

Jim Cox

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Date: Monday, March 28, 2016 12:39 PM
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Subject: Land taxation

I called Danny Kepner this morning to get his thoughts on the Circuit Court ruling last week.

In the FL Supreme Court ruling on taxation of improvements on PB, the Court compared the PB leases to Navarre Beach leases (see page 5), and noted that the Navarre Beach leases are perpetual, but the PB leases "are not perpetually renewable". (However, a footnote states that some PB leases are perpetually renewable.) The leases also do not have the right to obtain title for a nominal sum at the end of the lease. But the Court says those distinction are "not sufficient to remove the improvements on the properties at issue here from the scope of the equitable ownership doctrine."

The next paragraphs talk about "equitable ownership" of improvements by a lessee under FL law, and its taxability "regardless of how title is held".

Danny says this ruling was narrowly applied to improvements only, and that the taxability of land is an open issue. He feels that PB leases that have no renewal provision (the subject 12 acres, Portofino, Beach Club, and most commercial leases), will probably be found to be exempt from taxation of the land, but their improvements will continue to be taxed. And the FL Supreme Court may indeed simply let the lower court ruling stand.

Leases with a renewal provision that says they can be renewed under "like terms and conditions" (including another renewal provision, and another renewal provision, etc.) may well be regarded by the FL Supreme Court as perpetual. That may be what the footnote was implying. (Danny had asked for clarification of the footnote, but the request was denied.)

I asked Danny "What if a lessee with a renewal provision went to the SRIA and re-negotiated the lease to have no renewal provision? Could that leaseholder then be deemed exempt from taxation of land?" Danny said he thought they would.

Of course, if Fee Simple title becomes available, this will complicate the decision to accept Fee Simple title for anyone with no renewal provision – why pay taxes on the land if you are now exempt.

Looks like we may end up with a real patchwork of leases on the Island – some with taxable land, some without. *+ Some with fee simple title.*

What a complicated mess!

What should PBA do next?

Jim Cox

3/28/2016