

>> THE LAST CASE FOR THE DAY IS
ALACHUA COUNTY VERSUS EXPEDIA.

>> YOU MAY BEGIN.

>> GOOD MORNING, MAY IT PLEASE
THE COURT.

MY NAME IS BOB MARTINEZ AND
STEPHANIE CASEY AND I REPRESENT
THE PETITIONERS.

WE REPRESENT 12 COUNTIES AND FOUR
TAX COLLECTORS.

THE TOURIST DEVELOPMENT TAX
TAXES A RENTAL TRANSACTION.

IN THE MERCHANT MODEL THERE IS
ONLY ONE TRANSACTION.

THE MERCHANT MODEL IS WHAT THIS
CASE IS ALL ABOUT AND THAT
RENTAL TRANSACTION IS BETWEEN
THE TOURIST AND THE ONLINE
TRAVEL COMPANY.

BEFORE I GET TO THE CENTRAL
QUESTION IN THIS PARTICULAR
CASE, ON WHAT PART OF THE AMOUNT
PAID BY THE TOURIST IS A TAX
IMPOSED ON, WHAT I LIKE TO DO IS
DIGRESS A LITTLE BIT AND TOUCH
UPON THE ESSENTIAL ELEMENTS OF
THE MERCHANT MODEL BECAUSE I
THINK IT'S A VERY DISTINCT
MODEL.

I THINK IT IS IMPORTANT FOR THE
COURT TO UNDERSTAND THAT MODEL.
THERE IS A FULL EXPLANATION
OF THAT MODEL IN THE RECORD AT
1.3710.

THIS IS HOW THE MODEL
ESSENTIALLY WORKS.

ONLINE TRAVEL COMPANY ENTERS
INTO AN AGREEMENT WITH TERMS AND
CONDITIONS WITH A TOURIST TO
RENT A ROOM AND THAT AGREEMENT
IS REFLECTED ON THE WEBSITE.
TERMS.

THE TOURIST IS CHARGED BY THE
ONLINE TRAVEL COMPANY AND PAYS
IT DIRECTLY, A TOTAL PAYMENT FOR
THE RENTAL OF A CONFIRMED REST
RESERVATION, GUARANTYING
OCCUPANCY, GUARANTYING OCCUPANCY
OF THE THAT TOTAL PAYMENT PAID
BY THE TOURIST TO THE ONLINE

RENTAL COMPANY IS CONDITION OF OCCUPANCY.

IT MUST BE PAID IN ORDER TO BE ABLE TO MAKE A RESERVATION THROUGH THE ONLINE TRAVEL COMPANY.

ONCE THE ONLINE TRAVEL COMPANY CHARGE AS TOURIST'S CREDIT CARD FOR THAT TOTAL PAYMENT, FOR THAT TOTAL RESERVATION PRICE, THE CUSTOMER HAS PAID FOR THE ROOM. AND HAS OBTAINED THE RIGHT TO OCCUPY THE ROOM.

>> CAN I JUST, BUT ON THAT, AND THIS HAS BEEN FOR THOSE OF US WHO LOOK AT THESE ONLINE RATES, QUITE A REVELATION. THE, THEY PAY, AGAIN YOU'VE GIVEN ALL THESE HYPOTHETICALS BUT IF IT WAS BROKEN DOWN IF THE TOURIST UNDERSTOOD, OKAY, THE ROOM IS ONLY COSTING YOU \$500.

WE'RE GOING TO BE CHARGING FOR OUR SERVICES TO HAVE SHOPPED AROUND TO SEE WHAT EVERY OTHER HOTEL IN MIAMI HAS CHARGED AND TO DECIDE WHAT THE BEST RATE IS? BECAUSE WE'RE REALLY REPRESENTING YOU.

WE'RE NOT AN AGENT OF THE HOTEL. WE'RE, WE'RE ACTING ON YOU. AND WE'RE GOING TO CHARGE FOR THAT BECAUSE WE'RE GOING TO GET YOU THE BEST RATE FROM THE HOTEL, WE'RE GOING TO CHARGE YOU A FEE OF 20%, A SERVICE FEE.

I DON'T, AGAIN I KNOW THERE IS OTHER ISSUES BUT HOW IS THAT, IF IT WAS BROKEN DOWN THAT WAY WHERE THE HOTEL DOES NOT GET ANYTHING OTHER THAN WHAT THE AGREED UPON RATE IS BETWEEN TRAVEL COMPANY AND HOTEL, HOW DOES THAT ADDITIONAL FEE-FOR-SERVICES GET TAXED IN THE CURRENT STATE OF THIS STATUTES?

AND THAT'S WHAT I'M, AND I GUESS FIRST DISTRICT STRUGGLED WITH IT.

THE TRIAL COURT STRUGGLED WITH IT.

FRANKLY I THINK YOUR BRIEF IS EXCELLENT.

THEIR BRIEF IS EXCELLENT.

I READ YOURS I'M CONVINCED.

THEN I READ THEIRS I'M CONVINCED.

EXCELLENT ADVOCACY.

THAT IS WHAT I'M STRUGGLING WITH.

IS NOT FOR THE HOTEL ROOM.

IT IS FOR SERVICES TO DECIDE WHERE I'M GOING TO STAY.

>> WELL, FIRST OF ALL, THOSE SERVICES YOU AND I CAN GO UP ON THE WEBSITE AND SURF THAT WEBSITE FOR ABSOLUTELY FREE. SO THAT SERVICE IS FREE.

THE --

>> WE THOUGHT IT WAS BUT NOW WE KNOW IT IS NOT FREE.

>> IF YOU AND I GO AND LOOK AT IT AND DECIDE ON OUR OWN TO CALL DOUBLETREE OR MARRIOTT WE DON'T HAVE TO PAY THE ONLINE TRAVEL COMPANY FOR ANYTHING.

THAT IS FREE.

THE WAY --

>> WOULD WE GET THE SAME RATE?

>> WOULD YOU GET THE SAME RATE?

>> WENT ON THE WEBSITE?

>> YOU HAVE TO PAY, JUSTICE PERRY, ONLY ONE AMOUNT.

THEY DON'T LET YOU PAY ANYTHING, ONE AMOUNT THEY'RE DEMANDING TO BE PAID IN ORDER TO GET A ROOM RESERVATION THROUGH THEM.

>> BUT THE SITUATION, THE HOTEL RENTS, IF I HAVE A TRAVEL AGENT, I DON'T PAY MY TRAVEL AGENT, THEY DO NOW WITH AIRLINES BECAUSE THEY DON'T MAKE ANY MONEY ON IT, BUT THE HOTEL THEN, THIS IS WHAT THEY PAY.

THEY REMIT THE COMMISSION BACK.

SO I AM PAYING THE HOTEL THE FULL AMOUNT.

BUT IN THE CASE OF, AND IT IS

NOT CONTESTED, OF THE ONLINE TRAVEL COMPANY, THEY'RE PAYING THE HOTEL AND THEY DON'T OWN, THEY'RE NOT RENTING THE ROOM. THE HOTEL IS RENTING THE ROOM. THEY'RE PAYING LESS THAN WHAT THEY'RE CHARGING ME.

>> SO THEY'RE PAYING THE HOTEL A WHOLESALE RATE BUT FOR THAT WHOLESALE RATE THEY'RE NOT ALLOWED TO OCCUPY THE ROOM. THAT IS NOT A RENTAL TRANSACTION BETWEEN THEM AND THE HOTEL. WHAT YOU AND ARE CHARGED WITH, IF WE WERE USING THE WEBSITE, ONLINE TRAVEL COMPANY IS TOTAL AMOUNT.

ALL THAT IS BUNDLED, YOUR HONOR.

THEY DON'T BREAK IT APART. UNDER THE CASE LAW AS IT RELATES TO THE RENTAL TAX IN GOULD CASE AND RULES PROMULGATED BY THE DEPARTMENT OF REVENUES WHICH IS BINDING AUTHORITY WITH REGARDS TO THIS COURT, WITH REGARDS TO INTERPRETATION OF THE STATUTE THE TOTAL AMOUNT THAT BEING CHARGED WHEN IT INCLUDES CHARGES FOR SERVICES, IF THAT IS AN AMOUNT THAT MUST BE PAID IN ORDER TO RENT THAT ROOM, EVEN IF, IF IT INCLUDES SERVICES IF IT IS REQUIRED TO BE PAID THEN THAT IT IS A RENTAL CHARGE.

>> JUST SEEMS, THE ISSUE REALLY IS THOUGH IS THE POLICY AND HERE'S MY PROBLEM.

I LOOK AT THE STATUTE FROM 1977 AND I LOOK AT THE OTHER STATUTE WHICH IS TO BE READ, AT LEAST WE'VE SAID IT IS TO READ IN PARI MATERIA, WHAT I SEE THE FIRST DISTRICT SAID, THAT THE PRIVILEGE, IT IS, IT IS THE BUSINESS RENTING OR LEASING THE ROOM THAT IS THE FOCUS, NOT ME, THE TOURIST.

YOU SAY THERE IS ANOTHER

INTERPRETATION.

I DON'T SEE IT AS THAT CLEAR.
IF THERE IS TWO REASONABLE
INTERPRETATIONS, DON'T WE HAVE
TO SAY, LISTEN, WE'RE NOT
LEGISLATING.

THE LEGISLATURE CAN FIX THIS
TOMORROW.

WELL NOT MAYBE TOMORROW.

BUT LEGISLATURE CAN SOLVE THIS.
BUT WE'RE BEING ASKED, NOT THE
POLICY ISSUE BECAUSE, YOU KNOW
THE HOTELS SAY THIS IS BAD BUT
TRAVEL AGENTS SAY IT'S GOOD.
IT IS BAD FOR BUSINESS, GOOD FOR
BUSINESS.

THAT IS NOT OUR ISSUE.

OUR ISSUE IS, IF THE STATUTE IS
SUSCEPTIBLE TO BEING THAT IT IS
THE TAXES FOR, FOR THE HOTEL AND
RENTING THE HOTEL ROOM, THEN,
THAT IS THE, THAT'S A REASONABLE
INTERPRETATION.

>> WITH ALL DUE RESPECT THAT'S
NOT WHAT THE STATUTE SAYS.
THAT'S NOT WHAT IT SAID, YOUR
HONOR.

WHAT THE FIRST DCA, IT REWROTE
THE STATUTE.

IT DID EXACTLY WHAT IT WAS
ACCUSING OF US DOING.

THE STATUTE DOESN'T HAVE THE
WORDING IN THE RENTAL TAX.

IN 1977 WHEN THEY PASSED TOURIST
DEVELOPMENT TAX THEY
INTENTIONALLY OMITTED WORD OF
ENGAGING BUSINESS OF RENTING IN
THE 1949 LAW.

TRANSIENT RENTAL TAX.

THAT IS NOT IN THERE.

THE DCA TOOK WORDING FROM
DIFFERENT STATUTE, 212.03, AND
GRAFTED THAT ONTO THE WORDING
OF TOURIST DEVELOPMENT TAX.

>> DIDN'T WE SAY IN MIAMI
DOLPHINS THOSE TWO STATUTES ARE
TO BE READ IN PARI MATERIA?

>> YOU SAID THAT, YOUR HONOR.
SUPREME COURT IN MIAMI DOLPHINS
SAID THAT IN MIAMI DOLPHINS

THERE WERE FOUR ISSUES.
THAT ISSUE DIDN'T COME UP WITH
THE FOURTH ISSUE WHICH DEALT
WITH QUESTION OF PROTECTION.
THAT ISSUE OF PARI MATERIA
WHETHER THE STATUTE WAS VOID IN
VAGUENESS DIDN'T APPLY TO A MECHANISM
FOR ENFORCEMENT AND
ADMINISTRATION.

WHAT THE SUPREME COURT SAID YOU
LOOKED INTO 212.

YOU LOOKED INTO 212 TO SUPPLY
WHAT IS MISSING WITH REGARDS TO
ENFORCEMENT AND ADMINISTRATION.
BUT WITH REGARDS TO THE FOURTH
ISSUE WHICH IS WHO IS THE TAX
IMPOSED ON BY THE
SUPREME COURT, YOUR PREDECESSOR
COURT LOOKED AT SUBSECTION 3-C
OF THE TOURIST DEVELOPMENT
STATUTE.

THAT IS ALL IT DID.

IT LOOKED AT IT, SECTION 3-C AND
ALSO THE UNDERLYING ORDINANCE
WHICH HAD THE SAME LANGUAGE AND
BY LOOKING AT THAT LANGUAGE,
JUST THE TOURIST DEVELOPMENT TAX
LANGUAGE IT HELD TAXES IMPOSED
ON THE TOURIST.

>> SO LET ME GO BACK TO THIS.
THIS IS MY PROBLEM.

IT IS, TO ME THE SORT OF THE
CRUX OF EVERYTHING BECAUSE WHEN
I FIRST READ, EVERY PERSON WHO
RENTS, LEASES OR LET THE FOR
CONSIDERATION, FIRST, PERSON
CAN'T BE A BUSINESS.

BUT THEN I'M GOING BUT LETS FOR
CONSIDERATION, SURE SOUNDS LIKE
THE PERSON WHO IS LETTING OR
RENTING THE ROOM FOR
CONSIDERATION.

AND THEN I GO AND IT'S TO BE
CONSTRUED IN PARI MATERIA
WITH 125 OR 212 WHICH IS THE
STATEWIDE TAX WHICH IS HEREBY
DECLARED LEGISLATIVE INTENT THAT
EVERY PERSON IS EXERCISING A
TAXABLE PRIVILEGE WHO ENGAGED IN
BUSINESS OF RENTING, LEASING

LETTING OR GRANTING.
SO THE TAXABLE PRIVILEGE WHICH
SEEMS TO, WHO, ARE YOU SAYING IT
SWITCHED FROM THE 1940s FROM
THE TAXABLE PRIVILEGE BEING, FOR
THE HOTELS TO IN THE 1970S THE
TAXABLE PRIVILEGE WAS FOR
TOURISTS?

>> THERE IS NO QUESTION THAT THE
STATUTES HAVE DIFFERENT LANGUAGE
WITH REGARDS TO THAT ISSUE.
IT'S A DIFFERENT PRIVILEGE, YOUR
HONOR.

BUT THAT IS --

>> BUT THAT IS IMPORTANT.
YOU'RE SAYING THE PRIVILEGE,
WHEN THEY WENT AND SAID COUNTIES
CAN DO THIS, WAS NO LONGER
GOING TO BE THE TAXABLE
PRIVILEGE OF THE HOTELS WHO ARE
IN THE BUSINESS OF RENTING OR
LEASING THE ROOMS BUT NOW THE
PRIVILEGE WAS BEING CHANGED TO
BE THE PRIVILEGE OF THE
TOURISTS?

IS THAT YOUR ARGUMENT?

>> WELL, THAT IS ONE OF THEM,
YOUR HONOR.

THERE IS NO QUESTION THAT'S
EXACTLY WHAT HAPPENED WHEN THEY
PASSED TOURIST DEVELOPMENT TAX
STATUTE.

>> DON'T YOU THINK THEY HAVE
SHOULD HAVE BEEN A LITTLE MORE
SPECIFIC?

IF THAT IS A PRETTY DRAMATIC
CHANGE IN ITS IMPACT -- LISTEN
IN THE END IT MAY IMPACT THEIR
BUSINESS BUT IT SURE IMPACTS
TOURISTS WHO ARE USING THESE
ONLINE COMPANIES BECAUSE THEY'RE
THE ONES THAT ARE GOING TO END
UP PAYING AD-ON TAX ANYWAY?

>> YOUR HONOR, IF MAY
RESPECTFULLY REQUEST WHAT JUDGE
PAVANO DID, IF YOU LOOK AT THIS,
WHAT THEY'RE FOCUSING ON
TRANSACTION.

THEY'RE NOT TAXING ACTIVITY BY
ONE OF THE PARTIES TO THE

TRANSACTION.

THEY'RE TAXING THE TRANSACTION.
THAT IS WHAT 3-C, SUBSECTION 3-C
OF THE TOURIST DEVELOPMENT TAX
STATUTE IS CRUX OF THIS CASE.

>> BUT WHAT IF IN THE
TRANSACTION, WHAT IF IT'S A
RESOURCE, I'M SORRY A RESORT
TAX, A RESORT PRIVILEGE.
YOU GO TO THE HOTEL YOU PAY THIS
MUCH FOR THE ROOM AND AD ON AND
DOING THIS WE'RE ADDING
SOMETHING ELSE ON, YOU DON'T PAY
THE TAXES ON THE RATE FOR THE
ROOM, NOT ALL, IF YOU HAVE TO DO
INTERNET SERVICE OR WHATEVER
YOU'RE NOT PAYING TAX ON THOSE
ADDITIONAL ADD-ONS?

>> IF ALL, IF THE CHARGES ARE
PART OF THE CHARGES THAT YOU
MUST PAY IN ORDER TO RENT THAT
ROOM, THEN, YES.

THAT IS INCLUDED IN THE TOTAL
RENTAL CHARGES.

>> LET ME ASK YOU SOMETHING.

>> I'M SORRY.

>> FOR A PRACTICAL, AND THAT IS
I'VE GONE THROUGH ONE OF THESE
ONLINE SERVICES AND I'VE GOT MY
ROOM AND I'M AT THE HOTEL.
I'M GETTING READY TO CHECK OUT.
WHAT KIND OF TAXES ARE GOING TO
BE SHOWN ON THAT BILL THAT I GET
FROM THAT HOTEL?

>> AT THE HOTEL ITSELF?
WITHOUT USING, IF YOU DON'T USE
ONLINE TRAVEL COMPANY?

>> NO, I'M USING THE ONLINE
TRAVEL COMPANY.

>> IF YOU'RE USING AN ONLINE
TRAVEL COMPANY YOU DON'T KNOW
WHAT TAXES YOU PAY.

AND IN FACT --

>> THERE IS NO BILL AT THE END,
IS THAT WHAT YOU'RE SAYING?

>> YOU GET AN AMOUNT THAT SAYS,
THIS IS THE TOTAL AMOUNT.
NOW ON THE WEBSITE IT BUNDLES IT
ALL UP.

SO YOU'RE NEVER TOLD THE TAXES

THAT YOU PAY.

IN FACT THAT RUNS CONTRARY TO THE TAX LAW THAT'S FOUND IN 212 ITSELF, PART OF WHAT IS USED TO ADMINISTER THIS LAW.

>> I'M TRYING TO REMEMBER A TIME WHEN I DIDN'T GET A BILL HAD OCCUPANCY TAX AND COUNTY TAX. , FOUR OR FIVE SEEMS TO ME DIFFERENT TAXES COME OUT OF WHATEVER I'M PAYING.

>> JUSTICE QUINCE, IF YOU USE THE WEBSITE, IF YOU USE THE ONLINE TRAVEL COMPANIES YOU WILL NEVER KNOW WHAT TAXES YOU PAY. YOU WILL NEVER KNOW.

THEY TELL YOU THAT.

THEY BUNDLE IT UP AND DO IT ON PURPOSE BECAUSE IF YOU DID KNOW YOU WOULD BE ABLE TO BACK OUT TO FIND OUT HOW MUCH THEY'RE PAYING FOR THE ROOM AT THE WHOLESALE RATE.

SO WHAT THEY DO THEY GIVE YOU --

>> IF YOU KNEW THAT --

>> LESS THAN WHAT I COULD GET IT FOR.

>> IF YOU CALL THE HOTEL, HEY, I'M GETTING THIS RATE THROUGH EXPEDIA, HOW COME YOU'RE NOT GIVING ME THIS RATE.

THEY GO, WE CAN'T GIVE YOU THIS RATE.

WE UNDERSTAND THAT THE HOTEL, THE DAY I GET THERE COULD DECIDE TO RENT IT TO, RENT THE HOTEL ROOM TO ME FOR \$50.

>> IF YOU DO, IF YOU USE THE ONLINE TRAVEL COMPANY, ONCE YOU SHOW UP AT THE HOTEL, THE HOTEL HAS TO HONOR THAT RESERVATION THAT YOU PAID FOR BY USING THE ONLINE TRAVEL COMPANIES.

>> THEY CAN NEVER CANCEL IT? THEY CAN'T SAY WE OVERBOOKED, SORRY?

>> YOU KNOW WHAT YOU HAVE TO DO, YOUR HONOR?

YOU HAVE TO GO BACK TO THE ONLINE TRAVEL COMPANIES.

TOUGH CALL THEM FOR A REFUND.
TOUGH CALL THEM FOR THEM TO FIX
THE PROBLEM FOR YOU.
BUT THE HOTEL IS DUTY-BOUND TO
CONTRACTUALLY HONOR THE ROOM
RESERVATION THAT YOU MADE THROUGH
THE ONLINE TRAVEL COMPANY.
I THINK I'M RUNNING A LITTLE BIT
SHORT ON TIME.
FIVE MINUTES LEFT TO GO.
>> IF THEY BREACH THAT
OBLIGATION, THAT IS OBLIGATION
THEY BREACHED TO THE ONLINE
TRAVEL COMPANY, RIGHT?
>> THAT IS OBLIGATION -- THAT'S
RIGHT.
SHOWS, YOUR HONOR, THAT A
TOURIST IS NEVER DOING BUSINESS
WITH THEM OF THE TOURIST IS ONLY
DOING BUSINESS WITH THE ONLINE
TRAVEL COMPANY.
THAT IS GETS BACK TO BEGINNING
OF MY ARGUMENT.
THAT IS ONLY RENTAL TRANSACTION
HERE DEALING WITH MERCHANT MODEL
IS RENTAL TRANSACTION BETWEEN
THE TOURIST AND THE ONLINE
TRAVEL COMPANY.
I HAVE FIVE MINUTES LEFT.
I LIKE TO RESERVE IT FOR
REBUTTAL.
LET ME DO THAT.
>> YOU MAY.
>> GOOD MORNING.
MAY IT PLEASE THE COURT.
I'M ASSISTANT COUNTY ATTORNEY
MARY JOLLY ON BEHALF OF VOLUSIA
COUNTY AND SCHOOL BOARD OF
VOLUSIA COUNTY.
I WANT TO FOLLOW FROM WHERE
MR. MARTINEZ LEFT OFF.
THE RELATIONSHIP IS BETWEEN THE
TOURIST AND THE ONLINE TRAVEL
COMPANY AND AMOUNT IS TOTAL
CONSIDERATION CHARGED.
VOLUSIA COUNTY AND ALL OF THE,
OBVIOUSLY THE PETITIONERS AND
THE FIVE AMICI, ARE ALL
CONSISTENT ON THE PLAIN AND
ORDINARY LANGUAGE OF 125.0104.

>> I DON'T QUITE UNDERSTAND WHY THE DIFFERENCE BETWEEN WHAT GOES THROUGH THE HOTEL AND WHAT THE ONLINE TRAVEL AGENT CHARGED ME ISN'T THE PROFIT THAT THE ONLINE TRAVEL PEOPLE ARE MAKING AND THAT THE TAXES, THEY PAY TAXES ON THAT, AS WHATEVER BUSINESS TAXES THEY END UP PAYING?

>> I THINK PLAINLY, JUSTICE QUINCE, THE STATUTE SAYS THAT THE TOTAL CONSIDERATION CHARGED TO THE TOURIST.

THAT'S THE WHOLE AMOUNT AND THE ONLY WAY TO, IF I AM CONCLUDING OTHERWISE, YOU'RE IGNORING THAT PLAIN LANGUAGE.

>> WHAT, AGAIN, THIS IS THESE COMPANIES BUT GOING BACK TO MY HYPOTHETICAL, I DECIDE TO GO IN THE BUSINESS BECAUSE I REALIZE IT'S A PRETTY GOOD BUSINESS OF OFFERING SERVICES TO MY CLIENTS WHERE I, WHERE I AM GOING TO SHOP AROUND FOR THEM AND I'M GOING TO PUT TOGETHER A PACKAGE BUT I'M GOING TO CHARGE THEM, WHICH HAPPENS, WHICH SOME TRAVEL AGENTS DO?

I'M GOING TO CHARGE THEM A FEE OF \$500 FOR MY SERVICES.

AND MR. MARTINEZ MAKES A BIG DEAL THAT IT IS BUNDLED TOGETHER BUT LET'S ASSUME IT IS BROKEN OUT.

DO I HAVE TO PAY THE TOURIST DEVELOPMENT TAX ON THE, WHAT MY, MY AGENT, MY AGENT, NOT THE HOTEL'S AGENT, HAS CHARGED ME FOR THE SERVICE OF GETTING ME THE BEST POSSIBLE RATE?

>> YES BECAUSE THAT TRIGGERS YOUR OCCUPANCY. IT IS TOTAL CONSIDERATION.

I LOOK AT JUDGE PADOVANO'S DISSSENT AND --

>> I'M NOT SURE YOU UNDERSTOOD HER QUESTION OR EITHER I DIDN'T. I THINK WHAT SHE'S ASKING YOU IS, IF THERE IS A SEPARATE FEE

CHARGE, NOT WHAT IS BEING CHARGED HERE BY EXPEDIA, BUT IF THERE IS A SEPARATE FEE THAT THERE'S THE AMOUNT CHARGED FOR THE HOTEL BUT A SEPARATE FEE THAT WOULD BE PAID TO THE TRAVEL AGENT, IS THERE A TAX PAID ON THE ADDITIONAL FEE PAID TO THE TRAVEL AGENT?

>> UNDER THE AGENCY THERE IS NO DISPUTE THAT IT IS ON THE ENTIRE AMOUNT.

I'M LIMITED FOR TIME AND I DON'T WANT TO --

>> -- MECHANISM IN PLACE FOR THESE STATUTES?

>> I'M SORRY?

>> I KEEP HEARING ABOUT THE AGENCY AND MERCHANTS MODEL. ARE THOSE MENTIONED IN THE STATUTE?

>> NO, SIR, BUT I THINK IF YOU LOOK AT JUDGE PADOVANO'S DISSENT HE --

>> TALKING ABOUT THE STATUTE. WE'RE TRYING TO INTERPRET THE STATUTE, RIGHT.

>> THE STATUTE IS PLAIN. TOTAL CONSIDERATION CHARGED.

>> BEFORE YOU SIT DOWN, I DON'T THINK WE GOT AN ANSWER.

>> OKAY.

>> IS IT YOUR CONTENTION IT IS PAID ON THIS ADDITIONAL AMOUNT?

>> INCIDENTALS ARE, WHAT YOU PAY FOR THE OCCUPANCY TO GET INTO THAT ROOM IS TOTAL CONSIDERATION CHARGED AND, WHAT YOU HAVE TO PAY GET YOUR OCCUPANCY IS WHAT YOU SHOULD BE TAXED ON.

>> SO THE QUESTION, IF IT IS SOMETHING SEPARATE THAN THAT AND DIFFERENT THAN THE OCCUPANCY, IS AN ADDITIONAL CHARGE FOR THE SERVICES FOR THE TRAVEL AGENT, THAT WOULD NOT BE SUBJECT TO THE TAX, CORRECT?

>> A DISTINCTION THOUGH THAT IS NOT -- YOU'RE GOING TO THEN RESORTING THAT IS SOMETHING THAT

IS PLAIN AND ORDINARY LANGUAGE
OF THE STATUTE, TOTAL
CONSIDERATION CHARGED AND THAT'S
THE AMOUNT.

>> BUT THE PERSON WHO IS IN THE
BUSINESS --

>> I WILL LET HIM FINISH UP.
MAYBE.

>> MAYBE HE CAN CLEAR IT UP.

>> GARY CRUCIANI REPRESENTING
OSCEOLA AND BREVARD COUNTIES.
WHAT IS RELEVANT IS THE CERTIFIED
QUESTION.

>> COULD YOU ANSWER WHAT WE WERE
DISCUSSING WITH HER.
I WAS NOT CONFUSED UNTIL JUST
THEN.

>> LET ME TRY TO DO THAT.
ASSUME FOR EXAMPLE THAT THE OTC
ROOM RATE IS \$100.

THAT IS ALL THEY TELL YOU THEY
NEVER TELL YOU WE'RE SUBMITTING
A NET RATE OF \$80 TO THE HOTEL
AND KEEPING \$20.

IF YOU BOOK A ROOM TO THE HOTEL
DIRECTLY FOR SAME RATE OF \$100,
TAX IS DUE ON \$100.

THE HOTEL REQUIRES UNDER RATE
PARITY CLAUSES OTC TO CHARGE AT
LEAST \$100.

WHY DOES THE \$20 SERVICE
FEE THAT THE OTC POCKETS NOT
TAXED WHEN THE HOTEL HAS SIMILAR
SERVICES BUILT INTO THAT SAME
\$100 RATE THAT ARE TAXED?

>> I UNDERSTAND THAT.
BUT IF IT'S BROKEN OUT AND YOU
CAN BOOK A ROOM FOR \$100 AND I
UNDERSTAND THAT WOULD BE THE
TOTAL CONSIDERATION PAID FOR THE
ROOM AND SO YOUR ARGUMENT IS
THAT WHAT YOU PAY TAXES ON.

>> YES, YOUR HONOR.

>> BUT IF THERE'S A SEPARATE FEE
FOR THE SERVICE FEE TO DUE TO
THE TRAVEL AGENT THAT WOULD NOT
BE SUBJECT TO THIS TAX, WOULD
IT?

>> THERE IS NOT A SEPARATE FEE.

>> I UNDERSTAND.

HYPOTHETICALLY, HYPOTHETICALLY.

>> IF YOU, IF THAT FEE IS MUST BE PAID BY THE TOURIST, FOR OCCUPANCY, IF THAT HAS TO BE PAID, THEN IT WOULD BE TAXED. THAT IS, BY THE WAY EXACTLY THE EXAMPLE --

>> THIS RESPECTFULLY, THIS IS NOT HARD.

IF YOU HAVE A TAX FOR, I MEAN IF YOU HAVE A CONSIDERATION PAID FOR THE HOTEL, \$100, ON THE WEBSITE, \$100, HOTEL ROOM, YOU SEE WHEN YOU GO TO CLICK, CHECK OUT, HYPOTHETICALLY, THERE IS AN ADDITIONAL CHARGE THERE DUE TO THE TRAVEL AGENCY, SAY, 20 BUCKS. SOUND HIGH BUT 20 BUCKS.

OKAY?

WOULD THERE BE A TAX PAID ON THE 100 OR THE 120 UNDER THIS STATUTE?

>> SIR, IF I UNDERSTAND THE HYPOTHETICAL, IF THAT \$20 WOULD NEED TO BE PAID BY THE TOURIST AS CONDITION OF OCCUPANCY, YES, IT WOULD BE SUBJECT TO TAX.

THAT IS WHAT THE DOR RULE SAYS. THE ISSUE IS WHAT IS THE RENTAL CHARGE.

THE DOR RULE SAYS IF ANY CHARGE, INCLUDING SERVICES PROVIDED BY A THIRD PARTY MUST BE PAID AS A CONDITION OF OCCUPANCY.

>> THE DOR TAX THE ONLINE AGENCY AMOUNT?

>> YES.

THE DOR --

>> IT DOES?

>> RULE SAYS --

>> ARE THEY COLLECTING IT IS MY QUESTION?

>> THE DOR IS NOT INVOLVED IN THE COLLECTION PROCESS.

IT'S THE, IN THIS CASE WE'RE TALKING ABOUT THE COUNTY.

THE COUNTY SAID THAT IT IS DUE BUT IT IS NOT BEING PAID.

THE ISSUE SIMPLY IS WHAT IS THE TOTAL CONSIDERATION, SAYS TOTAL.

DOESN'T SAY A PORTION OF THE
CONSIDERATION, FOR THE RENTAL.
THAT'S THE QUESTION.

THAT IS THE TAXABLE AMOUNT.

>> WELL, TO ME THE RENTAL IS FOR
THE ROOM IS THE 100.

>> IT IS.

>> AND ADDITIONAL 20 IS FOR THE
TRAVEL AGENCY FEE, BUT I
UNDERSTAND IN THIS CASE WE HAVE
ONE AMOUNT AND WHENEVER THE TOURIST
LOOKS ON THERE AND THEY'RE
BUYING THE ROOM FOR 100 BUCKS.
THAT IS WHAT THEY PAY THE TAX ON.
THAT'S YOUR ARGUMENT.

>> THAT'S RIGHT.

SO YOUR HYPOTHETICAL IS NOT OUR
CASE BECAUSE THAT SERVICE FEE IS
BUILT IN.

IN AN AGENCY MODEL WHERE THE
HOTEL COLLECTS THE \$100
DIRECTLY, THE OTCs AGAIN
ARE PROVIDING SERVICE.

LET'S SAY THEY GET A \$10
COMMISSION FOR THAT, THAT IS IN
EFFECT TAXED, \$90 NET THAT THE
HOTEL KEEPS.

>> DOES THE HOTEL, THAT IS WHERE
WE STILL GO BACK TO WHOSE
PRIVILEGE IT IS.

IN THIS HYPOTHETICAL ABOUT
TRAVEL AGENTS THAT DON'T GET
THAT 10% ANYMORE FROM HOTELS, IS
NOT, IT HAPPENS ALL THE TIME.

IF YOU GO AND YOU ARE LOOKING
FOR A PACKAGE DEAL FOR FLORIDA
AND YOU GET A TRAVEL AGENT WHO
IS YOUR AGENT, AND THEY'RE NOT
GETTING THEIR FEES ANYMORE FROM
THE HOTELS OR AIRLINES, THEY
CHARGE, AS PART OF THE PACKAGE,
A FEE FOR THEIR SERVICES TO GET
YOU THE BEST DEAL.

AND I'M STILL TRYING TO
UNDERSTAND HOW UNDER THE STATUTE,
WHICH IS TO ME LOOKING AT THE
BUSINESS OF BEING IN THE
BUSINESS OF RENTING HOTEL ROOMS,
THIS GETS SWITCHED TO SAY THAT
SOMEBODY THAT IS PROVIDING

ADDITIONAL SERVICES, WHICH IS SHOPPING AROUND FOR THE BEST PRICE AND DOING ALL THAT, EVEN IF THE TOURIST DOESN'T KNOW, THAT THEY DON'T CARE BECAUSE THEY'RE GETTING A BETTER RATE, WHY THE COUNTY GETS ABLE TO GET THAT MONEY FROM THE ONLINE COMPANY THAT'S IN ANOTHER STATE WHO IS DOING SERVICES AND COULD JUST AS WELL BRING US, YOU KNOW, BRING THE TOURISTS TO CALIFORNIA?

>> IF I MAKE NO OTHER POINT, THIS IS THE ONE POINT I WOULD LIKE TO MAKE WITH THE COURT. THE NATURE OF THE TAX, THE PRIVILEGED ACTIVITY, WHETHER IT'S A TAX ON THE TOURIST OR A TAX ON THE HOTEL, IS THE BIG RED HERRING IN THIS CASE.

IT IS IRRELEVANT WHETHER IT'S A TAX ON THE TOURIST OR A TAX ON THE PRIVILEGE.

BECAUSE THERE ARE TWO RELEVANT ISSUES IN EVERY CASE.

I'M INVOLVED IN 10 OF THESE ACROSS THE COUNTRY.

THERE ARE TWO ISSUES.

WHAT IS THE TAX AMOUNT.

THAT IS ANSWERED BY SUBSECTION C, THE TOTAL CONSIDERATION CHARGED FOR THE RENTAL.

SECOND QUESTION, YOUR HONORS, IS DO THE OTCs HAVE THE OBLIGATION TO COLLECT THE TAX AND REMIT THE TAX?

THEY HAVE AN OBLIGATION UNDER F BECAUSE THE PERSON WHO RECEIVES THE CONSIDERATION IN THE PREPAID MODEL, THE OTC RECEIVES 100% OF THE CONSIDERATION, THEY ARE ALREADY COLLECTING THE TAX, UNDER F.

WHAT THEY'RE FAILING TO DO IS TO REMIT THE TAX UNDER G.

AND THEY HAVE THAT STATUTORY DUTY BECAUSE IT IS THE PERSON RECEIVING THE CONSIDERATION FOR THE RENTAL.

THAT IS WHY I DISAGREE WITH THE NOTION THAT MIAMI DOLPHINS HAS ANY RELEVANCE.

I DISAGREE WITH THE NOTION THAT THE NATURE OF THE TAX HAS ANY RELEVANCE. THAT IS SUBSECTION A, THE PRIVILEGE ACT, THE INTENT OF THE LEGISLATURE IS TO TAX.

THE PRIVILEGE OF RENTING, LEASING OR LETTING.

THAT IS SUBSECTION A.

IT IS IRRELEVANT.

SUBSECTION C ANSWERS THE AMOUNT SUBJECT TO TAX.

THAT'S IS THE KEY QUESTION THAT WAS CERTIFIED.

SUBSECTIONS F AND G ANSWER THE OTCs HAVE TO COLLECT AND REMIT.

ONE CLARIFICATION TO -- .

>> YOU'RE OUT OF TIME.

DO THAT AND CONTINUE.

>> IS WHEN YOU CHECK OUT YOU DON'T GET ANYTHING FROM THE HOTEL.

YOU GET ALL OF YOUR RECEIPT AND CONFIRMATION INFORMATION FROM THE OTC. ALL YOU WILL GET IS SHOWING WHAT YOUR INCIDENTALS FOR, INCIDENTAL BEVERAGE CHARGES AND THE LIKE ARE.

ALL OF THAT CONFIRMATION PAPERWORK COMES FROM OTC DIRECTLY TO THE TOURIST.

>> THANK YOU.

>> THANK YOU.

>> YOUR HONORS, DARREL HIEBER AND MARK HOLCOMB, RESPONDENT ONLINE TRAVEL COMPANIES.

WHAT THE COMPANIES ARE DOING TO TAX A SERVICE FEE, NOTWITHSTANDING THAT THE FLORIDA LEGISLATURE BEEN LOATHE AND REFUSED TO TAX SERVICE PROVIDERS GENERALLY AND IN PARTICULAR TRAVEL PROVIDERS OF SERVICES.

>> LET ME ASK YOU THIS QUESTION. GOING BACK AND FORTH, MY COLLEAGUES ARE ASKING QUESTIONS

ABOUT BREAKING OUT AND ALL THOSE
KIND OF THINGS.

UNDER YOUR ARGUMENT, IF YOU
BREAK THINGS OUT, LIKE A QUOTE,
SERVICE CHARGE, YOUR POSITION IS
THERE'S NO TAX DUE ON THAT
AMOUNT, CORRECT?

>> YES, YOUR HONOR.

>> WELL WHAT IF A HOTEL UNDER THIS
SCENARIO OFFERS FREE ACCESS TO
THE ROOM BUT WE'VE GOT A GOOD
DEAL ON TOWELS, WE'VE GOT A GOOD
DEAL ON THE CARPETING, WE'VE GOT
A GOOD DEAL ON THE FURNITURE IN
THIS PARTICULAR ROOM, WE'RE
GOING TO BREAK OUT EVERYTHING
BUT GIVE YOU ACCESS TO THAT ROOM
FOR FREE?

COULDN'T THEY JUST SIMPLY
CIRCUMVENT BECAUSE THOSE ARE NOT
FOR USE OF THE ROOM?

THESE ARE OTHER THINGS.

WE'VE GOT A BRAND NEW TV
THAT'S IN THERE AND THAT WILL
BE A CHARGE FOR THAT?

WHY COULDN'T THEY HANDLE IT IN
THAT FASHION AND EVERYONE ESCAPE
IT?

>> THAT WOULD NEVER WORK.

>> WHY?

>> THE ENTIRE CHARGE IS FOR
GETTING THE ROOM, WHATEVER THEY
CALL IT.

MOST IMPORTANTLY, YOUR HONOR --

>> THAT INCLUDES YOUR SERVICE
FEE.

>> THE ONLY WAY IT WOULD WORK IF
THEY CREATED A SUB THAT WAS
TRULY INDEPENDENT OF THE PARENT.
IN WHICH CASE THEY WOULD BE
GIVING AWAY \$5 OF RENT TO SAVE
FIVE CENTS OF TAX.

THAT WOULD NEVER HAPPEN.

ALTERNATIVELY THEY HAVE A SHAM,
NON-ARMS LENGTH SUBSIDIARY IN
WHICH CASE THE TAX LAWS WOULDN'T
ALLOW THEM TO DO IT.

THEY WOULD SEE THROUGH AND
PIERCE THAT AND PROBABLY GO TO
JAIL FOR THAT.

THAT IS WHY WE WOULD NEVER SEE THAT HAPPEN.

>> THE TAX WILL BE DUE ON CONSIDERATION PAID FOR OCCUPANCY.

SO I GUESS THEN THE BREAKDOWN IS, THE SERVICE CHARGE IS NOT FOR OCCUPANCY.

OR THAT THE PERCENTAGE OF EACH DOLLAR OF THE TOTAL CONSIDERATION CHARGED, THAT, THAT WE DON'T CALL THE SERVICE FEES OR THESE OTHER AMOUNTS QUOTE, BROKEN OUT, AS, CONSIDERATION CHARGED?

>> NOT WHEN IT IS CALLED BY THE ONE, RENTING, LEASING OR LETTING THE ROOM.

AGAIN, EVERY PRIVILEGED EXCISE TAX EVER ENACTED IN FLORIDA, THE TRT WHICH IS RED IN PARI MATERIA IS LOOKING AT PERSON EXERCISING THE PRIVILEGE AND WHAT DID THEY CHARGE AND RECEIVE IN EXERCISING THE PRIVILEGE.

IN YOUR HYPOTHETICAL, WHATEVER THEY WANT TO LABEL IT, THAT ONE ENTITY THAT IS RENTING THE ROOM IS CHARGING THE ENTIRE AMOUNT.

>> THE LAST ARGUMENT WAS BY SOMEBODY SAYS HE IS DOING THIS ALL OVER THE COUNTRY AND I'M NOT SURE WHAT IS GOING ON ALL OVER THE COUNTRY BUT I'M JUST STICKING WITH FLORIDA, IT DOESN'T MATTER WHETHER IT'S TO BE A TAX ON HOTELS THAT ARE RENTING THE ROOM OR ON THE ENTITY WHO IS ARE HELPING THE CONSUMER GET THE BEST POSSIBLE PRICE.

THAT THAT'S IRRELEVANT TO OUR ANALYSIS.

>> RIGHT.

>> IS THAT IRRELEVANT?

>> YOUR HONOR, IT'S A SELF-REFUTING PROPOSITION THAT THE PRIVILEGE UNDER OUR FLORIDA PRIVILEGE EXCISE TAX IS IRRELEVANT.

THIS COURT IN GAULT AND GREEN

MADE THAT CLEAR.
THEY TOLD US, THE COURT TOLD
US --
>> DO YOU AGREE WITH HIM?
>> IT IS RELEVANT.
ABSOLUTELY RELEVANT.
>> ALL RIGHT.
>> GAULT MADE IT CLEAR THE
NATURE OF A PRIVILEGED EXCISE
TAX IN THIS STATE, EVERYONE OF
THEM THAT HAVE BEEN ENACTED
INCLUDING THE TRT IS A TAX ON
THE BUSINESS FOR EXERCISING THE
PRIVILEGE.
THAT'S THE ONE THAT HAS TO PASS
IT ON AND COLLECT IT FROM THE
CUSTOMER AND REMIT IT AND THE
AMOUNT TAXED IS THE AMOUNT THAT
THAT BUSINESS EXERCISING THE
PRIVILEGE RECEIVED FROM
EXERCISING THE PRIVILEGE.
EVERYTHING ELSE IS EXCLUDED.
>> IS THERE ANYTHING IN THE, IN
THE STATUTORY SCHEME THAT
CONTEMPLATES THAT A TAX ON A
PARTICULAR TRANSACTION WILL BE
COLLECTED FROM THE CONSUMER BY
ONE ENTITY AND YET REMITTED BY
ANOTHER ENTITY?
>> YES, YOUR HONOR.
>> WHERE'S THAT.
>> IF YOU LOOK AT 8-A IN THE
ENABLING ACT, IT ADDRESSES THIS
QUESTION SQUARELY.
IT TELLS YOU THAT THE PERSONS
WHO ARE SUBJECT TO THE TAX, ARE
TAXABLE HEREUNDER.
WHICH IN SECTION 4 THEY TELL US
ARE HOTELS, MOTELS AND THE LIKE.
THEY ARE OBLIGATED TO COLLECT
THE TAX FROM CUSTOMERS.
THAT TELLS US WHO THE PRIVILEGE
IS BY THE WAY, IT'S THE
BUSINESS.
IT FURTHER SAYS AND DOESN'T HAVE
IT, MAKE SURE IT GETS COLLECTED
AND REMITTED THEY'RE LIABLE.
IT GOES FURTHER TO SAY AND YOU
MIGHT USE AN INTERMEDIARY TO
COLLECT YOUR RENT FROM THE

CUSTOMER AND TO COLLECT THE TAX ON THE RENT.

BUT IF YOU DO, IT REMAINS THE ONE EXERCISING THE PRIVILEGE, THE HOTEL, THAT HAS THE STATUTORY OBLIGATION TO COLLECT AND REMIT THE TAX AND THE LIABILITY IF ONE OF THOSE TWO THINGS DON'T HAPPEN. AND NOT INTERMEDIARY.

>> AGAIN, I KNOW THIS IN THE RECORD, BUT FOR THE, FOR YOUR COMPANIES, THEY GIVE THIS FULL AMOUNT BUT THEY DON'T AT THE TIME THAT THEY'RE ADVERTISING THESE RATES, THEY DON'T, HAVEN'T SUBLEASED A BLOCK, OR HAVE THEY SUBLEASED A BLOCK OF ROOMS?

>> ABSOLUTELY NOT, YOUR HONOR. CONTRACT WITH THE HOST THAT DETERMINES THAT AND ABSOLUTELY NOT.

>> WOULD BE DIFFERENT IF THEY DID, WOULDN'T IT BE?

>> IF SOMEBODY, YOU SEE THIS FROM THE DOR RULES, IF AN INTERMEDIARY ACTUALLY GOT THE ROOMS FROM THE HOTEL AND WAS ACTUALLY EXERCISING THE PRIVILEGE OF RENTING, LEASING OR LETTING THEM WE WOULD HAVE A COMPLETELY DIFFERENT CIRCUMSTANCE, NOT THE CIRCUMSTANCE HERE.

>> SO THE CHARGE IS THE \$100 AND BUT ONLY 80 IS FOR THE HOTEL ROOM? THIS, WHEN YOU, WHEN THE OTC, IS THAT OTC?

ONLINE --

>> OTC IS FINE, YOUR HONOR.

>> THINKING OF OFF-TRACK BETTING OR SOMETHING, OTB.

THAT WHATEVER IT IS, THAT DIDN'T EXIST BY THE WAY IN 1977 WHEN THIS STATUTE WAS DRAFTED, WE DIDN'T EVEN HAVE INTERNET BACK THEN. WHEN THEY GET THE AMOUNT THEY DETERMINE IS THE TAX THAT WOULD BE DUE ON THE HOTEL ROOM, THEY THEN, WHO, DO THEY REMIT IT

TO THE COUNTY OR THEY REMIT IT,
WHO, HOW DOES THAT GO?

HOW DOES THE TAX GET TO THE
COUNTY OR THE TO THE ENTITY --

>> IN THIS CASE THE OTC, THE
INTERMEDIARY, IS COLLECTING THE
RENT AND THE TAX ON THE RENT.
THAT THE HOTEL IS GOING TO OWE.
SEND THAT TO THE HOTEL.

>> TO THE HOTEL?

>> THE HOTEL, SOME CASES IT IS
DOR FOR THE COUNTIES THAT IS
ACTUALLY ADMINISTERING IT BUT
OTHER TIMES IT IS COUNTY ITSELF
AND OTHER TIMES THE ONE WHO
RECEIVES THE TAX.

THE STATUTE MAKES IT VERY CLEAR
AND DISTINGUISHES BETWEEN
COLLECTING THE TAX AND
COLLECTING RENT AND WHO IS
RECEIVING THE RENT AND UNDER
THEIR SCENARIO THEY'RE TELLING
YOU, WELL THE HOTEL IS NOT
INVOLVED.

THEY'RE NOT RECEIVING RENT.
BUT OF COURSE IF THE HOTEL
WASN'T INVOLVED IN THE
RESERVATION TRANSACTION, YOU'RE
JUST SENDING A REQUEST TO THE
HOTEL.

THE HOTEL DECIDES WHETHER TO
ISSUE A RESERVATION, YOU
WOULDN'T HAVE ANY RESERVATIONS.
IF THE HOTEL WASN'T INVOLVED YOU
WOULDN'T GET A RIGHT OF
OCCUPANCY LATER.

THE HOTEL CERTAINLY NOT DOING
THAT FOR FREE.

THEY'RE CHARGING RENT.

THEY'RE THE ONES THAT RECEIVE
THE RENT.

WHILE IN PART OF THE BRIEF THEY
CLAIM WE'RE RECEIVING IT, ON
PAGE 29 OF THEIR OPENING
BRIEF THEY FINALLY ADMIT, OKAY,
THE HOTEL DOES RECEIVE IT BUT
YOU'RE BOTH RECEIVING IT.

THAT IS NOT WHAT THE STATUTE
SAYS.

THAT IS NOT HOW THE TRT OPERATES

AND NOT HOW THE TDT OPERATES.

>> COULD YOU EXPLAIN WHAT YOU SEE IS THE RELATIONSHIP BETWEEN THE INITIAL STATUTE THAT WAS PASSED THAT SPECIFICALLY TALKS ABOUT SOMEONE IN THE BUSINESS.

>> RIGHT.

>> AND THEN, WHAT MR. MARTINEZ SAYS IS THE LATER SAYS IS LATER STATUTE, EXCLUDE THE LANGUAGE OF THE BUSINESS.

>> RIGHT.

>> SO THAT IT LEADS TO THE CONCLUSION THAT THEY INTENDED AND IN THAT SITUATION TO BE REFERRING TO THE PERSON WHO IS DOING, WHO IS GETTING THE RENT AS OPPOSED TO RENTOR OR LESSOR?

>> SURE, YOUR HONOR.

THIS IS WHERE THEY TURN THIS COURT'S MANDATE IN MIAMI DOLPHINS TO READ TWO STATUTES IN PARI MATERIA ON ITS HEAD.

FIRST STATUTE SAYS ENGAGING IN LEASING OR RENTING.

SECOND STATUTE TAKES OUT ENGAGED IN THE BUSINESS BUT ADDS FOR CONSIDERATION.

WHAT DOES FOR CONSIDERATION MEAN?

DOING IT FOR MONEY WHICH IS WHAT A BUSINESS DOES.

WE KNOW THAT THE IS MEANING BECAUSE THE TRT STATUTE, THE TRT STATUTE IN SEVEN DIFFERENT PLACES USING FOR CONSIDERATION TO TELL YOU, AND GIVE YOU THE SECTIONS IN A MOMENT, IT IS SUBSECTION .215 AND .062.

THEY TELL YOU SALE FOR CONSIDERATION, SALE FOR CONSIDERATION AND TELLING YOU WHAT IT IS TO EXERCISE THE PRIVILEGE THAT A BUSINESS DOES TO BE LIABLE UNDER THE TRT WHICH IS INCORPORATED BY REFERENCE INTO THE TDT.

SO THIS NOTION THAT THE USE OF THE WORDS, THE OMISSION OF ENGAGE IN BUSINESS SOMEHOW MEANS

SOMETHING DIFFERENT THAN RENT,
LEASE OR LET FOR CONSIDERATION
IS A MISNOMER.

>> HOW EASY WOULD IT BE FOR THE
LEGISLATURE TO SOLVE THIS
PROBLEM TO CLARIFY?

COULD THEY LEGALLY DO THAT?

CAN THEY TAX THE
OTCs ON ENTIRE -- I DON'T KNOW
WHY I'M SAYING OTC.

>> OTC IS FINE, YOUR HONOR.

>> ARE THEY, CAN THEY TAX ON THE
WHOLE AMOUNT OF THE SERVICE
THAT'S PROVIDED?

>> COULD THEY PASS LEGISLATION
TO DO SO?

IN PUTTING CONSTITUTIONAL
LIMITATIONS.

>> LEGALLY?

>> THERE'S, THEY COULD GO AHEAD
AND PUT IN AN ACT, A TAX ON
SERVICE PROVIDERS AS OPPOSED TO
PEOPLE RENTING, LEASING OR
LETTING ROOMS.

>> ON MY HYPOTHETICAL WHERE THE
TRAVEL AGENT WHO I NOTICE
ESPOUSE YOUR POINT OF VIEW
ALTHOUGH THE HOTELS ESPOUSE THE
PETITIONER'S POINT OF VIEW, IN
THE HYPOTHETICAL WHICH IS A REAL
LIFE SITUATION WHERE
SOMEBODY IS CHARGING FOR THEIR
SERVICE OF HELPING YOU GET THE
BEST RATES AND DOING ALL OF THE
OTHER THINGS LIKE GETTING YOU TO
THE HOTEL AND PEOPLE PICKING YOU
UP, ARE THEY HAVING TO PAY TAX
ON THE WHOLE AMOUNT THAT THEY'RE
CHARGING?

>> AS ASTA POINTS OUT THERE ARE
OTHER TRADITIONAL TRAVEL AGENTS,
TOUR OPERATORS AND OTHER TRAVEL
INTERMEDIARIES USE SOMETHING
AKIN TO A MERCHANT MODEL.

>> SO IT WOULD BE, THIS DOESN'T
JUST IMPLICATE YOUR COMPANIES?
THIS IMPLICATES ANY TRAVEL AGENT
THAT IS JUST NOT GETTING THEIR
COMMISSION BACK FROM THE HOTEL?

>> WELL, ONES THAT CHARGE SERVICE

FEES AND AGAIN THE LEGISLATURE HAS BEEN LOATHE TO TAX SERVICE BUSINESS PROVIDERS.

>> DOES IT MATTER THAT YOU HAVEN'T BACKED IT OUT? JUST THAT IF YOU BACKED IT OUT IT IS, YOU KNOW, STARTING TOMORROW YOU ACTUALLY LET THE CONSUMER KNOW WHAT WAS GOING WHERE?

WOULD IT BE DIFFERENT SO THAT, I'M SAY, NOT ANYONE DOES IT ON PURPOSE -- WELL, SO IT'S ALL, IT IS TRUTH IN LENDING.

YOU KNOW EXACTLY WHAT YOU'RE PAYING FOR AND WHO YOU'RE PAYING IT TO?

>> WELL, YEAH, THE TERMS AND CONDITIONS DISCLOSURES ON THE WEBSITE DO INDICATE THAT THERE'S A MARGIN IN THE INDICATED ROOM RATE.

BUT TO THE EXTENT THE STATUTES REQUIRE ANY SEPARATELY STATED THAT IS OBLIGATION OF THE ONE LETTING, LEASING OR RENTING AND ISSUE BETWEEN THEM AND DOR AND THE COUNTIES BUT THIS IS IMPORTANT THIS, IS TALKED ABOUT IN BY THIS COURT IN GAULT AND IN GREEN, WHETHER SOMETHING IS BROKEN OUT OR NOT DOESN'T CHANGE THE NATURE OF WHAT IS TAXED WHO IS TAXED, WHO HAS THE OBLIGATIONS.

THEY POINT OUT THERE, YOU KNOW THE REALITY IS THE CUSTOMER IS GOING TO PAY THE TAX WHETHER WE SAY PASS IT ON OR NOT.

WHETHER IT IS HIDDEN OR NOT HIDDEN DOESN'T CHANGE WHAT THIS TAX IS ABOUT WHICH IS NOT A CONSUMER TAX BUT LOOKING AT IT FROM THE PERSPECTIVE OF THE PERSON WHO IS EXERCISING THIS PRIVILEGE OF A PARTICULAR BUSINESS THAT THE STATE HAS GIVEN THEM THE PRIVILEGE TO DO, AND TAXING THEM ON THE AMOUNT THEY'RE CHARGING AND RECEIVING

FROM HAVING DONE THAT.

>> WE'RE NOT HERE TO MAKE THE POLICY DECISION BUT YOU SAID EARLIER IT IS NOT A BIG DEAL FOR WHAT THE HOTEL HAS TO PAY INITIALLY.

SAY YOU HAVE, SOME OF YOUR COMPANIES HAVE 25%, SOME OF THEM MAY BE LESS, SOME MAY BE MORE, MUST BE ILLUMINATING FOR EVERYBODY TO FIND OUT WHO HAS THE BEST BUSINESS MODEL BUT WHAT IS THE, WHAT, HAVE YOU, IS THERE ANYTHING IN THE RECORD THAT TALKS ABOUT WHAT AMOUNTS WOULD BE PASSED ON TO THE CONSUMER? IN THE CASE OF THE, THE ONLINE COMPANIES?

>> IF THE TAX WAS, IF THIS ADDITIONAL TAX ON OTC SERVICE FEE?

>> WE WOULD AGREE WITH JUDGE PADOVANO'S DECISION.

>> THERE IS, WELL, ONE CAN EXTRACT THE MATH FROM THE RECORD BUT IT'S A SIGNIFICANT AMOUNT OF MONEY IF YOU'RE ADDING A TAX OF THE SERVICE FEE ON TOP OF THE TAX THEY'RE ALREADY PAYING WHAT THE HOTEL IS CHARGING AS RENT. AND --

>> THE STATUTES IN THE OTHER STATES, DO OTHER STATE HIGH COURTS HAVE CONSIDERED THIS ISSUE, CORRECT?

>> WELL, THEY HAVE CONSIDERED IT UNDER THEIR OWN.

>> OF COURSE, OF COURSE. UNDER THEIR OWN STATUTE. FOR EXAMPLE, THE GEORGIA SUPREME COURT HAS HELD, AS I UNDERSTAND IT, IT IS THE TOTAL PAID AND IT'S NOT QUOTE. EVEN IN THAT CASE THEY TALKED ABOUT I BELIEVE A WHOLESALE PRICE IS NOT --

>> BUT WHAT HAPPENED IN GEORGIA IS THE COURT SAID, NO PAST TAXES ARE DUE, NO TAXES ARE DUE UNDER THE ACTUAL ORDINANCE BECAUSE YOU'RE NOT A HOTEL AND YOU'RE

NOT A VENDOR.

WHAT THEY SAID UNDER A STATE STATUTE THAT SAID IF YOU COLLECT TAX YOU MIGHT HAVE CERTAIN OBLIGATIONS.

BUT HERE YOU HAVE TO BE THE ONE THAT COLLECTS, RECEIVES THE RENT AND COLLECTS AND RECEIVES THE TAX.

>> YOU WOULD DISTINGUISH THAT ON THAT BASIS?

>> ABSOLUTELY.

>> HOW ABOUT THE NORTH DAKOTA CASE, SAME THING?

>> THE, I'M NOT SURE, NORTH DAKOTA ISN'T --

>> I THOUGHT THERE WAS NORTH DAKOTA CASE AS WELL?

>> I CAN TELL YOU IN SHORT WHAT EACH OF THOSE -- THERE ARE SOME JURISDICTIONS, NONE OF THEM BY THE WAY ARE PRIVILEGED EXCISE TAXES BY NATURE OF THE STATE OF FLORIDA AS THIS COURT INDICATED IN GAULT AND MIAMI DOLPHINS. IN THOSE CASES THEY EITHER SAID BEING INVOLVED IN A RESERVATION IS ENOUGH.

HERE IT IS IT ISN'T.

YOU HAVE TO LEASE, LET OR RENT THE ROOM.

IF YOU'RE INVOLVED IN COLLECTION OF THE TAX THAT IS ENOUGH.

WE KNOW FROM SECTION 8-A THAT IS NOT ENOUGH.

IT IS NOT INTERMEDIARY THAT IS RESPONSIBLE OR HAS OBLIGATIONS.

WHY?

THEY DON'T WANT TO FORCE THE DOR TO BE CHASING INTERMEDIARIES.

THEY GO TO THE HOTEL EVERY TIME. THAT IS WHAT THEY WERE DOING IN THIS CASE.

WOULD I REMIND WHERE THIS CASE STARTED, IF YOU WANT TO SEE EXACTLY AS WAS INDICATED THIS IS CONSTRUED THE SAME AS TRT, THAT IS THE TAXES ON THE ONE EXERCISING THE PRIVILEGE.

IT'S A BUSINESS, THAT IS THE ONE

THAT HAS COLLECTION AND
REMITTANCE OBLIGATIONS AND
AMOUNT THAT PERSON CHARGES AND
RECEIVES, YOU ONLY HAVE TO LOOK
AT THEIR COMPLAINT.

THAT'S WHAT THEY ALLEGED FOR
THREE YEARS AND THEY SAID, YOU
GUYS ARE RENTING, LEASING OR
LETTING.

SO THAT'S WHY WE'RE BRINGING
THIS CASE.

IT WAS ONLY WHEN EVIDENCE SHOWED
WE DON'T HAVE ROOMS AND WE DON'T
LET, LEASE AND RENT THEM THEY
HAD EPIPHANY ON EVE OF SUMMARY
JUDGMENT AND SAID, YOU KNOW
WHAT?

TAX STATUTE IS COMPLETELY
DIFFERENT THAN THE TRT.

IT TAXES SOMETHING DIFFERENT.
IMPOSES OBLIGATIONS ON
NON-DEALERS WHO DON'T EXERCISE
THE PRIVILEGE.

BY THE WAY IT IS NOT EVEN A TAX
ON THE PRIVILEGE OF A BUSINESS.
IT IS FIRST TAX IN THE HISTORY
OF FLORIDA, PRIVILEGED TAX
IMPOSED ON PRIVILEGE OF A
CONSUMER.

BY THE WAY ALL THIS IS BY
IMPLICATION, NOTHING EXPRESS IN
THE STATUTE.

THAT'S WHAT WE HAVE.

WE HAVE A GOVERNMENT AGENCY, IN
THIS CASE COUNTIES, COMING INTO
COURT SAYING THE STATUTE MEANS
ONE THING.

WHEN THE EVIDENCE WAS AGAINST
THEM, COMING IN AND SAYING YOU
KNOW WHAT, IT MEANS SOMETHING
ELSE.

GOING TO ONE OF THE EARLIER
POINTS IN OUR DISCUSSION HERE,
THAT IS WHY YOU HAVE THE RULES
FOR TAX STATUTES AND FORFEITURE
STATUTES, THAT THEY BE HELD TO
THE EXPRESS LANGUAGE.

THAT IT BE STRICTLY CONSTRUED
AND ANY AMBIGUITY BE CONSTRUED
AGAINST THEM BECAUSE THIS IS

EXACTLY THE KIND OF MISCHIEF, IT IS INTENDED TO PREVENT.

WHETHER IT IS IN THIS TAX STATUTE OR THE NEXT ONE AGAINST SOME INDIVIDUAL TAXPAYER, THEY CAN'T COME IN AND CHANGE THE MEANING.

WHY?

BECAUSE THEY HAVE ALREADY TOLD THIS COURT, THE COURT BELOW, FOR THREE YEARS, THAT THE VERY CONSTRUCTIONS THAT THE COURT OF APPEAL ADOPTED, WERE NOT ONLY REASONABLE BUT COMPELLED.

AND WE KNOW THEY'RE REASONABLE.

>> LET ME ASK YOU THIS.

I WANT THIS TO, YOU KNOW, SOMETIMES THESE CASES, THEY GET A LITTLE COMPLICATED AND I WANTED TO SEE IF I COULD MAKE IT A LITTLE SIMPLER AT LEAST FOR MYSELF.

IN THIS SITUATION, SAY THE CONSUMER PAID YOUR ONLINE COMPANY, \$100, SEND YOUR ONLINE COMPANY, ONLY 80 OF IT, TO THE HOTEL, FOR THE RENTAL OF THE HOTEL.

IF THE ONLINE COMPANY SENT THE ENTIRE \$100 TO THE HOTEL AND THEN THE HOTEL AT SOME POINT IS REMITTING SOMETHING BACK TO THE ONLINE SERVICE PROVIDER, DOES THAT MAKE A DIFFERENCE?

>> IT SURE DOES, YOUR HONOR, BECAUSE THE ECONOMIC SUBSTANCE IS DIP.

UNDER THE AGENCY MODEL THE HOTEL DECIDES THE ENTIRE AMOUNT IT'S REQUIRING TO BE PAID.

THAT ENTIRE AMOUNT IS RECEIVED BY THE HOTEL.

AND ON ITS OWN BEHALF.

AND THEN IT HAS SOME COSTS THAT IT PAYS OUT THE BACK END BUT IT IS THE AMOUNT IT CHARGED AND IT RECEIVED AND CHARGED THE CUSTOMER.

UNDER THE MERCHANT MODEL THE HOTEL IS DETERMINING HOW MUCH IT IS REQUIRING TO RENT, RENT,

LEASE OR RENT THE ROOM.
BUT IT IS ONLINE TRAVEL COMPANY
THAT DECIDES HOW MUCH MORE IT IS
GOING TO CHARGE FOR ITS SERVICE.
AND SO THAT IS FUNDAMENTALLY
DIFFERENT.

IN FACT AT THE END OF THE
BROWARD AMICUS BRIEF THEY
CONCEDE THAT OTC ULTIMATELY
DECIDES THAT THE TOTAL AMOUNT OF
THE EXTRA AMOUNT IT IS GOING TO
CHARGE.

SO IT IS DIFFERENT IN NATURE.
AND THAT IS WHY YOU HAVE A
DIFFERENT TAX RESULT BECAUSE IT
IS ALWAYS PREMISED ON HOW MUCH
OF THE ONE EXERCISING THE
TAXABLE PRIVILEGE IS RECEIVING
FOR EXERCISING THE TAXABLE
PRIVILEGE AND IT'S DIFFERENT IN
THE TWO MODELS WHICH IS ONE
REASON WHY THE HOTELS WOULD
PREFER THE AGENCY MODEL OVER THE
MERCHANT MODEL.

>> CAN YOU TELL US WHAT THE
SIGNIFICANCE, IF ANY IS ON THE
DOR REGULATIONS?

AND OF COURSE THE DOR IS
REMARKABLY SILENT, AS EVERYONE
ELSE IN THE WORLD IS IN AMICUS
EXCEPT THE DEPARTMENT OF REVENUE
AND DOES THAT MATTER? DOES IT
MATTER WHAT THE DEPARTMENT OF
REVENUE SAYS OR THINKS?

>> I THINK IT IS VERY IMPORTANT
THAT THE DOR REPORTED TO THE
LEGISLATURE REPEATEDLY THAT
THEY, UNDER THEIR, NOT ONLY
UNDER THEIR RULES BUT UNDER
THESE STATUTES THAT THE TRT AND
TDT OBLIGATIONS LIABILITY CAN
NOT BEING IMPOSED ON THE OTCS.

>> I'M TALKING ABOUT THEIR
REGULATIONS.

WE CAN'T, THIS WHOLE THING WE'LL
LOOK AT FAILURE TO ACT, YOU KNOW
WHAT WAS REPORTED OUT WITH THE
EXECUTIVE BRANCH AND LEGISLATIVE
BRANCH, WE'VE GOT TO BE CAREFUL
AS WHAT WE CONSIDER IN, BECAUSE

WE'RE REALLY LOOKING AT
LEGISLATIVE INTENT IN 1977,
RIGHT?

>> RIGHT, YOUR HONOR.

>> THAT'S WHAT THE OPERABLE
ISSUE IS.

NOT WHAT HAPPENED IN THE LAST 40
YEARS.

>> AND OFFICIAL POSITION OF THE
DOR IS THEIR RULES AND THEY
WERE, THEY'RE THE ONES CHARGED
WITH CONSTRUING THEM AND
ADMINISTERING THEM.

WHAT THE RULES SAY, YOUR HONOR,
IS THE SAME CONSTRUCTIONS WE'VE
BEEN TELLING YOU AND WHAT THEY
USED TO SAY IN THEIR COMPLAINT
THREE YEARS IN THIS CASE UNTIL
THEY HAD THEIR EPIPHANY.

THAT IS IT IS A TAX ON SOMEONE
ENGAGING IN THE BEST OF RENTING,
LEASING OR LETTING.

THEY ENGAGED WITH SOMEONE IN THE
BUSINESS WHICH SHOWS YOU CAN
HARMONIZE.

PARI MATERIA DOESN'T
SEE, LOOK AT LANGUAGES
DIFFERENTLY OR CAN YOU HARMONIZE
IT, OR IS IT IMPOSSIBLE TO
HARMONIZE IT.

THAT IS WHAT IS PARI MATERIA,
WHAT THIS COURT SAYS IT MEANS.

THE ONE EXERCISING THAT
PRIVILEGE, THE DEALER, ONE
LETTING, LEASING OR RENTING.
THEY'RE TRYING TO INSTEAD SAY
SOMETHING WHO DOESN'T DO THAT
AND IS NOT A DEALER.

THEY FURTHER SAY, NUMBER THREE,
IT IS THE AMOUNT THAT PERSON
CHARGING, THE ONE EXERCISING THE
PRIVILEGE IS CHARGING SOLELY FOR
CONSIDERATION, NOT CHARGES BY A
THIRD PARTY BUT CHARGES BY THE
ONE EXERCISING THE PRIVILEGE.
AND FINALLY, YOUR HONOR, THE
RULES JUST LIKE THEIR OWN
ORDINANCES WHICH THEY DON'T WANT
TO TALK ABOUT, THEIR OWN
ORDINANCES ONLY AUDIT,

ASSESSMENT AND ENFORCEMENT
PROVISIONS AGAINST THE DEALERS
WHICH EVEN THE ORDINANCE LIKE THE
RULES DEFINES AS THE ONE
RENTING, LEASING OR LETTING THE
ROOM.

SO THEY'RE TRYING TO CREATE THIS
NEW KIND OF TAX WITH A NEW
CATEGORY OF PERSON WHO IS LIABLE
AND HAS COLLECTION AND
REMITTANCE OBLIGATIONS BUT WITH
NO PROVISIONS THAT WOULD COVER
THEN TO ENFORCE IT.

>> SO IN OTHER WORDS, THEY WOULD
HAVE TO REMIT THE ADDITIONAL
AMOUNT THAT THE HOTEL DOESN'T
GET TO THE HOTEL WHO WOULD THEN
HAVE TO REMIT --

>> WHO KNOWS?

BECAUSE YOU HAVE TO REVAMP THE
ENTIRE DOR RULES UNDER THEIR
SCENARIO.

YOU HAVE TO REVAMP, THOSE ARE
THE RULES THAT GOVERN HERE,
EXPRESSLY UNDER THE TDT STATUTE.
YOU WOULD HAVE TO REVAMP THEIR
ORDINANCES BECAUSE EVERYTHING
THEY'RE SAYING TODAY IS COUNTER
TO THAT AS WELL.

PRESUMABLY YOU HAVE TO REVAMP
THE TDT STATUTES.

>> ARE ALL OF THE ORDINANCES OF
ALL THE PETITIONERS THE SAME?

>> THEY, THEY AGREED IN THEIR
COMPLAINT THAT THEY WERE ALL
SUBSTANTIVELY THE SAME AS THE
LEON ORDINANCES.

THE ORDINANCES CAN ONLY BE AS
BROAD AS ENABLING ACT.

ANY ARGUMENT ONE OR ANOTHER IS
BROWDER IS A SELF-REFUTING
ARGUMENT AS THEY OCCASIONALLY IN
REPLY BRIEF WE LIKE THAT LITTLE
PIECE IN THE TRT STATUTE.

WE'LL USE THAT TO SHOW SOMEHOW
THE TDT TAX IS DIFFERENT.

IT IS SELF-REFUTING ARGUMENT.
EVERY TIME YOU GO TO THE TDT
STATUTE YOU REMIND EVERYONE
THEY'RE READ TOGETHER ONE AND

THE SAME UNLESS THERE IS SIMPLY
NO WAY TO HARMONIZE THEM AND
THAT'S THE FUNDAMENTAL
DIFFERENCE, YOUR HONOR.
OUR CONSTRUCTIONS THAT THE OF
APPEAL ADOPTED THEY'RE COMPELLED
BY EXPRESS LANGUAGE.
THEY IGNORE SECTION-A, ONE THAT
IS CRUCIAL AND DIRECTLY ON
POINT.
THEY IGNORE THE FOR
CONSIDERATION REFERENCE SEVEN
TIMES IN THE SALES TAX STATUTE.
OURS IS ENTIRELY HARMONIOUS
AND CONSISTENT WITH IN PARI
MATERIA MANDATE OF THIS COURT
TO READ THEM AS ONE.
IT WAS NOT ONLY AFFIRMED BY THE
COURT OF APPEAL BUT THREE OTHER
CIRCUIT COURTS ENDORSED IT.
AND THE DOR REACHED THE
CONCLUSION THOSE PROVISIONS
DON'T REACH THE OTCs.
WE ADD ONE MORE PIECE.
>> IS IT YOUR ARGUMENT THAT IT'S
PLAINLY YOUR RIGHT OR THAT IT
REQUIRED STATUTORY CONSTRUCTION
AND IT IS NOT CLEAR?
>> YES, IT IS PLAINLY FROM THE
PLAIN MEANING OF THE LANGUAGE.
>> WHICH IS SO FUNNY, SO WE HAVE
TWO ADVOCATES WHO ARE EXCELLENT
SAYING THE PLAIN LANGUAGE
REACHES TWO DIFFERENT RESULTS.
AND WE HAVE EXCELLENT JURISTS
THAT LOOK AT THIS OF THE SO WHAT
DOES THAT SAY?
>> IT TELLS YOU THIS, WE KNOW
THAT, THE COMPLAINT FOR THREE
YEARS.
IT WAS COMPELLED.
UNDER AMBIGUITY RULE, IT IS
COMPELLED BY THAT LANGUAGE.
WE'RE NOT ONES THAT CHANGED OUR
MIND THREE YEARS INTO THE
LITIGATION WHAT THE TAX
STATUTE MEANS.
EVEN IF THERE ARE NEW REASONABLE
CONSTRUCTIONS WERE ALSO
REASONABLE AND THEY'RE NOT FOR

ALL REASONS WE'VE BEEN TALKING ABOUT PUTTING IN OUR BRIEF, AT BEST ALL THEY HAVE DONE IS CREATE AN ALTERNATIVE, REASONABLE CONSTRUCTION AND THAT WOULD HAVE TO BE REJECTED BECAUSE OURS IS REASONABLE. AND THAT IS THE, THAT IS HOW THE AMBIGUITY RULE WORKS, IN PART TO AVOID SITUATIONS LIKE THIS WHERE THE GOVERNMENT COMES IN AND YOU KNOW WHAT?

WE HAVE A DIFFERENT IDEA WHAT THE STATUTE MEANS TODAY.

WE MAY HAVE A DIFFERENT ONE TOMORROW.

LET'S STAY TUNED.

THAT IS NOT HOW TAX STATUTES WORK.

SO, IT IS COMPELLED BY ALL THE THINGS I SAID.

THEY EVEN TOLD THE COURT FOR THREE YEARS IT WAS COMPELLED.

SO WE KNOW IT'S REASONABLE.

-COMPELLED.

AT BEST, I DON'T THINK THEY GOT REMOTELY CLOSE TO IT, AT BEST THEY CAME UP WOULD BE REVIEWED AT BEST A SECOND GROUP OF REASONABLE CONSTRUCTIONS.

THAT IS SIMPLY NOT HOW IT WORKS.

>> THANK YOU FOR YOUR ARGUMENTS. REBUTTAL.

>> THANK YOU.

JUSTICE QUINCE, LET ME TAKE UP A QUESTION, YOU ASKED TO GIVE AN EXAMPLE THAT HOPEFULLY WILL CLARIFY A LOT OF THINGS.

IT ALSO WILL SHOW THIS IS NOT A SERVICE FEE TAX AND ALSO WILL SHOW THAT WHAT THEY HAVE DONE HERE IS THEY HAVE TAKEN THE FORM AND THEY HAVE IT PREVAIL OVER THE SUBSTANCE.

I WANT YOU TO ASSUME THIS EXAMPLE.

THE ONLINE TRAVEL COMPANIES PROVIDE THEIR SERVICES BOTH USING AGENCY MODEL AND USING THE MERCHANT MODEL.

SAME SERVICES.

NOW UNDER THE AGENCY MODEL WHAT THEY DO, THEY ALLOW THE TOURISTS TO PAY THE HOTEL DIRECTLY.

ALL RIGHT?

AND WHEN THAT HAPPENS, THEY PAY THE TOURISTS, PAYS HOTEL \$100, SAY THIS EXAMPLE, \$100 FOR THE ROOM RATE.

ASSUME A 10% TOURIST DEVELOPMENT TAX.

THAT IS \$10 FOR THE TAX FOR A TOTAL OF \$110.

THE HOTEL KEEPS \$80.

\$20 GOES TO THE ONLINE TRAVEL COMPANY.

\$20, THAT IS THEIR SERVICE FEE. PART OF THE TAXABLE BASE IS PART OF THE TAXABLE BASE.

AND THE COUNTY GETS THE \$10, 10% TOURIST DEVELOPMENT TAX.

UNDER THE MERCHANT MODEL HERE'S WHAT HAPPENS.

UNDER THE MERCHANT MODEL, ONE TOTAL AMOUNT IS PAID, \$110 IS PAID BY THE TOURIST TO THE ONLINE TRAVEL COMPANY, LUMP SUM, IT IS ALL BUNDLED TOGETHER.

THE ONLINE TRAVEL COMPANY SENDS \$80 TO THE HOTEL, \$80 TO THE HOTEL ALONG WITH 10% OF \$80, WHICH IS \$8 WHICH GOES TO THE COUNTY AND KEEPS FOR ITSELF \$22. MAKES A \$2 PROFIT AT THE EXPENSE OF THE COUNTY,

AT THE EXPENSE OF THE COUNTY.

THAT'S WHAT THEY'RE DOING, USING THE MERCHANT MODEL.

THEY'RE TAKING THE FORM OF THE TRANSACTION AND THEY'RE HAVING IT PREVAIL OVER THE SUBSTANCE.

AS YOU KNOW, WHEN DEALING WITH TAX ISSUES, SUBSTANCE HAS TO PREVAIL OVER THE FORM.

WHEN THEY USE THE AGENCY MODEL, THEIR SERVICE FEE IS PART OF THE TAXABLE BASE FOR THE HOTEL PAYS THE TAX ON, THAT THE HOTEL PAYS THE TAX ON THAT TAXABLE BASE, IT INCLUDES THEIR SERVICE FEE.

AND THEN THE HOTEL SENDS THEM
THEIR SERVICE FEE.

IT'S TAXABLE.

IT'S TAXABLE.

IT IS TAXABLE BECAUSE THE DOR
RULES PROVIDE THE TOTAL
CHARGE.

AND THIS IS WHAT THE RULE SAYS.
THE RULE SAYS, AND THIS IS THE
RULE AT 4-B-1.

RENTAL CHARGES OR ROOM RATES
INCLUDE ANY CHARGE OR SURCHARGE
TO GUESTS OR TENANTS FOR THE USE
OF ITEMS FOR SERVICES, OR
SERVICES THAT IS REQUIRED TO BE
PAID BY THE GUEST OR TENANT AS A
CONDITION OF THE USE OR
POSSESSION OF ANY TRENCHANT
ACCOMMODATION OF THE TOTAL
PAYMENT MADE BY TOURISTS TO
ONLINE TRAVEL COMPANY IS
REQUIRED TO BE PAID AS A
CONDITION OF OCCUPANCY.

THAT, THERE IS A SERVICE FEE IN
THERE FOR THE ONLINE TRAVEL
COMPANIES THAT IS REQUIRED TO BE
PAID BY THE TOURISTS, THEN
ACCORDING TO THE RULES WHICH
HAVE THE FORCE OF LAW, THAT IS
PART OF THE RENTAL CHARGE.

AND UNDER SUBSECTION 3-C THE
TOURIST DEVELOPMENT TAX SHALL BE
LEVIED UPON THE TOTAL
CONSIDERATION.

THAT IS PART OF THE TOTAL
CONSIDERATION.

THE GOLD AND GREEN CASE CITED BY
ONLINE TRAVEL COMPANIES, THEY
DEAL WITH THE TRANSIENT RENTAL
TAX, 212.03.

JUSTICE PARIENTE, THERE WAS A
REASON WHY THE LEGISLATURE IN
1977 DECIDED TO PASS THAT LAW
EXCLUDING LANGUAGE THAT HAD BEEN
ON THE BOOKS FOR 30 YEARS AND
CONSTRUED BY THE SUPREME COURT.
THE LEGISLATURE MADE AN
INTENTIONAL DECISION TO EXCLUDE
THAT LANGUAGE.

I DON'T THINK THIS COURT CAN

IGNORE THAT.
THAT IS A DIFFERENT STATUTE.
IF YOU TAKE THE STATUTE,
125.0104, THE TOURIST
DEVELOPMENT TAX AND YOU DO A
WORD SEARCH FOR THE WORD HOTEL,
YOU WILL FIND THE WORD IN THERE
TWICE.

ONCE IN CONNECTION WITH A
COMPOSITION OF THE TOURIST
DEVELOPMENT COUNCIL AND
THE SECOND TIME DESCRIBING THE
TIME OF ROOM, HOTEL ROOM OR
MOTEL ROOM. THAT'S IT.
YOU WILL NOT FIND IN THERE THE
WORD, HOTEL WITH REGARDS TO THE
HOTEL BEING THE ONE THAT IS
COLLECTING THE PAYMENT FROM THE
TOURISTS OR THE ONE THAT ISN'T
RESPONSIBLE FOR REMITTING THE
TAX TO THE COUNTY OR THE DOR
IT'S NOT IN THERE.

WHAT THE FIRST DISTRICT COURT
OF APPEALS DID HERE THEY
ENGRAFTED, THEY LEGISLATED,
REWROTE THE STATUTE TO THEIR
LIKING AND PUT IN THERE WORDS
THAT ARE NOT IN THE STATUTE AND
THEY FOUND THAT DUTY TO COLLECT
A TAX IS IMPOSED ON HOTEL
OPERATORS, AND THAT WORD, HOTEL
OPERATORS OR PROPERTY OWNERS IS
CLEARLY NOT IN THE TOURIST
DEVELOPMENT TAX.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.
COURT IS ADJOURNED.

>> ALL RISE