Lewis Ward v. Gregory S. Brown

MARSHAL: PLEASE RISE.

CHIEF JUSTICE: GOOD MORNING.

MARSHAL: PLEASE BE SEATED.

CHIEF JUSTICE: I AM SURE THE THINNING OF THE AUDIENCE HAS NOTHING TO DO WITH THE SERIOUSNESS OF THE ISSUE INVOLVED IN THE NEXT CASE. AGAIN WE APPRECIATE COUNSEL BEING READY TO GO WHEN WE COME BACK OUT, SO WITHOUT ANY FURTHER ADO, WE CALL WARD VERSUS BROWN. YOU MAY PROCEED.

MR. CHIEF JUSTICE AND MEMBERS OF THE COURT, MY NAME IS JOSEPH MELLICHAMP, AND I AM WITH THE LAW FIRM OF CARLTON FIELDS, AND I AM REPRESENTING THE PETITIONERS IN THIS CASE. THE MATTER ON APPEAL IN THIS CASE IS THE STRIKING BY THE TRIAL COURT, OF CLASS ALLEGATIONS. THE STANDARD FOR REVIEW, AND IT IS VERY IMPORTANT IN THIS CASE, BECAUSE OF THE WAY THE DISTRICT COURT DECIDED ITS CASE, THE STANDARD FOR REVIEW OF A MOTION TO STRIKE REQUIRES THAT ALL WELL PLED MATTERS BE TAKEN AS TRUE, AND IF THE COURT REVIEWS THE AMENDED COMPLAINT IN THIS CASE, THE COURT WILL SEE THAT THE PETITIONERS ALLEGED, IN PARAGRAPH 20, THAT THEY HOLD A LEASEHOLD INTEREST, THAT INCLUDES IMPROVEMENTS IN GOVERNMENT PROPERTY THAT, THE LEASE REQUIRES A PAYMENT OF RENT, IT IS USED FOR RESIDENTIAL PURPOSES, AND IT IS FOR A PERIOD OF LESS THAN 100 YEARS. THEY ALSO PLEAD THAT THEY ARE NEITHER THE EQUITABLE OWNERS OF THE LEASED PREMISE OR THE IMPROVEMENTS NOR ARE THEY THE LEGAL OWNER.

DO THEY ALLEGE ANYTHING CONCERNING WHEN, ON THE 60 DAYS UNDER 194.171, IS THERE ANY ALLEGATION IN THE COMPLAINT CONCERNING THE TIME PERIOD, THIS TIME PERIOD?

IN THE COMPLAINT --.

IN OTHER WORDS ANYTHING THAT WOULD FACIALLY ESTABLISH A PREDICATE FOR THE OPERATION OF THAT STATUTORY PROVISION.

CORRECT. IS THERE ANYTHING IN THAT COMPLAINT THAT WOULD SATISFY THE REQUIREMENT OF 194.171?

NO. THE AMENDED COMPLAINT WAS FILED AFTER THE 60 DAYS HAD RUN. IN THE AMENDED COMPLAINT, THEY CITE CHAPTER 86, WHICH SDLARTORY ACTION, AND THEY CITE 194.171.

SO THEY ARE REALLY JUST ALLEGING IN THE COMPLAINT, THAT IT WAS WITHIN THE FOUR-YEAR TIME PERIOD, IS THAT CORRECT?

YES. THIS IS FOR TAX YEAR 2001. THEY FILED THIS IN FEBRUARY 2002.

BUT IT IS CORRECT THAT WHAT IS BEING SOUGHT IS A DECLARATORY JUDGMENT THAT AN ORDER INVALIDATING THE ASSESSMENTS?

NO, YOUR HONOR. INAL WILL -- INVALIDATING THE CLASSIFICATION OF THEIR PROPERTY.

DOESN'T THE COMPLAINT SAY THAT AN ORDER INVALIDATING THE ASSESSMENTS AND DIRECTING THE PROPERTY APPRAISER AND TAX COLLECTOR, ON PAGE 11?

YES, YOUR HONOR, IN PARAGRAPH 3, IT SAYS INVALIDATING THE ASSESSMENTS AND DIRECTING THE PROPERTY APPRAISER AND TAX COLLECTOR TO COMPLY WITH THE LAWS.

WHERE, IN THE AMENDED COMPLAINT, DOES IT CITE SECTION 197.182?

1967.182. A REFUND -- 197.182. A REFUND?

YES. ISN'T THAT THE FOUR-YEAR LIMITATION PERIOD YOU CLAIM APPLIES?

NO, YOUR HONOR.

WHERE IS THE FOUR-YEAR LIMITATION PERIOD YOU CLAIM APPLIES THEN?

IN PAREN 2 PAREN 2. THERE ARE TWO CASES THAT DEAL WITH REFUNDS. THE REST OF THE CASES DO NOT DEAL WITH REFUNDS. REFUNDS HAS A FOUR-YEAR STATUTE OF LIMITATIONS AND CHAPTER 95 AS ONE FOR ALL OTHER MATTERS. WHEN YOU ARE CHALLENGING A TAX ASSESSMENT, WHICH THEY ARE NOT DOING, THEY ARE CHALLENGING THE CLASSIFICATION OF THEIR PROPERTY, AND THE REASON THEY ARE CHALLENGING THE CLASSIFICATION OF THEIR PROPERTY IS THEIR PROPERTY, ACCORDING TO THE LEGISLATURE, IS INTANGIBLE. THEY ARE NOT SEEKING AN EXEMPTION, BECAUSE AN INTANGIBLE IS TAXED BY THE STATE, UNDER CHAPTER 199.

WELL, BUT, HOW, YOU KEEP SAYING, IN YOUR BRIEF, YOU ARGUE THAT THIS IS A CLASSIFICATION VERSUS AN AS ASSESSMENT. HOWEVER, IF YOU ARE CHANGING THE CLASSIFICATION, DON'T YOU THEN GET TO THAT PORTION YOU JUST READ, WHICH SAYS THAT YOU THEN, THE ASSESSMENT IS INCORRECT, SO ISN'T THIS INTERTWINED, WHETHER THE CLASSIFICATION IS CORRECT, YOU THEN GET TO WHETHER OR NOT THE ASSESSMENT WAS CORRECT?

FROM A REVIEW OF THE COMPLAINT, YOU WILL SEE THAT THEY ALLEGE THAT THEY ARE NOT CHALLENGING THE VALUATION, THE TAX ASSESSMENT OF THEIR PROPERTY. WHAT THEY ARE CHALLENGING IS THE CLASSIFICATION OF THEIR LEASEHOLD INTEREST AS BEING SUBJECT TO COUNTY AD VALOREM TAX.

SO IF YOU, IN FACT, PREVAIL ON THE ISSUE OF WHETHER OR NOT IT WAS IMPROPERLY CLASSIFIED, WHAT IS THE RESULT OF THAT IMPROPER CLASSIFICATION?

THE STATE IS THE ONLY ENTITY THAT TAXES THEIR INTANGIBLE LEASEHOLD INTEREST.

SO THE ASSESSMENT THAT WAS LEVIED IN THIS PARTICULAR CASE WOULD BE IMPROPER.

IT IS VOID RIGHT NOW AS WE SPEAK, IT IS VOID, ABSOLUTELY. THE LEGISLATURE, IN CREATING WHAT THE DISTRICT COURT CONSIDERS AN EXEMPTION, IF I MAY READ THAT STATUTE TO THE COURT, WE HAVE TO GO TO 196.199, PAREN 2. 196.199 IS GENERALLY KNOWN AS GOVERNMENT PROPERTY EXEMPTIONS. IT IS CONTAINED IN CHAPTER 196. PAREN 2 PROVIDES THAT PROPERTY OWNED BY THE FOLLOWING GOVERNMENTAL UNITS BUT USED FOR NONGOVERNMENTAL LESSEE, USED BY NONGOVERNMENTAL LESSEE, SHALL ONLY BE EXEMPT FROM TAXATION UNDER THE FOLLOWING CONDITIONS, AND THEN IT HAS A PAREN LITTLE A AND IT LISTS THOSE CONDITIONS. THEN GOES TO PAREN B, EXCEPT AS PROVIDED IN PARAGRAPH C, WHICH HAS NO APPLICATION IN THIS PARTICULAR CASE, THE EXEMPTION PROVIDED BY THIS SUBSECTION, THE EXEMPTION PROVIDED BY THIS SUBSECTION, SHALL NOT APPLY TO THOSE PORTIONS OF LEASE HOLDS OR OTHER INTERESTS DEFINED BY SECTION 199.023 PAREN 1 CLOSE PAREN, PAREN LITTLE D CLOSE PAREN, SUBJECT TO THE PROVISIONS OF SUBSECTION 7, WHICH IS NOT APPLICABLE IN THIS CASE. THEN IT GOES ON TO SAY, SUCH LEASEHOLDS OR OTHER INTERESTS SHALL BE TAXED ONLY AS

INTANGIBLE PERSONAL PROPERTY, PURSUANT TO CHAPTER 199, IF RENTAL PAYMENTS ARE DUE IN CONSIDERATION OF SUCH LEASEHOLD OR OTHER INTEREST. NOW, IS THIS COURT -- NOW, AS THIS COURT SAID, IN NO UNCERTAIN TERMS, IN THE SCRIPPS-HOWARD CASE. HAVEL VERSUS SCRIPPS HOWARD, IT IS UNCONSTITUTIONAL FOR A PROPERTY APPRAISER TO INCLUDE INTANGIBLE PROPERTY ON HIS ROLE. NOW, TO GIVE YOU AN EXAMPLE THAT THIS IS A CLASSIFICATION ISSUE, AS OPPOSED TO AN EXEMPTION ISSUE --

BUT THE PROBLEM I AM HAVING IS THAT IT SEEMS TO ME THAT WHEN YOU GET INTO THIS KIND OF WORD DIFFERENTIATION BETWEEN WHETHER IT IS AN ASSESSMENT OR WHETHER IT IS A CLASSIFICATION, IT LEADS TO A REPEATED INVOLVEMENT OF THE COURTS, IN WHAT CHAPTER 194, IT SEEMS THAT THE LEGISLATURE HAS SAID THAT THE COURT IS ONLY GOING TO GET INVOLVED, IF AN APPRAISER ASESES A, SOMETHING, WHATEVER IT IS -- ASSESSES SOMETHING, WHATEVER IT IS, AND SOMEBODY MAKES A CONTEST OF IT WITHIN THE 60-DAY PERIOD, AND THAT IS PRETTY SIMPLE, AND SHOULDN'T IT BE TREATED AS PRETTY SIMPLE?

IT IS SIMPLE, YOUR HONOR, IF ONE, THE PROPERTY APPRAISER FOLLOWS THE STATUTES, WHICH HE DID NOT, AND, TWO, IF YOU READ THE STATUTE.

BUT IF THE TAXPAYER FOLLOWS THE STATUTE, THE TAXPAYER KNOWS THAT, IF THERE IS GOING TO BE A CONTEST, THAT IT HAS TO BE DONE WITHIN THAT 60-DAY PERIOD. IF IT IS GOING, IF HE IS GOING TO CONTEST IT IN COURT.

WELL, YOUR HONOR, TO READ 194.171 PAREN 2, AS BEING THE ONLY WAY YOU CAN CONTEST THE MISS CLASSIFICATION OF YOUR PROPERTY, THEN BY IMPLICATION, THE COURT IS SAYING THE LEGISLATURE, WITH THE PASSAGE OF THAT SECTION, REPEALED 197.182, WHICH IS THE REFUND STATUTE, REPEALED 197.444, WHICH IS DEALING WITH THE VOIDING OF TAX CERTIFICATES AND THE TIME PERIOD FOR THAT, THE REFUND IS FOUR YEARS, REPEALED OR MADE IN APPLICABLE, SECTION 95.11-2-B.

ISN'T THE POLICY OF IT, IF YOU ARE DOING IT WITHIN 60 DAYS, THEN YOU ARE NOT PAYING THE ASSESSMENT, BUT IF YOU HAVE THE REFUND YOU HAVE ALREADY PAID IN, AND SO THE COUNTY HAS THAT MONEY, AND SO HERE YOU HAVE A SITUATION WHERE YOU ARE SAYING THIS REALLY SHOULD HAVE BEEN TAXED AS INTANGIBLE PROPERTY, BUT FOR FOUR YEARS, IT IS GOING, NO ONE IS GOING TO HAVE TO PAY ANYTHING. THEY ARE NOT GOING TO BE PAYING IT AS AD VALOREM TAXES AND THEY ARE NOT GOING TO HAVE TO PAY IT AS INTANGIBLE TAXES, SO SORT OF THIS FOUR-YEAR WINDOW WHERE NOTHING IS HAPPENING, I GUESS FOLLOWING ALONG WITH WHAT JUSTICE WELLS IS SAYING, IS THAT THE POLICY OF 171 IS FOR THESE MATTERS TO BE PROMPTLY RESOLVED, SO THAT THE TAX ROLLS ARE, SO MONEY IS PAID INTO THE COUNTY COFFERS AS PROPRIETOR CONTESTED WITHIN A SHORT PERIOD OF TIME.

UNDER SECTION 197.122, WHICH HAS BEEN IN THE STATUTES A LONG TIME, AND TO SAY THAT 194.171, ALSO AFFECTS THAT, THAT IS THE CORRECTION OF OMISSION OR COMMISSION BY A PROPERTY APPRAISER OR TAX COLLECTOR. AND IT DOESN'T GIVE A TIME PERIOD. '95 -- 95 SUPPLIES THAT TIME PERIOD AS FOUR YEARS, BUT THAT MEANS THE PROPERTY APPRAISER COULD NOT CORRECT AN OMISSION OR COMMISSION, ONE WAY OR THE OTHER, UNDER THAT, UNDER THAT THEORY, BECAUSE IF HE MADE A MISTAKE, IT IS ALWAYS A MISTAKE, BUT THE STATUTE SAYS HE CAN CHANGE IT. AND ALL OF THE CASES CITED IN OUR BRIEF, FOR CLASSIFICATIONS SUCH AS PEP RIDGE FARM, AND IT CITES THE REFUND STATUTE FOR A FOUR-YEAR PERIOD, DEALS WITH THE CLASSIFICATION. THOSE CAN BE, THOSE CAN BE CHANGED. THAT IS THE FIRST STEP IN THE PROCESS.

LET ME ASK YOU, REGARDLESS OF WHETHER IT CAN BE CHANGED, WE ARE DEALING WITH WHEN A CLAIM CAN BE MADE. WHY ISN'T IT A REASONABLE CONSTRUCTION, WHEN WE HAVE TO CONSIDER BOTH 194.171 AND THEN 197.182, AND GIVEN THAT THE TAX COLLECTOR HAS TO KNOW

WHAT IS GOING TO BE COLLECTED IN TAXES, THAT IF YOU WANT TO CHALLENGE THE ASSESSMENT, WITHOUT PAYING THE TAX ON THAT, YOU HAVE TO DO IT WITHIN 60 DAYS. OTHERWISE YOU CAN GO AHEAD AND PAY THE TAX, THEN YOU HAVE FOUR YEARS TO CHALLENGE IT AT THAT POINT. YOU STILL HAVE THE RIGHT TO CHALLENGE IT BUT NOW YOU HAVE PAID THE TAX AND YOU ARE JUST SEEKING A REFUND OF IT, AND YOUR CLIENTS CAN STILL DO THAT. THEY CAN PAY THE TAX, AND THEY CAN SEEK A REFUND UNDER 197.181. WHY ISN'T THAT A REASONABLE WAY TO DEAL WITH BOTH STATUTES?

THAT IS ONE WAY TO DEAL WITH IT. IT DOES NOT DEAL WITH THE OMISSION AND COMMISSION. IT DOES NOT DEAL WITH THE TAX CERTIFICATE ISSUE, AND IT DOESN'T DEAL WITH THE PLAIN LANGUAGE OF 194.171 PAREN 2, WHERE IT SAYS --

GET RID OF THE WHOLE OMISSION, COMMISSION ISSUE AND HAVING TO MAKE AN ACADEMIC DECISION IN SOME CASES WHETHER THIS IS AN ERROR OF OMISSION OR COMMISSION OR A JUDGMENT CALL, AND SIMPLY SAY IF YOU WANT TO CONTEST IT BEFORE YOU PAY THE TAX, YOU DO IT WITHIN 60 DAYS. OTHERWISE YOU PAY THE TAX AND SEEK A REFUND.

IF THE LEGISLATURE WANTED THAT SYSTEM, THEY WOULD HAVE SET IT UP, YOUR HONOR.

AND MY QUESTION IS, ISN'T THAT EXACTLY WHAT THEY DID?

NO, YOUR HONOR, THEY DID NOT, BECAUSE UNDER 194.171 PAREN 7, IT SAYS TAX ASSESSMENT. IT DOESN'T DEFINE TAX ASSESSMENT, EXCEPT IT DOES DEFINE ASSESSED VALUE OF PROPERTY, IN SECTION 192.0001 PAREN 2. AND IF THE COURT REVIEWS ALL OF THE CASES WHERE THE COURTS HAVE FOUND THAT THE PROPERTY HAD TO BE CHALLENGED OR THE ACTION BY THE PROPERTY APPRAISER HAD TO BE CHALLENGED WITHIN 60 DAYS, YOU WILL FIND THAT ALL OF THOSE CASES FROM THE DISTRICT COURT, DEALT WITH A VALUE QUESTION OR AN EXEMPTION QUESTION, AND IT FALLS UNDER THE DEFINITION OF WHAT ASSESSED VALUE OF PROPERTY IS.

NOW, IF YOU SAY THAT IT WOULD ALLOW A CONTEST THAT, IF YOU WERE CONTESTING THE EXEMPTION STATUS, IT WOULD HAVE TO BE WITHIN 60 DAYS.

NO DOUBT ABOUT IT.

WHERE DOES IT SAY IN THE STATUTE, TO CONTEST A TAX ASSESSMENT, WHERE DOES IT SAY THAT EXEMPTIONS ALSO ARE INCLUDED IN TAX ASSESSMENTS?

THE COURTS HAVE MADE THAT DICHOTOMY, BASED ON DEFINITION OF ASSESSED VALUE OF PROPERTY, WHICH MEANS, THE LEGISLATURE DEFINED THIS, WHICH MEANS THE ANNUAL DETERMINATION OF JUST OR FAIR MARKET VALUE OF AN ITEM OF PROPERTY OR THE VALUE OF A HOMESTEAD, AND I AM SKIPPING ON.

AND THE IDEA WOULD BE THAT, IF IT IS AN EXEMPTION, THEN THE TAX ASSESSMENT WOULD BE ZERO, CORRECT?

IN WHAT CASE?

IF IT WAS YOU ARE CHALLENGING AN EXEMPTION, THE TAX ASSESSMENT WOULD BE ZERO.

IT COULD BE. IT DEPENDS ON THE AMOUNT OF THE EXEMPTION.

THE EXEMPTION. THE MARSHAL HAS HAS TURNED ON THE LIGHT, TO REMIND YOU OF YOUR TIME, BUT YOU CAN FINISH ANSWERING, OF COURSE.

HERE, YOU HAVE GOT AN ARGUMENT THAT THERE SHOULD BE A ZERO TAX ASSESSMENT, RATHER

THAN THE AMOUNT ASSESSED, BECAUSE IT WAS MISS CLASSIFIED AS TO, AS, AND IT SHOULD HAVE BEEN CLASSIFIED AS INTANGIBLE PROPERTY.

THE COUNTY CANNOT TAX AN INTANGIBLE INTEREST, AND IT SHOULD NOT BE ON THE ROLL. YES, YOUR HONOR.

CHIEF JUSTICE: OKAY.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS TOM FINLEY. I REPRESENT THE PROPERTY APPRAISER, GREGORY BROWN, IN THIS CASE. SEATED WITH ME IS ELLIOTT MESSER AND ROY ANDERS, AS CO-COUNSEL. YOUR HONOR, WITH RESPECT TO WHAT WAS ALLEGED IN THE AMENDED COMPLAINT, THERE WERE A FEW QUESTIONS ABOUT THAT, AND I WOULD LIKE TO OUT THAT, IN PARAGRAPH ONE OF THE AMENDED COMPLAINT, THE PETITIONERS VERY CLEARLY STATED IN THE SECOND SENTENCE OF THE FIRST PARAGRAPH OF THE COMPLAINT, THIS COURT HAS ORIGINAL JURISDICTION OF THIS MATTER PURSUANT TO SECTION 194.171 FLORIDA STATUTES. THEY HAVE ELECTED TO PROCEED UNDER 194.171. THERE IS NO OTHER STATUTE THAT COULD POSSIBLY APPLY IN THIS CASE. AND THEY SHOULD BE BOUND BY THE STATUTE OF NONCLAIM THAT COMES WITH SECTION 194.171. AND IN THE THIRD SENTENCE OF THAT SAME PARAGRAPH, THE PLAINTIFFS ALLEGE, PLAINTIFFS AND CLASS MEMBERS SEEK A DECLARATION THAT AN ASSESSMENT TAXING IMPROVEMENTS TO PROPERTY LEASED TO PLAINTIFFS BY SANTA ROSA COUNTY IS VOID. VERY CLEARLY, BY THIS LANGUAGE, THEY ARE ATTACKING AN ASSESSMENT. THEY ARE CONTESTING AN ASSESSMENT. THIS IS THE REMEDY THAT THEY HAVE CHOSEN.

HOW CAN WE AVOID SORT OF THIS SEMANTICAL CIRCLE, YOU KNOW, THAT WE ARE IN HERE, BECAUSE IT SEEMS TO ME THAT THIS IS THROWING UP HUGE PROBLEMS, THE SEMANTICS THAT ARE GOING ON HERE. LET ME COME BACK AND ADDRESS THEIR CLAIM FROM A DIFFERENT PERSPECTIVE. AREN'T THEY CLAIMING HERE, THAT COUNTY GOVERNMENT HAS ABSOLUTELY NO AUTHORITY TO TAX THIS PROPERTY? ISN'T THAT REALLY THE ESSENCE OF THEIR CLAIM, THAT IN OTHER WORDS, THAT ONLY THE STATE HAS THE AUTHORITY TO COLLECT ANY TAX, AND WHEN THE STATE DOES IT, THEY ARE NOT CLAIMING AN AD VALOREM TAX HERE. THEY ARE, SO AREN'T, HELP ME, ISN'T THAT REALLY WHAT THEIR CLAIMS IS, THOUGH THAT, THE COUNTY HAS NO AUTHORITY TO SUBJECT THIS TO AN AD VALOREM TAXATION, BECAUSE OF THE STATUTORY OR CONSTITUTIONAL EXEMPTION?

I THINK THAT MAY BE WHAT THEY ARE CLAIMING, BUT I DON'T THINK THAT THAT MAKES A DIFFERENCE IN THE OUTCOME OF THIS CASE.

WHAT IF IT WAS FEDERAL PROPERTY? AND SOMEBODY WAS LEASING FROM THE FEDERAL GOVERNMENT, AND I GUESS I AM JUST MOVING UP A STEP IN SAYING THAT CLEARLY, I THINK, COUNTY GOVERNMENTS HAVE NO AUTHORITY IN FLORIDA, TO TAX FEDERAL PROPERTY, AND EVEN THOUGH THEY DO IT EVERY YEAR, PROBABLY THAT COULD BE CHALLENGED AT ANY TIME BY THE FEDERAL GOVERNMENT OR A LESSEE OF THE FEDERAL GOVERNMENT. WOULDN'T THAT, DON'T YOU THINK THAT WOULD BE --

THAT MAY BE WHAT THEY ARE TRYING TO ARGUE, BUT I DON'T THINK THAT IS WHAT THE PROPERTY APPRAISER HAS DONE. THE PROPERTY APPRAISER HAS NOT TRIED TO ASSESS ANY COUNTY PROPERTY, HAS NOT TRIED TO ASSESS ANY FEDERAL GOVERNMENT PROPERTY. AS POINTED OUT IN PARAGRAPH 14 OF THEIR COMPLAINT, IN THIS CASE FOR EXAMPLE, THE LESSEES, OR THE LEASES THAT ARE INVOLVED IN THIS CASE HAVE LANGUAGE THAT STATES THAT TITLE TO THE IMPROVEMENTS DOES NOT, VESTS IN THE SANTA ROSA COUNTY OR ITS AGENT, AT THE EXPIRATION OF THE LEASE TERM, SO THAT IS AT THE EXPIRATION OF 99 YEARS OR IN THIS CASE THERE ARE OPTIONS TO RENEW FOR 99 MORE YEARS, SO THE PROPERTY, THE IMPROVEMENTS IN THIS CASE, THE TITLE AND ALL OF THE AT TRIBUTES OF OWNERSHIP ARE WITH THE LESSEES AND THAT WAS WITHIN THE PROPERTY APPRAISER'S JUDGMENT E SOUGHT AN OPINION OF THE

ATTORNEY GENERAL, WHICH WENT THROUGH THE LAW ON THIS, AND HE DELIBERATELY CONCLUDED THAT THESE INTERESTS, THESE IMPROVEMENTS, NOT THE LAND LEASE BUT THESE IMPROVEMENTS ARE OWNED BY THESE PEOPLE THAT LIVE ON THE BEACH.

LET ME ASK YOU THIS, IS, THE OVERALL SCHEME THAT JUSTICE PARIENTE AND CANTERO OUTLINED, AS FAR AS THE PAYMENT IN AND THEN THE REFUNDS STATUTE FITTING TOGETHER, TO ALLOW, IN FACT, IF THEY, THE TAXPAYER MADE THE PAYMENT, TO BRING THIS ACTION WITHIN THE FOUR-YEAR PERIOD, DO YOU AGREE WITH THAT?

NOT ENTIRELY. I KNOW THAT SECTION 197.182 IS NOT BEFORE THE COURT, BECAUSE IT HASN'T BEEN PLED, BUT I UNDERSTAND THAT THE COURT IS INQUIRING WHAT DO WE DO WITH THE INTERPLAY BETWEEN THESE TWO, AND I THINK THAT THE BEST ANSWER IS TO FOLLOW THE STAFFORD DECISION OF THE FOURTH DCA THAT WAS AUTHORED BY JUSTICE PARIENTE, I BELIEVE, AND THAT SAYS THAT YOU CANNOT USE SECTION 197.182, TO CIRCUMVENT THE STRICT JURISDICTIONAL PROVISIONS OF 194.171. 194.171 IS A STRICT JURISDICTIONAL STATUTE THAT SAYS, IF YOU DON'T CONTEST THAT ASSESSMENT WITHIN 60 DAYS FROM THE CERTIFICATION OF THE TAX ROLLS, THEN THERE IS NO JURISDICTION FOR THE COURT TO CONSIDER IT. THERE IS A PURPOSE FOR 197.182, HOWEVER, AND THAT IS TO CORRECT ACCIDENTAL OVERPAYMENTS, WHERE SOMEONE PAYS MORE THAN THE ASSESSED VALUED EW JUSTIFIES, WHERE SOMEONE ACCIDENTALLY SENDS IN 1,000 INSTEAD OF 100.

WHAT DO YOU DO WITH SUBSECTION 1-A-3, THEN, OF 197.182, WHICH SAYS WHEN A BONA FIDE CONTROVERSY EXISTS BETWEEN THE TAX COLLECTOR AND TAXPAYER AS TO THE LIABILITY OF THE TAXPAYER FOR THE PAYMENT OF THE CLAIM TO BE DUE, THE TAXPAYER PAYS THE AMOUNT CLAIMED BY THE TAX COLLECTOR TO BE DUE AND IS FINALLY ADJUDICATED BY A COURT OF COMPETENT JURISDICTION THAT THE TAXPAYER WAS NOT LIABLE FOR THE PAYMENT OF THE TAX OR ANY PART THERE OF, THAT SEEMS TO INCLUDE MORE THAN JUST AN INADVERTENT OVERPAYMENT.

WELL, I THINK YOU HAVE TO READ THAT IN CONJUNCTION WITH THE FIRST PART OF 197.182 THAT STATES WHEN YOU ARE ENTITLED TO SUE FOR A REFUND. IT COULD BE THAT THAT IS INTENDED --

THIS ISN'T THE FIRST PART.

OKAY. WELL, THAT COULD BE INTENDED TO BE IN CONJUNCTION WITH A CASE THAT HAS BEEN DRAWN OUT UNDER 194.171 BUT WHERE THE ASSESSMENT WAS CHALLENGED WITHIN 60 DAYS. THERE IS ANOTHER POSSIBLE USE OF 197.182, AND THAT RELATES TO ANOTHER STATUTE THAT HAS NOT BEEN PLED IN THE AMENDED COMPLAINT. 197.122, WHICH SAYS THAT A PROPERTY APPRAISER CAN CORRECT A MATERIAL MISTAKE OF FACT AT HIS OWN INITIATIVE, WITHIN HIS OWN DISCRETION WITHIN A PERIOD OF ONE YEAR. IF THE PROPERTY APPRAISER WERE TO DO THAT, AND CORRECT AN ERROR WITHIN ONE YEAR, WITHIN HIS OWN DISCRETION THAT WOULD JUST BE A CORRECTION TO THE TAX ROLL, BUT IT WOULDN'T NECESSARILY BE, THE AMOUNTS WOULDN'T BE REFUNDED, UNLESS SOMEONE FILED A SUIT UNDER 197.182 WITHIN THE FOUR YEARS.

SO IT IS WITHIN THE POSITION OF YOUR CLIENT THAT, IF THERE IS A DISPUTE GOING ON AS TO WHETHER THE PROPERTY IS TANGIBLE OR INTANGIBLE PROPERTY, THAT IF THE TAXPAYER DOESN'T ACT WITHIN 60 DAYS, THEN THE TAXPAYER HAS NO REMEDY?

WELL, THEY DO HAVE A REMEDY. THEY CAN COME BACK THE NEXT YEAR AND SUE. EVERY YEAR CREATES A DIFFERENT ASSESSMENT. THEY CAN COME BACK THE NEXT YEAR AND PROPERLY --

THEY COULDN'T SUE ABOUT THIS PARTICULAR TAX YEAR.

THEY COULDN'T SUE ABOUT THIS PARTICULAR TAX YEAR. THERE MAY BE SOME INSTANCES IN

WHICH THEY COULD, IF THERE WAS AN ACCIDENTAL OVERPAYMENT INADVERTENT.

HOW LONG BEFORE THE TAXPAYER WOULD HAVE TO RAISE IT? LACHES WASN'T ATTACHED?

OUR POSITION WOULD BE THAT 197.182 SERVES THE PURPOSE OF CORRECTING INADVERTENT MISTAKES BY THE PROPERTY APPRAISER. IF SOMETHING WAS DONE BY ACCIDENT, AND WE DON'T BELIEVE THAT FOR THAT REASON THE SARTORI CASE OR THE SOEN CASE SHOULD NECESSARILY BE OVERRULED, BECAUSE BOTH SITUATIONS VOLVO-.

WHERE IT IN THE STATUTE DOES IT -- WHERE IN THE STATUTE DOES IT SAY THAT 197.182 IS LIMITED TO INADVERTENT ERRORS OR MISTAKES?

IT DOESN'T SAY IT AND THAT IS A PROBLEM IN THE DRAFTING OF THE STATUTES. THERE IS SOME CONFUSION, OBVIOUSLY, AND IT HAS GENERATED THE CONFUSION CASES.

WOULDN'T THAT BE AN UNUSUAL CLASSIFICATION, THOUGH, FOR, TO DESIGNATE, EVEN IF IT WAS DESIGNATED?

I THINK IT GIVES A PURPOSE TO BOTH STATUTES AND THAT IS THE WAY THE ATTORNEY GENERALS OFFICE HAS INTERPRETED AND IT IS THE WAY THAT SEVERAL DISTRICT COURTS HAVE INTERPRETED IT. I THINK IT GIVES MEANING TO BOTH PROVISIONS.

WHAT HAPPENS IN THIS CASE, NOW, FOR INSTANCE, IF I UNDERSTAND IT CORRECTLY, SOME OF THE LEASEHOLDERS HAVE FILED TIMELY CHALLENGE? INDIVIDUALLY?

YES.

AND HAVE THEY RECEIVED A LEGAL RULING YET IN THEIR CASE AND YOU KNOW, WHAT, I AM REALLY ASKING THIS MORE AS A HYPOTHETICAL THAN I AM A WHAT ACTUALLY HAPPENED. ASSUMING THAT THEY PREVAIL, ON THEIR INDIVIDUAL CLAIMS, WHAT HAPPENS TO WHAT ARE THERE, SOME 800 OF THESE LEASE HOLDS? WHAT HAPPENS TO THE REST OF THEM, THEN, AS FAR AS THE TAX ASSESSOR IS CONCERNED?

WELL, AS FAR AS --

IF THERE IS A LEGAL RULING. IN OTHER WORDS A LEGAL RULING IN FAVOR OF ONE OF THE LEASEHOLDERS, AND IT GOES ALL OF THE WAY UP TO THE FLORIDA SUPREME COURT, AND IT STAYS THE WAY THAT IT WAS. WHAT HAPPENS TO --

OUR SUGGESTION WOULD BE TO FOLLOW THE STAFFORD CASE AND CONCLUDE THAT 194.171 IS THE EXCLUSIVE REMEDY AND THE PEOPLE THAT ARE NOT IN THE 2001 SUIT ARE OUT. NOW, THEY ARE IN THE 2002 CASE, AND THEY ARE IN THE 2003 CASE, SO THEY ARE FINE ON A GOING FORWARD BASIS, BUT THEY DIDN'T FILE WITHIN THE 60 DAYS, AND WE BELIEVE THE LEGISLATURE HAS MADE THAT AN ABSOLUTE BAR TO ANY CHALLENGE, WHETHER BY REFUND, STATUTE OR OTHERWISE. SO THEY WOULD BE OUT, AND WE URGE THE COURT TO FOLLOW THE STAFFORD DECISION IN THAT RESPECT, BUT THERE IS CONFUSION IN THE STATUTES. THERE IS NO QUESTION ABOUT IT.

WHAT IS THE STATUS OF THE INDIVIDUAL CLAIMS? AT THIS TIME.

THE SUMMARY JUDGMENT MOTIONS WERE FILED, CROSS MOTIONS FOR SUMMARY JUDGMENT. THEY HAVE BEEN ARGUED AND THE COURT HAS NOT ENTERED A DECISION. WE HAVE, ALSO, ARGUED IN THE 2002 CASE, THE MERITS ON CROSS MOTIONS FOR SUMMARY JUDGMENT, AND THAT IS ALSO PENDING RESOLUTION, SO THERE IS NO RESOLUTION YET.

THANK YOU VERY MUCH.

BUT, YOUR HONOR, WE WOULD SUGGEST THAT, AS FAR AS AUTHORITY FOR CONCLUDING THAT 197.182 CAN'T BE USED TO CIRCUMVENT 194.171, THE NEPTUNE HOLLYWOOD BEACH CLUB THAT THIS COURT RENDERED, STATES THAT EVEN WHEN YOU ARE ATTACKING AN ASSESSMENT AS BEING TOTALLY UNAUTHORIZED, WHERE THE PROPERTY APPRAISER HAS DONE SOMETHING THAT HE NEVER SHOULD HAVE DONE, AND THAT IS SPECIFICALLY IN A FOOTNOTE OF THE NEPTUNE HOLLYWOOD BEACH CLUB, THE 60-DAY LIMITATION STILL APPLIES, AND THAT IS THE ONLY DECISION THAT THIS COURT HAS REACHED, AND IT SAYS THE VOID, VOIDABLE DISTINCTION DOESN'T MATTER. SEMANTICS DON'T MATTER. IF THERE IS ANY CONTEST TO AN ASSESSMENT IN THE DENIAL OF AN EXEMPTION THAT NECESSARILY LEADS TO AN ASSESSMENT, ANY CONTEST TO AN ASSESSMENT HAS TO BE FILED WITHIN 60 DAYS. THERE IS NO OTHER STATUTORY BASIS FOR ANY STATUTE OF LIMITATIONS IN THIS CASE. THEY HAVE CONTINUOUSLY ARGUED THAT CLASSIFICATIONS ARE SUBJECT TO A FOUR-YEAR PERIOD. WELL, THERE IS NOTHING IN ANY STATUTE THAT SAYS THAT. THERE IS THE STATUTE THAT WE HAVE DISCUSSED FOR REFUNDS THAT HAS A FOUR-YEAR LIMITATIONS PERIOD, AND THERE IS A STATUTE FOR CONTESTING AN ASSESSMENT THAT HAS A 60-DAY PERIOD. THERE IS NOTHING ELSE. 95.11 COULD NOT WORK, BECAUSE THAT APPLIES TO MONEY PAID IN ERROR TO THE STATE. I THINK THAT THE SPECIFIC HAS TO CONTROL OVER THE GENERAL, FIRST OF ALL, AND SECONDLY, THERE HAS BEEN NO MONEY PAID BY ANY OF THESE PETITIONERS. THERE SIMPLY IS NO OTHER STATUTORY BASIS FOR ANOTHER LIMITATIONS PERIOD, BASED ON THE THEORY OF A RECLASSIFICATION OR A MISS CLASSIFICATION. AND SECONDLY, WE BELIEVE THAT THERE IS NO ISSUE OF CLASSIFICATION IN THIS CASE, ANYWAY. WHAT WE HAVE HERE ARE BUILDINGS. THE QUESTION IS WHO OWNS THEM. THE PEOPLE THAT LIVE IN THEM AND ENSURE THEM, AND ARE OBLIGATED TO DO ALL OF THE MAINTENANCE REPAIR ON THEM AND THE PEOPLE THAT HAVE TITLE TO THESE BUILDINGS, OR THE COUNTY FOR WHICH TITLE WILL NOT VEST FOR IF ANOTHER 99 YEARS OR 198 YEARS OR BEYOND. OUR POSITION AND THE PROPERTY APPRAISER'S POSITION IS THAT THESE BUILDINGS ARE OWNED BY THESE PETITIONERS. AND THAT IS THE BASIS FOR THIS PETITION. THERE IS NO ATTEMPT TO ASSESS THE LEASEHOLD INTEREST. CASES SUCH AS PARK AND SHARP HAVE NO BEARING ON THIS CASE. CASES WHERE THERE ARE LEASES OR GOVERNMENTAL IMMUNITY AREN'T REALLY APPLICABLE IN THIS CASE. I REALIZE THAT IS THEIR DEFENSE, BUT THE ISSUE HERE IS WHETHER THE ASSESSMENT OF THE BUILDINGS HAS TO BE CONTESTED WITHIN 60 DAYS.

IS THIS THE WAY THE COUNTY APPRAISER TREATS PRIVATELY-OWNED PROPERTY, TOO, WHERE THE PARTIES AMONGST THEMSELVES, HAVE AGREED SIMILAR TO A LEASE AGREEMENT, THAT EXISTS HERE, AS TO DIFFERENT OWNERSHIP OF THE IMPROVEMENTS? IN OTHER WORDS DOES THE COUNTY, IF WE HAD THE UNDERLYING PROPERTY HERE, OWNED BY A PRIVATE ENTITY, CLEARLY IS SUBJECT TO TAXATION, YOU KNOW, NO FEDERAL OR OTHER GOVERNMENT INVOLVED, BUT THERE WAS A LEASE AGREEMENT SIMILAR TO THE LEASE AGREEMENT, DOES THE COUNTY SEPARATELY ASSESS THE LEASEHOLDERS' INTEREST IN THE IMPROVEMENTS, OR DOES THE COUNTY ASSESS THE UNDERLYING PROPERTY OWNER FOR THE WHOLE BALL OF WAX AND LETS THEM, THE PEARCE TO THAT, WORK THAT OUT?

WELL, -- THE PARTIES TO THAT, WORK THAT OUT?

THE GOVERNMENTAL, THE INTANGIBLE TAX ISSUE ONLY COMES UP IN THE SITUATION OF GOVERNMENTAL LEASE HOLDS.

SO IF IT WAS A PRIVATE ENTITY, THE UNDERLYING PROPERTY OWNER WOULD BE, RECEIVED THE FULL TAX BILL, SO TO SPEAK, REGARDLESS OF ANY AGREEMENT BETWEEN THE PARTIES, AS TO HOW THAT IS TO BE WORKED OUT.

THAT'S CORRECT. ASSUMING THAT IT IS A TRUE LEASE. THE TRUE, THE REAL QUESTION FOR THE PROPERTY APPRAISER IS WHO IS THE EQUITABLE OWNER NOT JUST WHO IS THE LEGAL OWNER.

TAKING THE SAME LEASE THAT IS INVOLVED HERE, AS FAR AS THE TERMS OF IT.

RIGHT.

THE ONLY DIFFERENCE THAT I AM THROWING IN IS THAT YOU HAVE A PRIVATE PARTY OWNING THE UNDERLYING FEE, INTEREST, BUT THEN YOU HAVE THE SAME LEASE PROVISION, WOULD THE PROPERTY ASSESS OR SEPARATELY ASSESS THE LEASEHOLD INTEREST FROM THE UNDERLYING FEE?

IN THIS PARTICULAR, WITH THESE PARTICULAR FACTS, THE PROPERTY APPRAISER WOULD ASSESS THE LESSEE AS THE OWNER OF THE IMPROVEMENTS, BECAUSE THE LESSEE WOULD BE THE EQUITABLE OWNER OF THE PROPERTY, IF THEY BEAR THE BURDENS OF INSURING, MAINTAINING, REPAIRING AND THEY HAVE THE TITLE, THERE IS A CLEAR BODY OF LAW THAT SUPPORTS THE THEORY OF EQUITABLE OWNERSHIP AND REQUIRES THE PROPERTY APPRAISER TO TAX THE EQUITABLE OWNER, EVEN IF LEGAL TITLE IS HELD IN ANOTHER ENTITY.

BUT THE CRITERIA THAT YOU ARE USING HERE, IS NOT, IS THAT THIS IS A 99-YEAR LEASE. NOW, NOT EVERY 99-YEAR LEASE IS SUBJECT TO A TANGIBLE PERSONAL OR TANGIBLE PROPERTY TAX. I MEAN, THAT IS NOT SO, IS IT?

NO. WHAT I AM SAYING IS THAT --

THE REASON THIS IS BEING DONE IS BECAUSE THE OWNER OF THE PROPERTY IS EXEMPT! THAT IS THE FACT HERE.

NO, I DON'T THINK SO. IF THEY WERE PRIVATE PARTIES AND, BUT THE EQUITABLE IN THIS SITUATION, WITH A 99-YEAR LEASE OF THE LAND, WITH AN OPTION TO RENEW FOR 99 MORE YEARS, AND THE LESSEE BORE ALL THE BURDENS AND BENEFITS OF OWNERSHIP, THEN THIS PROPERTY APPRAISER WOULD TAX THAT, WOULD ASSESS THAT LESSEE AS THE OWNER, AND THAT IS THE LAW.

IF IT WAS A 99-YEAR LEASE FOR A SHOPPING CENTER, IS IT YOUR, IS THE TAX COLLECTOR IN THAT COUNTY, NOT GOING TO TAX THE OWNER OF THAT PROPERTY?

DEPENDS ON THE PROVISIONS OF THE LEASE. IF THE, TYPICALLY IN THAT SITUATION, THE OWNER WOULD BEAR THE BURDENS OF AND BENEFITS OF OWNERSHIP. THEY WOULD HAVE TO MAINTAIN AND ET CETERA.

THEY ARE IN A 99-YEAR LEASE. THEIR LEASE ARRANGEMENT WOULD PROVIDE WHO IS GOING TO PAY THE TAX.

THERE IS PROBABLY NOT A GOOD ANALOGY TO A SHOPPING CENTER WITH THIS CASE, BECAUSE IN THIS CASE THE COUNTY AS THE ALLEGED LESS OR, FIRST OF ALL IS LEASING ONLY THE LAND, AND SECONDLY THEY HAVE ABSOLUTELY NO BENEFITS OR BURDENS OF OWNERSHIP. ALL OF THE BEN FIST AND BURDENS OF OWNERSHIP ARE ON THOSE BEACH RESIDENTS, AND THEY HAVE THE RIGHT TO RENEW FOR 99 YEARS, THEN 99 MORE YEARS, THEN, AD INFINITUM, ACCORDING TO THE MASTER LEASE.

SO, OKAY, IT IS BEACH LAND AND IMPROVEMENTS. ARE THEY THE HOUSES?

CONDOMINIUMS, HOUSES.

THAT THEY ARE SAYING SHOULD BE TAXED AS INTANGIBLE PROPERTY.

YES, AND THEY DON'T PAY INTANGIBLES TAX BY THE WAY. THEY DON'T PAY ANYTHING. AND

THEY HAVE ALL OF THE BENEFITS AND BURDENS OF COUNTY GOVERNMENT, THEY HAVE, AND THEY ARE JUST LIKE ANY OTHER CONDOMINIUM OWNER IN THE WORLD.

WHAT WOULD HAPPEN IF, IN A SITUATION WHERE THE STATE WAS SEEKING TO TAX PROPERTY AS INTANGIBLE AND THE PROPERTY APPRAISER HAD DETERMINED THAT IT WAS AD VALOREM TAXATION, WHAT TYPE OF, WHERE WOULD THAT DISPUTE FALL, BECAUSE THAT IS SORT OF IN A WAY WHAT THEY ARE SAYING, I GUESS THE STATE HASN'T COME IN TO TRY TO TAX THIS AS INTANGIBLE. I GUESS VOLUNTARILY IF THIS SUIT WAS ALLOWED TO GO FORWARD, THEY WOULD BE SAYING WE WILL HAVE THIS TAXED AS INTANGIBLE PROPERTY. HOW WOULD THAT DISPUTE BE RESOLVED?

ION. I GUESS THEY WOULD HAVE TO INTERVENE OR SOMETHING. FORTUNATELY IN THIS CASE THE DEPARTMENT OF REVENUE AGREES WITH US THAT THESE PROPERTIES ARE OWNED BY THE TEN AT -- TENANTS, BY THE CONDOMINIUM OWNERS.

HOW DO WE KNOW THAT?

BECAUSE WE HAVE TALKED TO THE DEPARTMENT OF REVENUE THAT SAYS THEY AGO GEE WITH THIS.

BUT WE CAN'T --

I UNDERSTAND. BUT IT IS NOT IN THIS RECORD, NO. ARE THERE ANY OTHER QUESTIONS?

THANK YOU VERY MUCH.

THANK YOU VERY MUCH. WE REQUEST THAT THE COURT AFFIRM THE OPINION OF THE FIRST DCA.

TALKING ABOUT THE ISSUE OF CLASSIFICATION AND EXEMPTIONS, IT SEEMS TO ME THAT ALL EXEMPTIONS IN SOME MANNER, RELATE TO HOW YOU CLASSIFY THE PROPERTY. WHETHER IT IS CLASSIFIED AS AGRICULTURAL, WHETHER IT IS HOMESTEAD PROPERTY, ALL OF THESE DIFFERENT THINGS, AND IT DOESN'T SEEM TO GIVE US AN ANSWER TO PUT OUR HANDS AROUND AND SOLVE THE PROBLEM THAT WE ARE DEALING WITH, AND THAT IS THE DIFFICULTY WE SEEM TO BE HAVING. COULD YOU --

YES.

-- VERIFY WHAT THIS CLASSIFICATION POSITION IS THAT YOU ARE --

YES, YOUR HONOR. BEFORE I WENT INTO PRIVATE PRACTICE, I WAS THE CHIEF OF THE TAX SECTION OF THE ATTORNEY GENERALS OFFICE FOR 20 YEARS, AND THIS IS ALL I DID. IN ANSWER TO JUSTICE, THE JUSTICE'S QUESTION ABOUT 197.182, IT WOULD BE THE POSITION OF A PROPERTY APPRAISER AND THE STAFFORD CASE, THAT IF YOU GOT AN ASSESSMENT, A VALUATION, AND YOU DIDN'T CHALLENGE THE VALUATION, IN THE FIRST YEAR YOU COULDN'T COME BACK. THE COURTS HAVE SAID THAT, AS TO CLASSIFICATION, THE 60-DAYS DOESN'T APPLY.

WHAT IS EXTENT? GET OUR HANDS AROUND CLASSIFICATION. WHAT IS THE CONCEPT THAT YOU THINK THAT THIS IS, THAT THE COURT SHOULD ADOPT, SO THAT WE CAN RESOLVE WHAT APPEARS TO BE A CONTINUING RUNNING PROBLEM THAT OCCURS FROM CASE TO CASE.

WELL, GOOD EXAMPLE IS THE PEP RIDGE FARM CASE. IN PEP RIDGE FARM, PALP RIDGE FARM, I WAS STILL WITH THE ATTORNEY GENERALS OFFICE AT THE TIME, PEP RIDGE FARM SAID MY SOFTWARE IS INTANGIBLE BECAUSE THE STATUTE SAYS IT IS. THE SECOND DISTRICT SAYS THAT IS CLASSIFICATION. THE STATUTE SAYS YOU ARE AN INTANGIBLE. THE PROPERTY APPRAISER SAYS YOU ARE TANGIBLE PERSONAL PROPERTY. THAT IS A CLASSIFICATION ISSUE.

HOW ABOUT IF I HAVE A FARM, AND I SAY THAT IT IS ZONED AGRICULTURAL AND THE PROPERTY APPRAISER SAYS, NO, WE ARE GOING TO TAX THAT AS RESIDENTIAL PROPERTY S THAT NOT CLASSIFICATION AS WALL? -- AS WELL?

THE PROPERTY APPRAISER, YOU WOULD HAVE TO MAKE AN APPLICATION FOR CLASSIFICATION. THE PROPERTY APPRAISER WOULD HAVE TO GRANT IT OR DENY IT.

I AM SAYING IS THAT NOT CLASSIFICATION AS WELL?

THAT FALLS, IF YOU LOOK AT THE DEFINITION OF ASSESSED VALUE, THAT FALLS UNDER ASSESSED VALUE, THE CLASSIFIED USE OF ARTICLE VII SECTION 4, PROPERTY, AND AS TO THE INTANGIBLE TAX, THE RESPONDENTS HAVE JUST ARGUED THE MERITS OF THIS CASE, WHICH WE CAUTION THE COURT IN OUR BRIEF THAT WHAT WE ARE DEALING WITH IS THE FACTS PLED IN THIS CASE ON A MOTION TO STRIKE, AND IN PARAGRAPH 20, THE PLAINTIFFS ALLEGE THAT THEY MADE ALL OF THE REQUIREMENTS OF SECTION 196.199, 199-2-B AND 7 AND 199.023. LET ME GIVE YOU AN EXAMPLE. IF, UNDER THE INTANGIBLE TAX DEFINITIONS UNDER ONE OF 199.023, IF THE PROPERTY APPRAISER, IF YOU OWNED A MILLION DOLLARS' WORTH OF STOCK AND THE PROPERTY APPRAISER PUT IT ON THE ROLL AS TANGIBLE PERSONAL PROPERTY, BECAUSE THE LEGISLATURE SAYS IT IS INTANGIBLE PERSONAL PROPERTY, WOULDN'T THAT BE A CLASSIFICATION ISSUE? THE SECOND DEFINITIONS ARE NOTES. SAY THEY ARE BONDS. SAY THEY OWN $1 MILLION WORTH OF BONDS ISSUED BY SANTA ROSA COUNTY AND THE PROPERTY APPRAISER CHOSE TO PUT IT ON THE ROLL, WOULDN'T THAT BE A CLASSIFICATION ISSUE?

ARE YOU --

AND --

DO YOU AGREE AND IT IS RIGHT HERE IN YOUR AMENDED COMPLAINT, THAT THE BASIS FOR THE COURT'S JUMPS DICTION IN THIS CASE IS PLED AS SECTION 194.177-1-1. IS THAT THE BASIS BY WHICH THE PLAINTIFFS ARE PROCEEDING?

IT SAYS --

COURT HAS ORIGINAL JURISDICTION OF THIS MATTER, PURSUANT --

YES, YOUR HONOR, AND IF YOU WILL LOOK AT, ALSO, CHAPTER 23, THE JURISDICTION OF CIRCUIT COURTS, YOU CAN ONLY BRICK A TAXISH -- BRING A TAX ISSUE IN IN CIRCUIT COURT. CAN'T BRING IT IN COUNTY COURT, BUT IF YOU WILL ALSO LOOK PAREN 1 OF 194.171, IS NOT A JURISDICTIONAL DROP DEAD, IF YOU DO THIS, YOU HAVE SEASON YOURSELF TO THE WALL. -- YOU HAVE SEWN YOURSELF TO A WALL.

DO YOU AGREE THAT ONE IS BROADER THAN TWO, IN OTHER WORDS THAT THE COURTS HAVE JURISDICTION OVERALL MATTERS RELATING TO PROPERTY TAXATION, BUT YET TWO DOESN'T APPLY TO ALL MATTERS RELATING TO PROPERTY TAXATION?

NO. IT APPLIES TO TAX ASSESSMENTS AND THE CASES HAVE ALWAYS SAID THAT IS A VALUATION QUESTION OR AN EXEMPTION QUESTION. THIS IS NEITHER!

CHIEF JUSTICE: WE ARE GOING TO HAVE TO END ON THAT NOTE. WE APPRECIATE THE HELP FROM ALL OF YOU TODAY, ESPECIALLY IN RESPONDING TO OUR QUESTIONS AND INQUIRIES. AT THIS TIME, THE COURT IS GOING TO TAKE ITS REGULAR 15-MINUTE MORNING RECESS. WE WILL STAND IN RECESS FOR 15 MINUTES, BEFORE WE HEAR THE NEXT CASE.

MARSHAL: PLEASE RISE.