

Biltmore Hotel, applicability of tax exemption

Number: INFORMAL

Date: August 18, 1998

Ms. Elizabeth M. Hernandez
Coral Gables City Attorney
Post Office box 141549
Coral Gables, Florida 33114-1549

RE: AD VALOREM TAXATION--MUNICIPALITIES--HISTORICAL PROPERTIES--applicability of exemption from ad valorem taxation for Biltmore Hotel property. s. 196.012. Fla. Stat.

Dear Ms. Hernandez:

A question has arisen regarding the ad valorem tax status of the Biltmore Hotel property under section 196.012(6), Florida Statutes. You state that there is presently pending before the Dade County Circuit Court an action considering the exemption of the Biltmore Hotel from ad valorem taxation pursuant to a 1994 amendment to section 196.012(6), Florida Statutes.[1] The following observations are made in an effort to be of assistance to both the city and the county in resolving these issues.

The Biltmore Hotel is a historic monument listed on the National Register of Historical Places and has been designated by the Secretary of the Interior as a Historic Landmark. The City of Coral Gables owns the Biltmore Hotel property pursuant to a conveyance from the federal government under 40 United States Code section 484(k)(3). The city leased the hotel to a private lessee under the terms of an agreement that required the lessee to restore the property and then to preserve and maintain the property in conformity with requirements imposed by the conveyance and federal agencies.

Generally, all property is subject to taxation unless it is expressly exempted and such exemptions are strictly construed against the party claiming them.[2] Two statutory sections, read together, represent the exemption to which the Biltmore Hotel asserts an entitlement.

Section 196.199(2)(a), Florida Statutes, provides that:

"Property owned by the following governmental units but used by nongovernmental lessees shall only be exempt from taxation under the following conditions:

(a) Leasehold interests in property of the United States, of the state or any of its several political subdivisions, or of municipalities, agencies, authorities, and other public bodies corporate of the state shall be exempt from ad valorem taxation only when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in s. 196.012(6). . . ."

Section 196.012(6) generally defines "governmental, municipal or public purpose," stating:

"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 the United States, the state or any of its political subdivisions, or any municipality, agency, special district, authority, or other public body corporate of the state 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. . . ."[3]

While the circuit court in *City of Coral Gables v. Robbins*,[4] held that the Biltmore Hotel property was subject to taxation for the 1993 tax year, you note that section 196.012(6), Florida Statutes, was amended in 1994 to specifically provide:

"If property deeded to a municipality by the United States is subject to a requirement that the Federal Government, through a schedule established by the Secretary of the Interior, determine that the property is being maintained for public historic preservation, park, or recreational purposes and if those conditions are not met the property will revert back to the Federal Government, then such property shall be deemed to serve a municipal or public purpose."

Thus, the Legislature has determined that municipal property used in the above manner is deemed to be governmental property used for a municipal or public purpose. It is the Legislature's responsibility, in the first instance, to determine what constitutes a public purpose and unless that determination is ruled invalid by a court of competent jurisdiction, this office must presume the validity of such a determination.

Moreover, in construing any statute the primary purpose is to give effect to the intention of the Legislature.[5] Thus, absent a violation of a constitutional right, a specific, clear and precise statement of legislative intent will control in the interpretation of a statute.[6]

The preservation of historic properties has been recognized by the Florida Legislature as a public purpose for statewide implementation.[7] The amendment of section 196.012(6), Florida Statutes, in 1994 to expressly include historic properties such as the Biltmore also reflects this legislative direction. The amendment would appear to have been drafted in direct response to the property appraiser's denial of an exemption for ad valorem taxes for the Biltmore Hotel in 1993 and was intended by the Legislature to provide such an exemption prospectively thereafter.[8] In order to give effect the intent of the Legislature, it appears that the exemption afforded by the 1994 amendment to section 196.012(6), Florida Statutes, should be interpreted to apply to the Biltmore Hotel.

I trust that these informal comments may assist both the county and the city in resolving this matter.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] *City of Coral Gables and The Biltmore Hotel Limited Partnership v. Joel W. Robbins, et al.*, Case No. 95-18319 CA 03 (Fla. 11th Cir. 1997).

[2] *Sebring Airport Authority v. McIntyre*, 642 So. 2d 1072, 1073 (Fla. 1994); *Volusia County v. Daytona Beach Racing and Recreational Facilities District*, 341 So. 2d 498, 502 (Fla. 1976), *appeal dismissed*, 434 U.S. 804, 98 S.Ct. 32, 54 L.Ed.2d 61 (1977); *Williams v. Jones*, 326 So. 2d 425, 435 (Fla. 1975).

[3] In reviewing the exemptions afforded under sections 196.012(6) and 196.199(2)(a), Florida Statutes, the courts have considered the exemptions refer to "governmental-governmental" functions rather than "governmental-proprietary" functions. See *Williams v. Jones, supra*; *Sebring Airport Authority v. McIntyre, supra* (governmental-proprietary function occurs when a nongovernmental lessee utilizes governmental property for proprietary and for-profit aims). And see *Page v. City of Fernandina Beach*, 1998 WL 316556 (Fla. 1st DCA 1998) (proprietary functions promote the comfort, convenience, safety and happiness of citizens, whereas government functions concern the administration of some phase of government).

[4] 3 Fla. L. Weekly Supp. 684 (Fla. 11th Cir. 1996), *affirmed*, Case No. 96-887 (Fla. 3d DCA 1997).

[5] *People's Bank of Jacksonville v. Arbuckle*, 90 So. 458 (Fla. 1921), and *City of St. Petersburg v. Siebold*, 48 So. 2d 291 (Fla. 1950).

[6] *Carawan v. State*, 515 So. 2d 161 (Fla. 1987).

[7] See, e.g., s. 187.201(19)(b)5., Fla. Stat., making it a policy of the state to "[e]ncourage the rehabilitation and sensitive, adaptive use of historic properties through technical assistance and economic incentive programs."

[8] Chapter 94-353, s. 59, Laws of Fla., amending section 196.012(6), Florida Statutes, specifically made the amendment "appl[icable] to the 1994 and subsequent tax rolls."