXCLUDED.

JUST FROM A COMMONSENSE STANDPOINT, ISN'T THIS, WHEN YOU APPRAISE A PIECE OF PROPERTY, INCLUDING ITS VALUE, A TAX? ISN'T THAT, FOR PURPOSES OF TAXING IT FURTHER, JUST A TAX ON A TAX?

JUSTICE WELLS THAT, HAPPENS ALL THE TIME, AND TO GIVE YOU AN EXAMPLE, YOU HAVE LARGE INDUSTRIAL PLANTS. YOU HAVE UNIQUE SPECIALTY PROPERTIES IN THE STATE OF FLORIDA, SUCH AS DISNEY WORLD. SALES TAX IS PAYABLE ON BUILDING MATERIALS. THE CONTRACTOR PAYS SALES TAX ON BUILDING MATERIALS, AND WHAT THE FIFTH DISTRICT SAID, AND WHERE THEY GOT IT WRONG AND WHERE THE SECOND DISTRICT GOT IT RIGHT IN THE TEDORA CASE, WAS TO RECOGNIZE THAT ALL OF THESE ARE SKOS THES, AND THEY ARE COSTS THAT YOU MUST INCUR IN BUILDING CITRUS BUILDING OR DISNEY WORLD OR TANGIBLE PROPERTY. YOU CANNOT LEGALLY GET THAT PROPERTY INTO THE STATE OF FLORIDA, WITHOUT A --

WHAT WE ARE LOOKING TO IS ADVALOREM TAXES.

THAT IS ALL THIS IS.

IF WE TALK ABOUT REAL PROPERTY AND TAX STAMPS ON A DEED, AND THEN WE TALK ABOUT APPRAISING THE VALUE OF REAL PROPERTY, ARE YOU SAYING THAT ROUTINELY, THAT THE TAX STAMPS ON A REAL ESTATE TRANSACTION ARE INCLUDED IN AVERAGE MARKET EVALUATION OF REAL PROPERTY?

FIRST OF ALL, REAL PROPERTY IS CUSTOMARILY APPRAISED AT THE MARKET VALUE, AS DEMONSTRATED BY MARKET TRAFFIC. THE REAL ESTATE MARKET IS MUCH MORE ORDERLY, AND IT IS THE WILLING BUYER/WILLING SELLER AMOUNT, NOT THE AMOUNT --

EVERY REAL ESTATE TRANSACTION IS GOING TO CONTEMPLATE A TAX CONSEQUENCE, IS IT NOT?

YES. AND IF YOU HAVE --

LET ME JUST WORK MY WAY, BECAUSE THIS IS PART OF THE DIFFICULTY WE ARE HAVING WITH THIS SORT OF, YOU HEARD ALREADY IN TWO QUESTIONS, THE MENTION OF THE AVERAGE PERSON OR COMMON SENSE, AND SO THIS IS IN A SENSE A HURDLE TO HAVE YOUIMOR US AND GET US OVER TO THE OTHER SIDE, SO IF YOU TAKE THAT REAL ESTATE, IT JUST STRIKES ME, FOR INSTANCE, THAT YOU WOULD NEVER CONSIDER THE TAX CONSEQUENCES, AND YET THERE IS GOING TO BE A TAX IN ANY ARM LENGTH REAL ESTATE TRANSACTION, GOING TO BE A SUBSTANTIAL TAX THAT GOES ALONG WITH THAT, AND YET WE ARE NOT FAMILIAR WITH THERE EVER BEING A VALID INCLUSION OF THAT TAX IN ASSESSING THE VALUE OF THAT REAL ESTATE. NOW, IS THAT RIGHT? OR NOT.

THAT IS CORRECT. YOU HAVE THE --

WHY, NOW, AND THIS, I THINK, IS THE QUESTION. WHY, THEN, WITH THIS PROPERTY, SHOULD A TAX BE INCLUDED?

THE TAXES ARE ENTIRELY DIFFERENT. THE FIFTH DISTRICT SAID THERE IS NO DIFFERENCE BETWEEN A REAL ESTATE TRANSFER TAX ON, QUOTE, AN EXCHANGE, WHICH IS NOT CORRECT. IT IS A TAX ON THE SALE OF REAL PROPERTY, AND A SALES TAX. THE DIFFERENCE IS THAT THE SALES TAX WHICH, IF YOU ARE A HOME DEVELOPER AND A HOME BUILDER BUILDS A HOME. HE INCURS SALES TAX AS PART OF HIS COSTS OF CONSTRUCTING THAT HOME AND WILL RECOVER THOSE TAXES ON ITS SALE, AS PART OF HIS COSTS. NOW, THE TRANSACTIONAL COSTS WHICH ARE INVOLVED IN THE TRANSACTION, MAINLY THE DOCUMENTARY STAMPS, IF THERE IS A \$100,000 MEETING OF THE MIND, WHICH THIS COURT HAS SAID IN WALTER V SCHULER. THAT IS THE TEST, THAT IF THAT \$100,000 IS THE AMOUNT -- IF THAT \$100,000 IS THE AMOUNT, THEN THE -- THE \$100,000 IS THE AMOUNT, THEN THE BUYER AGREES TO PAY THE SELLER THE DOCUMENTARY TAX IN ADDITION TO THAT AMOUNT OF.

IF YOU BREAK SOMETHING DOWN AND THE TAX HAS BEEN INCLUDED IN ADDITION TO THE BUILDER'S COST TO YOU, THEN IT MAKES SENSE TO YOU TO EXTEND THAT TO OTHER ITEMS OF PROPERTY, SUCH AS WE HAVE HERE.

EXACTLY RIGHT. THAT IS ONE OF THE INHERENT TAXES THAT MUST BE PAID TO BRING THAT HOUSE TO THE POINT WHERE IT CAN BE SOLD AND PUT ON THE MARKET. MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL TIME.

THANK YOU VERY MUCH. MR. CHIEF JUSTICE

MS. BLANK.

GOOD MORNING. MY NAME IS STACY BLANK AND I AM HERE THIS MORNING FOR THE WAL-MART STORES.

COULD YOU PICK UP WHERE HE LEFT OFF.

SURE. I THINK THE CRITICAL POINT, JUSTICE ANSTEAD, AND THE CONDITION, IS THE TAX ON THE ULTIMATE SALE OF THE PROPERTY. THERE IS NO DIFFERENCE BETWEEN THE EXAMPLE THAT MR. WOOD SET OUT AND THE EXAMPLE OF SALES TAX ON COMPONENT PARTS OF TANGIBLE PERSONAL PROPERTY. HERE WE ARE TALKING ABOUT, THOUGH, THE TAX THAT IS IMPOSED ON THE ULTIMATE SALE. THAT IS THE COMPARISON BETWEEN DOCUMENTARY STAMP TAX AND SALES TAX ON TANGIBLE PERSONAL PROPERTY, NOT THE TAX ON THE COMPONENT PART. THE COST APPROACH FOR REAL PROPERTY IS A SUMMATION. THAT IS YOU GO THROUGH AND YOU ADD UP THE COSTS OF ALL OF THE SUM OF THE PARTS THAT GO INTO IMPROVING THE REAL PROPERTY. THAT IS NOT THE WAY THE COST APPROACH WORKS FOR TANGIBLE PROPERTY. IT STARTS WITH THE ORIGINAL COST OF THE ITEM AND THEN THEY ARE ADDING ON THESE ULTIMATE COSTS, WHICH ARE THE COSTS OF THE TRANSFER.

WOULD A SALES COMMISSION BE? IS THAT PART OF THE -- IF YOU HAD TO PAY A SALES COMMISSION IN ORDER TO OBTAIN THAT PROPERTY, IS THAT PART OF THE ORIGINAL COST, OR IS IT YOUR POSITION THAT WOULD BE IN THE SAME CATEGORY AS A SALES TAX?

IT WOULD BE IN THE SAME CATEGORY, YOUR HONOR, AND, AGAIN THE PLAIN LANGUAGE OF THE STATUTE SAYS THAT YOU WOULD EXCLUDE THE REASONABLE AND USUALLY COST OF SALES OR THE MIRROR COST OF PURCHASE, AND THAT WOULD BE FIGURED MUCH LIKE REALTORS' COMMISSIONS UNDER THE OYSTER POINT CASE.

WOULD THAT HAVE ANYTHING TO DO WITH THE ACTUAL COST TO BRING THE PROPERTY TO THE

LOCATION, SUCH AS TRANSPORTATION EXPENSES WOULD, LITTLE -- WOULD, ALSO, BE EXCLUDED FROM THE VALUE, THE JUST VALUATION IN A COMES APPROACH FOR -- IN A COST APPROACH FOR TANGIBLE PROPERTY?

I THINK YOU WOULD GET THE ANALYSIS THAT THE SECOND DCA DID IN THE TURNER CASE. THAT IS THE COST THAT IS PART OF AN INTERNAL PRODUCTION OR MARKETING OF THE PROPERTY, AS OPPOSED TO AN EXTERNAL COST THAT IS A TRUE AND REASONABLE COST OF THE SALE OF THE PROPERTY?

EACH OF THOSE ARE ACTUAL COSTS, IF THE PERSON WHO, IN THIS CASE WAL-MART, INCURRED IT, TO BRING IT THERE AND WOULD HAVE TO THEORETICALLY INCUR IT AGAIN, TO BRING IT BACK. WHY WOULDN'T THOSE ALL BE TREATED AS IN THE SAME TYPES OF CATEGORIES? I AM NOT SURE I UNDERSTAND, BUT YOU GET PAST WHAT INTRINSIC VALUE IS, THIS IS SOMETHING THAT HAS A WORTH AND ALL THE OTHER THINGS LIKE COMMISSIONS, SALES TAX, EQUIPMENT, ARE ALL THINGS THAT GET US THERE.

SURE.

HOW DO YOU, WHERE IS THE DEMARCATION LINE?

I WOULD AGREE, CERTAINLY, THAT THERE WOULD BE SOME FRANT INSTALLATION COSTS. I THINK YOU COULD MAKE A VERY STRONG ARGUMENT IT WOULD BE A COST OF SALE. NOW, I AM GOING TO BE FAIR AND SAY THAT THERE MAY BE OTHERS THAT WOULD BE NECESSARY TO MAKE A PRODUCT, FOR EXAMPLE, OPERATIONAL, AND THAT MAY NOT BE SO CLEARLY AN EXTERNAL OR AN EXTRANEOUS COST OF SALE. HERE SALES TAX IS NOT IMPOSED BY THE VENDOR. IT IS NOT RETAINED BY THE VENDOR. THE VENDOR CAN'T NEGOTIATE WITH THE VENDOR CAN'T CHANGE THE AMOUNT.

WHY IS THIS LIKE THE WHISKY CASE? YOU HAVE GOT TO RECOGNIZE THAT THERE ARE CERTAIN EMBEDDED COSTS WHICH ARE IN THE NATURE OF A TAX AS ALL OF THESE THINGS COME ALONG, AND THAT, WHEN YOU ARE TRYING TO APPRAISE THE VALUE OF THE INANIMATE OBJECT, THEN YOU HAVE GOT TO TAKE INTO CONSIDERATION, I MEAN IT IS GOING TO INCLUDE EVERYTHING THAT CAME INTO, MADE IT COME INTO EXISTENCE IN THE PLACE WHERE YOU ARE APPRAISING IT, AND SO PART OF THAT NECESSARILY, WITH WHISKEY, WAS THE EXCISE TAXES, AND THIS COURT RECOGNIZED THAT WAS PART OF THE VALUE. HOW IS THIS ANY DIFFERENT?

I THINK THE INTERESTING THING ABOUT THAT CASE IS THAT CASE ACTUALLY ESTABLISHED THAT IT IS DIFFERENT, BECAUSE IT IS A SALES TAX. THE TAXPAYER, IN THAT CASE, ARGUED THAT YOU CALL THIS A BEVERAGE STAMP TAX. IT IS REALLY A SALES TAX. WE ARE, YOU KNOW, WE HAPPEN TO BE AFFIXING THESE STAMPS AT THE TIME THAT WE ARE SELLING THE BEVERAGE, AND WE THINK THAT IT IS A TAX ON THE SALE, AND THE COURT SAID NO. IT IS NOT. IF IT WERE A TAX ON THE SALE, YOU MIGHT BE RIGHT, BUT IT IS A TAX ON AN ACT OF PRODUCING THE PRODUCT. THAT IS THE DISTILLATION, AND THE TAXPAYER THERE REALLY TRIED TO CHARACTERIZE THIS AS A SALES TAX, RECOGNIZING THAT, IF IT DID IT WOULD BE EXCLUDED.

BUT THEN, LET ME ASK YOU THIS, THOUGH, IN ANSWER, WHAT IS YOUR ANSWER TO MY FIRST QUESTION? IS IT SOMETHING THAT SUDDENLY JUMPED UP HERE IN 1997, OR HAS WAL-MART BEEN PAYING AD VALOREM TANGIBLE PROPERTY TAXES WITH THE SALES TAX INCLUDED IN THE APPRAISAL, UP UNTIL THAT TIME?

IT HAS, YOUR HONOR. I BELIEVE THAT THE STATUTE, SUBSECTION ONE AND SUBSECTION EIGHT, THE COST OF SALE AND COST OF PURCHASE EXCLUSIONS, WEREN'T ENACTED AT THE SAME TIME. I THINK ONE OF THEM MAY WELL HAVE BEEN THERE SINCE THE STATUTE CAME INTO PLAY BUT THE OTHER WAS IN THE LATE '60s, SO THE COST OF SALE AND COST OF PURCHASE EXCEPTIONS HAVE BEEN THERE.

SO THAT IS SOMETHING THAT, BY TRADITION, IF NOTHING ELSE, HAS ALWAYS BEEN INCLUDED IN THESE APPRAISALS, UP UNTIL THESE SERIES OF CASES THAT ARE NOW SEEMINGLY ALL OVER FLORIDA.

I THINK THAT IS TRUE, YOUR HONOR, AND, AGAIN, I CAN'T SPEAK TO WHEN PROPERTY APPRAISERS MAY HAVE GUN TO USE THE KIND OF --

IS THERE ANYTHING SPECIFICALLY THAT CED IN 19 --

NOTHING CHANGED.

WAL-MART JUST DECIDED TO RAISE THE POINT.

I THINK, TOO, PROPERTY APPRAISERS HAVE BEGUN TO USE THESE COMPUTER-GENERATED MATH-APPRAISAL COST APPROACHES, AND SO YOU ARE GETTING MORE AND MORE AWAY FROM MARKET, YOU KNOW, MARKET APPROACHES. I THINK THAT MAY WE WILL EXPLAIN THE TREND TOWARD CHALLENGING THESE KIND OF EMBEDDED, BUT AS FAR AS THERE HAVING BEEN A STATUTORY CHANGE, NO, THERE HAS NOT. HAD THERE BEEN A CHANGE IN A LINE OF DEMARCATION THAT YOU ULD DRAW AND SOME DIFFERENT KIND OF TREATMENT? NO.

IS THAT A CHALLENGE TO USING THE COST APPROACH TO THIS KIND OF PROPERTY?

IT IS NOT A CHALLENGE TO USING THE COST APPROACH TO THIS KIND OF PROPERTY, IF THE COST APPROACH IS USED CORRECTLY.

YOUR POSITION WOULD BE THAT, IN USING THE COST APPROACH, A WILLING BUYER REALLY WOULDN'T BE CONSIDERING THE SALES TAX THAT THEY WOULD HAVE TO PAY ON THIS KIND OF PROPERTY?

SURE BUT THAT IS TRUE WITH ANY KIND OF PROPERTY, AND THAT IS TRUE OF ANY KIND OF APPROACH. I MEAN, THE ANALYSIS THAT THE COURT ENGAGED IN, THE CIRCUIT COURT IN THE CRAVO CASE THAT THE COURT ULTIMATELY ADOPTED, AND THAT CASE SAID, WELL, YOU KNOW, A SELLER IS GOING TO CONTEMPLATE ALL OF THE COSTS OF SALE THAT IT IS GOING TO INCUR, WHEN IT DECIDES WHETHER IT IS GOING TO REPLACE THE PROPERTY. THAT IS TRUE OF REAL ESTATE, BUT WE KNOW FROM THE OYSTER POINT CASE YOU STILL EXCLUDE THOSE COSTS OF SALE. THAT IS TRUE --

ISN'T IT FAIR THAT, IF WAL-MART WAS GOING TO DECIDE TO ABANDON THIS LOCATION AND SELL IT TO TARGET, THAT THE PRICE THAT WAL-MART WOULD OFFER IT TO TARGET FOR WOULD INCLUDE ALL OF THESE COSTS, INCLUDING THE SALES TAX? ISN'T THAT THE WAY IT WOULD WORK WORK?

I DON'T THINK SO, YOUR HONOR. I MEAN, I THINK THE ANALYSIS IS, YOU KNOW, IF I AM TRYING TO SELL A FIVE-YEAR-OLD SHELF TO SOMEBODY, LET'S SAY I HAVE TWO FIVE-YEAR-OLD SHE WAS. I BOUGHT THEM ON THE SAME DAY. I PAID THE SAME INVOICE PRICE, BUT, YOU KNOW, ONE SOLD TO ME. ONE SOLD TO A TAX-EXEMPT PURCHASER. WHAT WE ARE SAYING IS THE VALUE OF THOSE SHE WAS FIVE YEARS LATER IS GOING -- OF THOSE SHELVES FIVEYEARS LATER IS GOING TO BE DIFFERENT, BASED ON THE CHARACTERISTICS OF THAT SALE AND BASED ON THE POSSIBLE BUYER. DID THEY HAVE TO PAY SALES TAX ON IT? HAT, TO ME, IS AN IRRATIONAL NOTION, THAT SOMEHOW FIVE YEARS LATER, THE EXACT PIECE OF PROPERTY, THE EXACT SAME AGE, THE EXACT SAME PRICE, WILL HAVE A DIFFERENT VALUE, BASED ON THE AMOUNT OF SALES TAX ORIGINALLY IMPOSED ON THE SALE OF THAT PROPERTY. NO RATIONAL BUYER WOULD DO THAT.

THIS GOES BACK TO THIS QUESTION. IS THIS A CONSTITUTIONAL CHALLENGE THAT YOU ARE

REALLY SAYING THAT WAL-MART IS PAYING IN EXCESS OF WHAT THE JUST VALUE OF THE PROPERTY IS, BECAUSE THE SALES TAX IS BEING INCLUDED?

ABSOLUTELY, YOUR HONOR. THE SALES TAX IS OVER AND ABOVE THE JUST VALUE OF THAT PROPERTY.

BUT YOU WEREN'T ABLE TO PUT ON OR SHOW ME WERE YOU ABLE TO PUT ON ANY EVIDENCE CONCERNING UNDER THE MARKET APPROACH, WHAT THE MARKET VALUE OF THIS PROPERTY WOULD BE?

ABSOLUTELY, YOUR HONOR. WAL-MART OFFERED EXPERT TESTIMONY, AND THAT EXPERT PERFORMED A MARKET ANALYSIS. NOW, THE TRIAL COURT DIDN'T ACCEPT THAT, BUT THEY DID OFFER EVIDENCE OF THAT.

I THOUGHT THE PROBLEM WAS THERE REALLY ISN'T A MARKET FOR SHELVES THAT ARE FIVE YEARS OLD OR WHATEVER, THESE ITEMS.

THAT IS, OF COURSE, WHAT THE PROPERTY APPRAISERS ARGUE BUT THAT IS NOT WHAT WAL-MART ARGUES. WAL-MART'S ARGUMENT U CAN PULL OUT THE YELLOW PAGES AND CONTACT DEALERS OF USD EQUIPMENT, AND YOU CAN SAY I WANT TO BUY A FIVE-YEAR-OLD SHELF, AND THEY WILL TELL YOU MAYBE I HAVE FIVE-YEAR-OLD SHELVES AND MAYBE I DON'T. THERE ISN'T REALLY A SUBSTITUTION --

ISN'T PART OF THAT, BECAUSE SOMETHING, ONCE IT IS PUT INTO SERVICE, BECOMES SO DEPREERBIATED, SO YOU COULD BE ATTACKING HOW MUCH DEPRECIATION IS BEING FIGURED INTO THIS PROPERTY, BUT I THINK THAT THE PROBLEM THAT I AM STRUGGLING WITH, WHEN YOU LOOK PACK AND SAY WHAT WOULD IT COST YOU -- WHEN YOU LOOK BACK AND SAY WHAT WOULD IT COST YOU NOW TO GO BACK AND GET ANOTHER SHELF? YOU WOULD HAVE TO AGAIN PAY SALES TAX AND AGAIN BRING IT TO THE LOCATION, AND YOU WOULD AGAIN HAVE TO ACQUIRE IT, AND SO THAT IS WHAT THE PROPERTY APPRAISER IS ESSENTIALYOIN, GIVING YOU THE BENEFIT OF THE DEPRECIATION, SO I GUESS WHY ISN'T THAT JUST VAN, AND A PROPER WAY TO APPROACH IT, UNDER THE FACTS OF S E?

I GUESS THERE ARE TWO POINTS TO AT, YOUR HONOR. THE FIRST IS, AGAIN, I THINK YOU HAVE TO LOOK BACK AT THE LANGUAGE OF THE STATUTE,HIH PLAINLY SAYS THAT YOU CONSIDER WHAT AILLING BUYERND A WILLING SELLER ULD PAY OR RETAIN,CLUDGTHE COST OF SALE. I MEAN, THE LEGISLATURE HAS TOLD US,R, WNDEND TH, IN A PRACTICAL WORLD, THERE E GOIGTO BE SALES TAX, AND SOME PARTY IS GOING TO HAVE TO BEAR THE EXPENSE OF THAT, BUT WE ARE SAYING THAT YOU EXCLUDE, IN THAT ANALYSIS, THE COST OF SALE AND THE COT OF PURCHASE. > BASICALLY NOW, THEN,THAT GETS BACK TO A STATUTORY CONSTRUCTION QUESTION, AS TO WHETHER THE LEGISLATURE EXPRESSLY INTENDED TO EXCLUDE THESE ITEMS FROM THE JUST VALUATION.

AND THE WAY THAT TIES INTO THE CONSTITUTIONAL ASPECT OF IT IS THE LEGISLATURE HAS PROVIDED THESE EIGHT FACTORS AS GUIDANCE, SO THAT PROPERTY APPRAISERS CAN COMPLY WITH THE CONSTITUTIONAL STANDARD AND ACHIEVE THE CONSTITUTIONAL STANDARD, BY CONSIDERING THESE FACTORS. THE FAILURE TO CONSIDER THE FACTORS, INCLUDING THE EXCLUSION OF SALES TAX, THEN RESULTS IN AN UNCONSTITUTIONAL OR EXCESSIVE ASSESSMENT IN THIS CASE, SO IT IS A MATTER OF STATUTORY INTERPRETATION, BUT THE STATUTORY INTERPRETATION IS THE STEPPING STONE TO A CONSTITUTIONAL ASSESSMENT.

IF WE RULED IN WAL-MART'S FAVOR, HOW, PRACTICALLY, WOULD THAT WORK, AS FAR AS THIS CHALLENGE IS CONCERNED? CERTAINLY WOULD IT PERTAIN TO HOLLAND & KNIGHT'S LAW OFFICE, CORRECT?

SURE.

ITS TANGIBLE PROPERTY.

ON A PERSPECTIVE -- ON A PROPECT I HAVE BASIS.

PROPECT I HAVE -- PROSPECTIVE FROM WHEN?

A WINDOW IN WHICH THE TAXPAYERS HAVE TO CHALLENGE THE ASSESSMENT, SO UNLESS THERE ARE CASES PENDING WHERE TAXPAYERS HAVE ASSERT ADD CHALLENGE FROM '97 TO CASES CURRENTLY, THEY ARE -- HAVE ASSERTED A CHALLENGE TO '97 CASES CURRENTLY, THEY ARE GOING TO BE OUT OF LUCK, BUT PRESUMABLY THEY WOULD BE MADE IN COMPLIANCE WITH THIS COURT'S ORDER AND WOULD NOT INCLUDE SALES TAX, SO I GUESS I AM ING WHATEVER CASES ARE OUT THERE NOW ARE PROBABLY THE ONLY ONCE YOU ARE GOING TO HAVE IN THE PIPELINE, UNLESS SOME TAXPAYERS HAVE RAISED THESE CHALLENGES, BASED ON THE CASES THAT ARE CURRENTLY BEFORE THE COURT. SIMPLY BECAUSE THE 60-DAY WINDOW PERIOD IS JURISDICTIONAL. THEY ARE NOT GOING TO BE ABLE TO GO BACK AND REOPEN THOSE CASES AND ASK FOR REFUNDS. THE SECOND PART OF YOUR QUESTION JUSTICE PARIENTE, DEALS WITH, I THINK, A LITTLE BIT OF HOW THE MARKET APPROACH PLAYS IN WITH THE COST APPROACH. THOSE TWO METHODS OF APPRAISAL ARE VERY SIMILAR, IN A CASE LIKE THIS. IN FACT, THE DOR'S MANUAL, THE OLD MANUAL, THE MANUAL IN EFFECT FOR THE TAX YEAR AT ISSUE IN THIS CASE, SAYS THAT, WHEN YOU BUY PROPERTY, NEW PROPERTY IN AN OPEN COMPETITIVE MARKET, THE COST APPROACH AND THE MARKET APPROACH ARE VIRTUALLY THE SAME. THE ONLY DIFFERENCE BETWEEN THOSE TWO APPROACHES IS THE WAY YOU TREAT DEPRECIATION. AND THE MARKET APPROACH, YOU LOOK AT COMPARABLE CURRENT SALES TO DETERMINE THE CURRENT FAIR MARKET VALUE, BUT THE MARKET ALREADY ADJUSTS FOR DEPRECIATION DEPRECIATION. THE COST APPROACH, YOU ARE REALLY TRYING TO GET TO THE SAME POINT BUT YOU ARE DOING IT ARTIFICIALLY. THEY ARE STARTING AT THE ORIGINAL COST AND THE PROPERTY APPRAISER IS THEN HAVING TO ARTIFICIALLY BACK THE DEPRECIATION OUT. IT JUST MAKES NO SENSE TO ME, THEN, TO SAY THAT YOU WOULD EXCLUDE SALES TAX WHEN YOU LOOK AT THE CURRENT SALES PRICES, BUT YOU WOULD INCLUDE SALES TAX, WHEN YOU LOOK AT THE HISTORIC SALES PRICE. THERE IS REALLY NO DIFFERENCE BETWEEN THOSE TWO, OTHER THAN JUST TAKING THE DEPRECIATION OUT.

IF YOU OVERPAID FOR EIGHT EMAND YOU PAID TWICE AS MUCH AS THAT ITEM SHOULD HAVE, COULD HAVE REALLY GOTTEN, IS THAT SOMETHING TO GO TO THE PROPERTY APPRAISER AND SAY YOU HAVE OVER VALUED MY PROPERTY BECAUSE I HAVE OVERPAID IN ACQUIRING THIS. IS THAT A POSSIBLE APPROACH?

I DON'T THINK, UNDER THE COST APPROACH, THAT YOU WOULD GET VERY FAR WITH THE PROPERTY APPRAISERS. THEY ARE TAKING THE ORIGINAL COST THAT YOU PAID, AND THEY ARE PLUGGING IT INTO THOSE COMPUTER PROGRAMS, AND THEY ARE TAKING OFF A CERTAIN PERCENTAGE OF DEPRECIATION.

I AM ASKING, THOUGH, IF YOU ARE REALLY LIT JUST VALUATION, IF SOMEBODY OVERPAID FOR A PIECE OF EQUIPMENT, WHY WOULDN'T, UNDER YOUR, THE LOGIC OF WHAT YOU ARE TALKING ABOUT, WHICH IS THAT THIS IS, REALLY DOESN'T HAVE ANYTHING TO DO WITH THE VALUE, YOU KNOW, JUST BECAUSE WE HAD TO PAY SALES TAX, JUST BECAUSE WE HAD TO BRING IT TO THIS LOCATION, IT IS REALLY WHAT IT WOULD GO FOR IN THE MARKET. IF YOU HAVE OVERPAID, THEN WHY WOULDN'T THAT BE SOMETHING THAT YOU, ALSO, COULD ARGUE?

WELL, I THINK YOU COULD, AND THE PROBLEM WOULD BE THAT YOU WOULD ENCOUNTER THE SAME SORT OF RESPONSES THAT YOU ARE ENCOUNTER ENCOUNTERING FROM THE PROPERTY APPRAISERS NOW. IT IS OVERWHELMING FOR US TO DEAL WITH THIS ON AN IVL BASIS, AND WE HAVE TO BE ABLE TO USE THIS COST APPROACH TO GET WHERE WE NEED TO BE, BECAUSE WE

CAN'T GO OUT AND INDIVIDUALLY ASSESS EVERY ITEM OF TANGIBLE PERSONAL PROPERTY IN THE STATE.

THAT IS NOT EXACTLY, THAT IS REALISTICALLY ACCURATE.

SURE.

ABSOLUTELY IT IS BUT I THINK THAT IS ONE OF THE PROBLEMS WITH THE COST APPROACH, WHICH IS NOT REALLY ONE OF THE ISSUES THAT WE ARE HERE TODAY ON, BUT, SURE, THAT IS A PROBLEM THAT TAXPAYERS MAY WELL HAVE A PROBLEM, BECAUSE YOU KNOW, IT IS FINE FOR PROPERTY APPRAISERS NOW TO SAY WHAT WE ARE DOING IS WE WOULD LIKE TO BE ABLE TO PICK AND CHOOSE THE CASES IN WHICH WE EXCLUDE COSTS OF SALES, IN ORDER TO KIND OF WEIGHT THIS THING AND GET TO JUST VALUE WHEN WE NEED TO, BY EITHER APPLYING IT OR NOT APPLYING IT, BUT THAT IS NOT HOW THE COST APPROACH IS WORKING. I MEAN THE COST APPROACH IS WORKING ON A SET DEPRECIATION CHART THAT IS PUNCHED IN BY THE COER, AND THAT IS WHERE YOU END UP AT THE END OF THE DAY.

BUT THAT IS NOT WHY WE ARE HERE TO DISCUSS TODAY, WHETHER THE DEPRECIATION CHART IS UNFAIR TO THOSE THAT ARE PAYING THE TAXES.

YOU ABUTELRIGHT, YHON, AND THAT WOULD BE, THE QUESTION THAT YOU RAISE IS AKIN TO THAT, WHETHER THE COST APPROACH WORKS IF SOMEONE'S ORIGINAL COST IS OUT OF, YOU KNOW, IS SKEWED. I GUESS ONE OTHER POINT I WANTED TO MAKE, THE PROPERTY APPRAISER HAS ARGUED THAT -- MR. CHIEF JUSTICE

ON THESE RETURNS THAT ARE FILED BY WAL-MART, THERE IS A BLANK THERE FOR PUTTING IN THE AMOUNT OF THE SALES TAX?

YES.

AND THAT HAS ALWAYS BEEN TRUE?

I AM SORRY. COULD YOU REPEAT THAT?

WHERE YOU SPECIFIED THE AMOUNT OF SALE.

NO. IT JUST SAYS REPORT YOUR COST, INCLUDING SALES TAX, SO IT IS LUMPED TOGETHER.

SO THERE IS NO IDENTIFIED SALES TAX AMOUNT.

THAT'S CORRECT, YOUR HONOR.

OKAY -- THE PROPERTY APPRAISER HAS ARGUED THAT SALES TAX ON THE TO BE INCLUDED, BECAUSE THERE IS SOME DISTINCTION BETWEEN AN EXTERNAL COST AND AN EXTRANEIOUS COST. THE COURTS HAVE USED THOSE TERMS INTERCHANGEABLY. THE HIGH COURT USES THE TERM EXTERNAL, TO TALK ABOUT THE COSTS THAT ARE EXTRANEIOUS. THE HOUSE MAN CASE USES THE TERM EXTRANEIOUS. PUTTING THAT ASIDE FOR A MOMENT, EVEN UNDER THE PROPERTY APPRAISER'S DEFINITION OF THE TERM, SALES TAX WOULD BE AN EXTERNAL EXTRANEIOUS COST. AGAIN, THE VENDOR CAN'T NEGOTIATE THE AMOUNT. IT CAN'T AGREE TO TAKE ON THE AMOUNT. IT CAN'T RELIEF THE BUYER OF THE BURDEN OF PAYING SALES TAX. IN CASES OF VERY LARGE TAXPAYERS THE VENDOR DOESN'T EVEN GET THE SALES TAX. IT IS PAID DIRECTLY TO THE STATE. AGAIN, SALES TAX IS A CLASSIC COST OF SALE, ADDED ON BY THE STATE, AT THE TIME OF THE SALE, AND IT OUGHT TO BE EXCLUDED FROM THE VALUATION OF THE UNDERLYING PROPERTY AND PROPERTY APPRAISERS' ASSESSMENTS. JUST MENTION ONE THING, IF THIS COURT WERE TO RULE IN FAVOR OF WAL-MART, THE PERFECT REMEDY WOULD BE A REMAND TO THE CIRCUIT

COURT, FOR A RETRIAL CONSISTENT WITH THE PROPER BURDEN OF PROOF IN THIS CASE. UNDER 194.301, THE STATUTE NOW SAYS THAT, IF PROPERTY APPRAISER FAILS TO PROPERLY CONSIDER ANY OF THE FACTORS, IT DEPRIVES THE ASSESSMENT OF THE PRESUMPTION OF CORRECTNESS IN THE --, AND THE TAXPAYER IS ONLY REQUIRED TO SHOW THAT IT EXCEEDS THE JUST VALUE BY A MERE PREPONDERANCE OF THE EVIDENCE. HERE THE COURT APPLIED CLEAR AND CONVINCING EVIDENCE, SO A RETRIAL WOULD BE NECESSARY IN THIS CASE. YOU CAN'T JUST TAKE THE SALES TAX OUT OF THE ASSESSMENT AND HAVE THAT BE THE END OF THE DAY. THANK YOU. MR. CHIEF JUSTICE

THANK YOU. REBUTTAL?

IF YOUR HONORS PLEASE, I THINK THERE IS SOME MATTERS HERE THAT DO REQUIRE CLARIFICATION. BEGINNING WITH THE LAST ONE. I THINK IT IS IMPORTANT FOR THE COURT TO REALIZE THAT, AS TO THE SALES TAX ISSUE, THERE HAS NEVER BEEN ANY EVIDENCE, SUBSTANTIAL, COMPETENT OR OTHERWISE, TO SHOW THAT THE PROPERTY APPRAISER FAILED TO CONSIDER THE REQUIREMENTS OF THE FIRST AND EIGHTH CRITERIA OF SECTION 193.011. AS JUSTICE PARIENTE INDICATED, IF THERE IS AN ISSUE HERE CONCERNING SALES TAX, AND WE WOULD SUGGEST TO THAT YOU THERE SHOULD NOT BE, IT IS ABSOLUTELY NOVEL, AND IT IS IN THE NATURE OF A CONSTITUTIONAL CHALLENGE, AND NOT A FAILURE TO, EXCUSE ME, TO CONSIDER AN EXISTING CRITERIA CRITERIA. THE METHOD THAT HAS BEEN USED IN THE COST APPROACH FOR TANGIBLE PERSONAL PROPERTY, HAS BEEN UNCHANGED FROM TIME IMMEMORIAL. GRANTED, THERE WAS A TIME WHEN THEY DID THE PROPERTY APPRAISERS DID NOT SIT AT COMPUTER, NO ORDER TO DO THIS, AND IT HAD TO BE DONE WITH A PENCIL, BUT THE WAY THAT IT IS DONE IS UNCHANGED AND I THINK IT IS IMPORTANT FOR US TO CONSIDER THAT WHAT WE ARE LOOKING AT IS A DIFFERENT SUBSTANTIAL DIFFERENCE, BETWEEN THE COST APPROACH VALUATION AND THE SALES COMPARISON OR MARKET VALUATION. IN A PROPER MARKET VALUATION OF PROPERTY, ASSUMING THAT THEY ARE THERE, ONE GOES OUT AND ONE FINDS SALES OF COMPARABLE PROPERTY, AS THAT PROPERTY EXISTS IN THE MARKET, COMPARABLE TO THE PROPERTY THAT WE ARE ATTEMPTING TO VALUE. IN A COST APPROACH TO VALUE, ONE PUTS TOGETHER, FROM THE MARKET, ALL THE COSTS THAT GO INTO THE PROPERTY WE ARE ATTEMPTING TO VALUE, AND DETERMINES WHAT THE VALUE OF THOSE COSTS IS AT THE DAY OF THE ASSESSMENT, BASED ON THE ACTUAL PROPERTY, ITSELF, WHETHER OR NOT IT HAS DEPRECIATED IN VALUE, EITHER PHYSICALLY OR ECONOMICALLY. WHAT IS REPORTED TO THE PROPERTY APPRAISER IS NOT THE VALUE OF THE PROPERTY. IT IS THE PURCHASE PRICE OF THE PROPERTY. REPORTED FROM THE INDIVIDUAL WHO IS SITTING IN THE POSITION OF THE PURCHASER.

YOU ARE CONJURING UP AN IMAGE IF I UNDERSTAND YOUR ARGUMENT OF ASKING SOMEBODY DID YOU SAVE ALL YOUR RECEIPTS, FOR EVERYTHING THAT YOU DID, IN TERMS OF THAT, AND THAT THAT IS SORT OF WHAT IS GOING ON WITH THIS APPROACH. IS THAT THE SIMPLE VIEW OF THIS?

EXCEPT FOR THE FACT THAT THE DATE OF THAT ONE USES TO ARRIVE AT THOSE COSTS IS THE DATA FROM THE MARKET, RATHER THAN ALL OF THE RECEIPTS OF THE TAXPAYER. IN THIS CASE, PROBABLY THE BEST DATA THAT ONE CAN GET FROM THE MARKET IS WHAT DID THIS TAXPAYER PURCHASE IN THE AGGREGATE, TO PUT TOGETHER THE PERSONAL PROPERTY THAT GOES INTO THE BUSINESS THAT IS BEING OPERATED? NOT THE VALUE OF THE BUSINESS, BUT THE VALUE OF THE PROPERTY, IN ORDER TO PERFORM THE FUNCTION OF THAT BUSINESS. AND I THINK, WHEN WE TALK ABOUT VALUE OF THE PROPERTY IN CONTINUED USE WE ARE TALKING IN TERMS OF THE EIGHT CRITERIA, ABOUT, WE ARE TALKING ABOUT THE LOCATION OF THE PROPERTY, THE COST OF THE PROPERTY, HOW MUCH DID IT COST. WE ARE TALKING ABOUT THE ABROGATION OF THE PROPERTY TOGETHER, ITS HIGHEST AND BEST USE.

BUT BASICALLY, IN THE COST APPROACH, AND THE COST OF PURCHASE IS BEING USED, BY THIS

PROPERTY APPRAISER, THE VALUE OF THE PROPERTY WILL VARY AND COULD VARY MARKEDLY, DEPENDING ON WHETHER SOMEONE HAD THE PROPERTY DELIVERED TO THE LOCATION OR PICKED IT UP, THEMSELVES, WHETHER THEY WERE A NONPROFIT, AND THEY OBTAINED THE PROPERTY WITHOUT HAVING TO PAY A SALES TAX. IF THEY HAD TO PAY A SALES COMMISSION OR NOT, AND SO FIVE IDENTICAL PIECES OF PROPERTY WOULD HAVE DIFFERENT TANGIBLE PROPERTY TAXES, BECAUSE THEIR COST WOULD HAVE BEEN DIFFERENT, EVEN THOUGH THE VALUE OF THAT PIECE OF WHATEVER IT IS COULD, WOULD BE THE SAME, BECAUSE IT IS THE SAME WIDGET OR WOULD YOU AGREE WITH THAT?

TO A CERTAIN EXTENT, YES, AND TO THE EXTENT THAT A PARTICULAR BUSINESS USES THE PROPERTY IN A CERTAIN WAY, THE VALUE OF THE HIGHEST AND BEST USE OF THAT PROPERTY --

I AM NOT TALKING ABOUT THE HIGHEST AND BEST USE. I AM TALKING ABOUT ONE PERSON, ONE BUSINESS DOESN'T HAVE TO PAY SALES COMMISSION AND ANOTHER DOES. YOU KNOW, A BIGGER CORPORATION DOESN'T PAY IT. A SMALLER BUSINESS DOES. ONE IS ABLE TO GET DELIVERY INCLUDED. THE OTHER HAS TO PAY DELIVERY. THAT THOSE ARE GOING TO BE JUST BECAUSE WHATEVER THAT INDIVIDUAL PROPERTY OWNER HAD TO PAY TO GET IT, IS GOING TO BE THE STARTING POINT FOR YOUR EVALUATION.

FOR THAT BUSINESS. AND THE VALUE OF THE SAME ITEM MAY VARY FROM PROPERTY OWNER TO PROPERTY OWNER. BECAUSE IF I AM THE LITTLE GUY DOWN THE STREET FROM ME AT THE HARDWARE STORE AND I BUY A SHELF IT IS UNUTTERBLY GOING TO COST ME MORE MONEY THAN IS GOING TO COST WAL-MART TO BUY 5,000 OF THOSE SHELVES AND ALLOCATE THEM AMONG THEIR FLORIDA STORES.

BUT I KNOW THAT THE KANSAS SUPREME COURT CAME TO THE CONCLUSION THAT THE SALES TAX DOES NOT ADD VALUE. I MEAN A TAX DOESN'T ADD VALUE PER SE, IN THE COMMON ORDINARY VIEW OF A CITIZEN OUT THERE. AND HOW CAN WE JUSTIFY THERE BEING AN ADVALOREM TAX, WHEN YOU APPRAISE SOMETHING THAT DOESN'T ADD VALUE IN THE SENSE THAT IT IS INTRINSIC TO THE PRODUCT ITSELF?

WELL, I WOULD SUGGEST, JUSTICE WELLS, THAT IT DOES ADD VALUE, THAT EACH AND EVERYTHING THING THAT A -- THAT EACH AND EVERYTHING THAT AN INDIVIDUAL BARGAINS FOR, AND I WILL SPEAK TO THAT, THAT AN INDIVIDUAL CAN BARGAIN FOR WHEN HE PURCHASES PROPERTY TO USE IN BUSINESS, ADDS VALUE OR CHANGES VALUE. NO, IT IS NOT LEGAL FOR A SELLER OF PROPERTY TO SAY I AM NOT GOING TO CHARGE YOU THE SALES TAX, WHEN IT CERTAINLY IS LEGAL FOR THAT SELLER OF PROPERTY TO PRODUCE THE PRICE OF THE ITEM, SUCH THAT THE EXPENSE OF THE SALES TAX IS EFFECTIVELY GONE, AND WHEN THE BUYER OF THAT PROPERTY SAYS, YOU KNOW, WHEN I AM BUYING THIS \$3,000 ITEM, WHEN I TACK THE SALES TAX ONTO THAT AT \$180, THAT IS GOING TO COST ME MORE. WHAT DO YOU SAY YOU GIVE ME THIS ITEM FOR \$2800 INSTEAD OF \$3,000 AND I WILL PAY THE TAX ON THE \$2800? THAT IS BARGAINED FOR AND THAT IS ADDING VALUE, AND THAT IS MAKING A DIFFERENCE IN WHAT THE EFFECTIVE PRICE IS. WHEN OPPOSING COUNSEL SAYS THAT SALES TAX IS NOT NEGOTIABLE, ON ITS FACE IT IS NOT BUT IT CERTAINLY IS, IN REALITY. I BELIEVE MR. KING, THE PROPERTY APPRAISER, TFIED ON HIS OWN EXPERIENCE, THAT, WHEN THERE WAS A SALES TAX HOLIDAY, HE WENT TO STORES LIKE WAL-MART AND DISCOVERED THAT THE CROWDS WERE ENORMOUS, AND THAT FOLKS WERE EFFECTIVELY MAKING, DRAWING A PATH TO BUY THINGS AT A REDUCED PRICE BECAUSE THERE WAS NO SALES TAX.

THANK YOU VERY MUCH, MS. STEWART. MR. CHIEF JUSTICE

THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS CASE.