Ad valorem taxation, municipal aircraft hangar leases

Number: AGO 2019-06

Date: August 16, 2019

Subject:
Ad valorem taxation, municipal aircraft hangar leases

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RE: AD VALOREM TAXATION – MUNICIPAL AIRPORT – TAX EXEMPTION – LEASEHOLD INTEREST – tax exemption for lease of hangar space to private aircraft owners. Art. VII, §3(a), Fla. Const.; §§196.012(6) & 196.199(2)(a), Fla. Stat.

Dear Ms. Bach and Mr. Woolsey:

This office has received your joint request for an Attorney General opinion on behalf of the Fernandina Beach City Commission and Nassau County Property Appraiser Michael Hickox asking essentially the following question:

Whether City-owned and operated hangars at the Fernandina Beach Municipal Airport are exempt from ad valorem taxation pursuant to article VII, section 3(a) of the Florida Constitution (2018), when spaces inside the hangars are periodically leased to private aircraft owners to store airplanes.

In sum:

The leasehold interests owned by Fernandina Beach and leased to private aircraft owners are exempt from ad valorem taxation under section 196.199(2)(a), Florida Statutes (2018), so long as the lessees are using the leaseholds for a noncommercial aviation or airport purpose or operation with no engagement in for-profit activity.

The City of Fernandina Beach owns and operates the Fernandina Beach Airport. There are over 50 T-hangars and bulk hangars for housing aircraft on the property. The City rents or leases individual bays directly to private aircraft owners to engage in “noncommercial activities, i.e., storage of aircraft.” Generally, property owned and operated by a municipality is exempt from taxation. Article VII, section 3(a) of the Florida Constitution (2018), provides: “All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation.” But a leasehold interest in municipal property held by a nongovernmental lessee may be taxed unless exempt. Section 196.001 provides: “Unless expressly exempted from taxation, the following property shall be subject to taxation in the manner provided by law: … (2) All leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority, or other public body corporate of the state.”

The Legislature has established conditions by which nongovernmental leasehold interests of governmental properties may be exempt. Section 196.199(2), Florida Statutes (2018), exempts such leasehold interests “only when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in s. 196.012(6).” The first sentence of section 196.012(6) establishes the general rule:

Governmental, municipal, or public purpose or function shall be deemed to be served or performed when the lessee under any leasehold interest created in property of … any municipality … is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds.

This is followed by multiple sentences that describe specific classes of property or uses of property legislatively “deemed” to serve a governmental, municipal, or public purpose or function, with the second and third sentences addressing certain leasehold interests in airports:

For purposes of the preceding sentence, an activity undertaken by a lessee which is permitted under the terms of its lease of real property designated as an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration and which real property is used for the administration, operation, business offices and activities related specifically thereto in connection with the conduct of an aircraft full service fixed base operation which provides goods and services to the general aviation public in the promotion of air commerce shall be deemed an activity which serves a governmental, municipal, or public purpose or function. Any activity undertaken by a lessee which is permitted under the terms of its lease of real property designated as a public airport as defined in s. 332.004(14) by municipalities … subject to a leasehold or other possessory interest of a nongovernmental lessee that is deemed to perform an aviation [or] airport purpose or operation shall be deemed an activity that serves a governmental, municipal, or public purpose.
…

Multiple statutes and judicial opinions through the years have addressed exemptions from taxation for nongovernmental entities leasing municipal property. Many of the cases, however, involve statutes that have since been repealed or analyses that have been supplanted. Although the supreme court stated in Walden v. Hillsborough County Aviation Authority, 375 So. 2d 283, 286 (Fla. 1979), that the exemptions codified in section 196.199(2) and in what is now section 199.012(6) serve a governmental, municipal, or public purpose, the court has concluded in subsequent case law that the definitions of “public purpose” in the statute may not necessarily be determinative. In Sebring Airport Authority v. McIntyre, 783 So. 2d 238 (Fla. 2001), the court concluded that a 1994 amendment to section 199.012(6) itself violated article VII, section 3(a), because the provision improperly exempted private, profit-making activities from ad valorem taxation.[1]

Accordingly, to be eligible for exemption, the use of leased property from a government entity must be shown to serve a “governmental-governmental” function as opposed to a “governmental-proprietary” function. See, e.g., Sebring, 783 So. 2d at 247-48; Williams v. Jones, 326 So. 2d 425, 433 (Fla. 1975). “Under this test, a tax exemption is constitutionally permitted only if the use by the private entity ‘could properly be performed or served by an appropriate governmental unit, or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds,’” as opposed to “profitmaking endeavors.” Florida Dep’t of Revenue v. City of Gainesville, 918 So. 2d 250, 260 (Fla. 2005) (quoting Sebring, 783 So. 2d at 246-48).

The courts have consistently concluded that airport property owned by a municipality cannot be exempt from ad valorem taxation when used for a commercial, for-profit purpose. See Sebring, supra (property leased by private enterprise from Sebring Airport Authority and used for a raceway operated for profit); Walden, supra (in airport owned and operated by aviation authority, space leased in airport buildings for various food services, newspaper and tobacco sales, and a duty-free shop, were all used for “commercial, profit-making purposes”); Greater Orlando Aviation Auth. v. Crotty, 775 So. 2d 978 (Fla. 5th DCA 2000) (hotel built and operated by airport authority “for private, profit-making purposes” on property owned by municipality).

In a case involving hangar space at your airport, Page v. City of Fernandina Beach, 714 So. 2d 1070 (Fla. 1st DCA 1998), rev. den., 728 So. 2d 201 (Fla. 1998), the First District concluded that certain hangars did not qualify for the ad valorem tax exemption because they were leased by nongovernmental entities and used for commercial, for-profit activities. The first lessee used its hangars in the operation of a fixed-base operation for profit;[2] the second lessee used its hangars to store and maintain aircraft it used to put on air shows throughout the country; and the third lessee used its hangars for the manufacture and testing of unmanned aircraft. The court concluded: “Undertaken by private entities for profit, these uses of City land do not qualify the leased real estate for the exemption[.]” Id. at 1075.

Two additional cases the City relies upon bear mentioning. In Nikolits v. Runway 5-23 Hangar Condominium Association, Inc., 847 So. 2d 1054 (Fla. 4th DCA 2003), the Fourth District affirmed a summary judgment against the Palm Beach County Property Appraiser who sought to assess an ad valorem tax on the leasing of airplane hangars to a private entity at the Boca Raton Airport. The case does not address the issue herein, however, because the airport and hangars were on land owned by the state of Florida, which the court concluded was “therefore not taxable.” See Canaveral Port Auth. v. Dep’t of Revenue, 690 So. 2d 1226, 1227-28 (Fla. 1996) (the state is immune from ad valorem taxation).

Nolte v. Paris Air, Inc., 975 So. 2d 627 (Fla. 4th DCA 2008), is a two-paragraph opinion that contains no facts. The court simply affirmed a trial court judgment finding that property owned by a municipal airport and leased “to full service, fixed base operators who provide goods and services to the general aviation public in the promotion of air commerce” served a governmental, municipal, or public purpose, tracking the language and citing the definition of such purpose in section 196.012(6).

It appears from the authorities cited herein that leases of hangars at the Fernandina Beach Airport by nongovernmental entities are exempt from ad valorem taxation so long as the activity undertaken by lessees using the hangars constitutes a governmental, municipal, or public purpose. The Property Appraiser acknowledges that the hangars at issue are being used solely for noncommercial storage of private aircraft. There has been no representation that the hangars are used for the conduct of any commercial, for-profit activity.

Fernandina Beach Airport is federally assisted and is thus subject to regulations of the Federal Aviation Commission (FAA).[3] The FAA Airport Compliance Manual, in chapter 9, addresses various aspects of an airport owner's "responsibility to make the airport available on reasonable terms."[4] Paragraph 9.7, dealing with "Availability of Leased Space," provides in part: "Sponsors [public agencies or private owners of a public-use airport] are also obligated to make space available to support aeronautical activity of noncommercial aeronautical users (i.e., hangars and tie-down space for individual aircraft owners)."[5]

Accordingly, by leasing hangars to private aircraft, the Fernandina Beach Airport is ensuring the provision of a basic airport purpose which "could properly be performed or served by an appropriate governmental unit" under section 196.012(6), that does not involve commercial or for-profit use by the nongovernmental lessees. Therefore, it is my opinion the hangars are not subject to ad valorem taxation.

Sincerely,

Ashley Moody
Attorney General

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[1] The court found the following provision to be unconstitutional: "The use by a lessee, licensee, or management company of real property or a portion thereof as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach is deemed a use that serves a governmental, municipal, or public purpose or function when access to the property is open to the general public with or without a charge for admission."

[2] The case involved the tax years preceding, and thus not subject to, the 1993 amendment to section 196.012(6), which added the language dealing with aircraft full-service fixed base operations serving a governmental, municipal, or public purpose. Page, 714 So. 2d at 1073 & n.3.

[3] See Mission Statement of the Fernandina Beach Municipal Airport, https://www.fbfl.us/806/Airport-Mission-Statement.

[4] FAA Airport Compliance Manual, Order 5190.6B (Sept. 30, 2009), https://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/media/5190_6b.pdf., at 9.1, p. 9-1.

[5] Id. at 9.7, pp. 9-8 to 9-9.