

**IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, SECOND DISTRICT**

HILLSBOROUGH COUNTY
AVIATION AUTHORITY,
Defendant/Appellant,

v.

Case No. 2D20-3602
L.T. Case No. 2020-CA-004927

BOB HENRIQUEZ, as Hillsborough
County Property Appraiser,
Plaintiff/Appellee.

/

ON APPEAL FROM THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

**AMICUS CURIAE BRIEF OF
NATIONAL AIR TRANSPORTATION ASSOCIATION AND
FLORIDA AVIATION BUSINESS ASSOCIATION
IN SUPPORT OF APPELLANT
HILLSBOROUGH COUNTY AVIATION AUTHORITY**

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SUMMARY OF THE ARGUMENT

This case arises as a result of Circuit Court's erroneous ruling allowing the Hillsborough County Property Appraiser to impose ad valorem property taxes upon certain providers of services essential to the basic operations of municipal airports in the County. The Florida legislature has expressly exempted these service providers from taxation because they are statutorily deemed to provide a "governmental, municipal, or public purpose or function."

The Circuit Court's ruling is contrary to the plain language of the statute. Allowing the ruling to stand would impose an unintended and unreasonable financial burden upon fixed base operators (FBOs) who are the primary service providers to general aviation aircraft operators. The imposition of this tax would burden economic development and activity in the general aviation sector at large and create downstream negative economic consequences in all markets served by general aviation.

Further the tax would impair the ability of the Aviation Authority to provide essential government services in the most efficient and economic manner possible. The public policy consequences of the Circuit Court's erroneous ruling are significant and could potentially extend to adversely impact general aviation activities in all 50 states. Inconsistent application of

tax rules from county to county, and state to state, chills economic development in the aviation industry, imposes artificial barriers to effective competition, and discourages innovation and efficiency in the marketplace.

Amici's members consist of thousands of participants at all levels in the general aviation community within Florida and throughout the United States. Amici's members include hundreds of FBOs which are predominantly small businesses with fewer than 40 employees.

The ruling of the Circuit Court should be reversed.

INTEREST OF AMICUS CURIAE

Amicus, The National Air Transportation Association (NATA) is a general aviation trade association serving the business, safety, and regulatory needs of its members. NATA was founded in 1940 and currently has nearly 3,700 member businesses in all 50 states. NATA member companies provide a broad range of products and services to the aviation community including: aircraft sales and acquisitions, fuel, aircraft ground support, passenger and crew services, aircraft parking and storage, on-demand air charter, aircraft rental, flight training, aircraft maintenance and overhaul facilities, parts sales, and business aircraft and fractional ownership fleet management.

NATA members range in size from large companies with an international presence to smaller, single-location operators that depend exclusively on general aviation and aviation support for their livelihood. Smaller companies account for a significant proportion of NATA's membership. Most NATA members have fewer than 40 employees and are designated as small businesses by the U.S. Small Business Administration.

NATA provides safety training and other programs to further the success of general aviation service businesses. It also represents the interests of the general aviation business community before the Congress and federal, state, and local government agencies, the media, and the public.

NATA advocates for and promotes economic policy, including tax policy, that enhances and sustains economic growth and competitive conditions in the general aviation industry. General aviation related activities in the United States accounted for 128 billion dollars of annual gross domestic product in 2018; in Florida alone nearly 100,000 jobs related directly to general aviation activities.¹

¹ *Contributions of General Aviation to the U.S. Economy, 2018*, PricewaterhouseCoopers LLP, February 19, 2020. Available at: <https://nbaa.org/wp-content/uploads/advocacy/legislative-and-regulatory-issues/business-aviation-essential/General-Aviation-Contribution-to-the-US-Economy-20200219.pdf>

In 2017, NATA filed an amicus brief in the United States Supreme Court in support of a petition for certiorari regarding the proper application of the federal air transportation excise tax set forth in 26 U.S.C. § 4261(a). NATA has advocated for strict adherence to the plain language and uniform application of aviation related tax statutes throughout the United States.

Amicus, The Florida Aviation Business Association (FABA) is recognized as the leading information resource, principal promoter, and is the lead advocate of business aviation and general aviation and in the State of Florida.

Since 1946, FABA's mission has been to engage, educate, and support the association's diverse membership of businesses, airports, and industry stakeholders and to promote, protect, and advocate for general aviation and business aviation in the State of Florida.

FABA's membership includes aircraft manufacturers, fixed based operators (FBO's), maintenance repair organizations (MRO's), air carriers, fuel providers, flight schools, aircraft owners, airports, aircraft brokers, aircraft managers, insurance providers, attorneys, CPA's, professionals, educational institutions, aviation associations, and industry stakeholders throughout the State of Florida who are committed to engage, educate, and support the association's diverse membership.

ARGUMENT

The Circuit Court entered an order granting summary judgment in favor of the Hillsborough County Property Appraiser on November 19, 2020 thereby permitting the Appraiser to impose ad valorem property taxes upon FBOs and other entities who provide essential services under leases at general aviation airports in the County.

Amici file this brief in support of Appellant Hillsborough County Aviation Authority and urge the Court to reverse the Order of the Circuit Court. Amici have set forth below concerns with the effect of the Circuit Court's ruling upon essential service providers (primarily fixed base operators) who perform basic required or critical airport functions at general aviation airports within Hillsborough County. In addition, if the Circuit Court's ruling stands other taxing authorities within Florida may attempt to use the ruling as precedent to undermine the Florida legislature's specific intent to exempt those providing FBO services from taxation.² The Circuit Court's ruling is therefore a threat to the viability of general aviation activities throughout the State and potentially in other States as well.

² *Scott Randolph Tax Collector Orange County Florida v. Greater Orlando Aviation Authority*, in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, CASE NO.: 2021-CA-002972-O.

A. FIXED BASE OPERATORS

Fixed base operators (FBOs) are the primary service providers to general aviation aircraft operators. The FBO industry in the U.S. today comprises over 3,500 locations at airports around the country. An FBO is defined as a business operating under a lease with an airport-owning authority that provides necessary or mandated/critical aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, and related aviation services. See, Federal Aviation Administration Advisory Circular 5190.6B, Appendix C [1], Definition § 1.1.h. The precise array of services offered varies, as FBOs may cater to small general aviation (GA) aircraft, business aviation, commercial airlines, cargo operators, military flights, or a combination of clientele.

Publicly available industry reports indicate that as of December 2018 there were 3,661 FBOs in the United States serving public use airports.³ Slightly fewer than half of these FBOs (42%) were operated by local government entities (authorities, counties, municipalities). Privately operated FBOs accounted for 57% of the total, and universities operated FBOs at a total of 19 airports (1% of the total). *Id.*

³ The National Academies of Science, Engineering & Medicine, *Characteristic of the FBO Industry 2018-19*, at Chap. 3 p.31. Available at: <https://www.nap.edu/read/25846/chapter/5#31>.

Critical to this case is the fact that publicly owned and privately owned FBOs perform the same functions on airport property.

Fuel and maintenance are considered the top two services provided by FBOs. At some airports, FBOs have fueling contracts with public air carrier commercial passenger and cargo carriers or with a government entity, such as a National Guard unit. Additionally, at certain locations, FBOs also perform line maintenance, cabin cleaning, and baggage handling for commercial airline customers.

FBOs compete vigorously with each other on price, service, and quality of facilities. Competition between FBOs is not limited to other on-field providers. Increased aircraft efficiency means an FBO competes for fuel sales with aircraft departure points and destinations. Additionally, pilots and passengers often have a choice of airports near their ultimate destination.

FBOs and the airports and communities they serve are closely tied. The Federal Aviation Administration (FAA) has established a policy recommending that airports implement minimum standards – providing benefits, including creating a safer operating environment, guaranteeing higher quality services to the public, and protecting the airport by ensuring service providers maintain a minimum level of training, equipment, staffing, and insurance coverage.

The Hillsborough County Aviation Authority has adopted a detailed set of minimum operating procedures governing FBO operations at the three general aviation airports in Hillsborough County (Peter O. Knight, Plant City, Tampa Executive) and also at Tampa International Airport General Aviation.⁴

The Hillsborough County minimum requirement consist of four “core” obligations: (i) tie-down and hangar storage; (ii) sale and dispensing of fuel (av-gas), jet fuel, oil, and lubricants, (iii) ramp service, and (iv) fuel farm capabilities to store fuel. Additional required services include maintenance, repair, servicing, parts, flight instruction, aircraft rental, flight planning, and courtesy transportation for airport users.

The Hillsborough County minimum requirements are representative of the requirement that nearly all municipalities establish for FBOs (public or private) providing service at general aviation airports.⁵

⁴ See R331, Hillsborough County Aviation Authority, Minimum Standards For Commercial Aeronautical Activities For Tampa International Airport General Aviation, Peter O. Knight Airport, Plant City Airport, Tampa Executive Airport, Hillsborough County, Florida (September 7, 2017). Available at: https://www.tampaairport.com/sites/default/master/files/R331-MinimumStandardsforCommercialAeronauticalOperations_0.pdf

⁵ See, e.g. Buckeye, Arizona, Code of Ordinances, Article 22-17, Airport Minimum Standards, FBOs. Available at:
https://library.municode.com/az/buckeye/codes/code_of_ordinances?nodeId=CD_ORD_CH22MUAIRURE_ART22-17AIMISTIXBAOP

Given the essential nature of the functions provided by FBOs at general aviation locations, it is clear that public general aviation simply would not exist in the absence of FBO services and support.

B. FLORIDA'S STATUTORY TAX EXEMPTION FOR FBOs

In recognition of the essential public benefit flowing from the services that FBOs provide to public airports, in conjunction with the underlying necessity/desirability of having public airports in the first place, the Florida legislature created a specific tax exemption for FBOs. Chapter 196 of the Florida Statutes includes a definition section codifying the concept that privately owned entities performing a “governmental, municipal, or public purpose” shall be exempt from taxation under Florida law:

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.***

Fla. Stat. § 196.012(6) (emphasis added).

While the statute is dense, its meaning is extremely clear. Any party performing a government function under a lease with the government is

exempt from taxation. Further, FBO coverage under the statute is a logical result of the fact highlighted above that more than 40% of FBOs throughout the United States are actually operated by the governmental unit itself and perform services identical to privately operated FBOs. Thus, it is clear that privately owned FBOs operating under leases from a governmental unit are performing “a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit.”

The statute continues on, and makes specific reference to fixed base operators (FBOs) providing service and support to aviation users at Florida 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.

Fla. Stat. § 196.012(6).

The statute is plain and clear on its face. Any FBO operating under a governmental lease at an FAA approved airport is deemed to be engaged in a “governmental, municipal, or public purpose or function” or a

governmental-governmental function to use the parlance of the Circuit Court. As required by the Hillsborough County Airport Authority, every FBO must enter into a lease with the Authority: "All FBOs will be required to enter into an Agreement with the Authority." Minimum Standards, § 5.1(A).

There is no distinction contained in the exemption statute based on whether the FBO is for profit or non-profit. The only requirement is that the FBO be a "full service fixed base operation which provides goods and services to the general aviation public in the promotion of air commerce . . ."

The Florida Administrative Code, Department of Revenue, Property Tax Oversight Program includes a specific exemption for full-service FBOs as well. In §12D-7.016, subsection 6 the exemption code parrots the exemption set forth in Fla. Stat. § 196.012(6). In addition, subsections 6(a) and 6(b) provide even further illumination on the full range of exempt services provided by FBOs:

(a) A fixed-base operator is an individual or firm operating at an airport and providing general aircraft services such as maintenance, storage, ground and flight instruction. See Appendix 5, Federal Aviation Authority Order 5190.6A.

(b) An "aeronautical activity" has been defined as any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operation. See Federal Aviation Authority Advisory Circular 150/5190-1A. The following examples are not considered aeronautical activities: ground transportation (taxis, car rentals, limousines); hotels and motels; restaurants; barber shops; travel agencies and auto parking

lots.

In conjunction with Florida Statute 196.012(6), the Florida Administrative Code makes crystal clear the full scope of Florida's tax exemption for FBOs extends to all "aeronautical activities." Thus all "aeronautical activities" constitute a governmental-governmental function. It is only non-aeronautical activities such as rental cars, diners/restaurants, newsstands, and the like that do not enjoy the tax exemption. Those non-aeronautical functions and services are not at issue on this appeal.

C. POLICY IMPLICATIONS

There is little justification to discuss policy implications of an erroneous lower court decision when the plain words of a statute resolve the legal issue in dispute. The Florida legislature is vested with the responsibility to weigh various policy determinations in fashioning law. The Court's responsibility is simply to construe the law in accord with the plain meaning of the words chosen by the legislature:

[L]egislative intent is the polestar by which the Court is guided, and "[t]o discern legislative intent, a court must look first and foremost at the actual language used in the statute." Accordingly, we look first to the actual text of the statutory provisions at issue. "[W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning."

Greenfield v. Daniels, 51 So. 3d 421, 425 (Fla. 2010), quoting *Larimore v. State*, 2 So. 3d 101, 106 (Fla. 2008), *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) (quoting *A.R. Douglass, Inc. v. McRainey*, 102 Fla. 1141, 137 So. 157, 159 (Fla. 1931)).

However, two significant policy consequences would occur if the Property Appraiser's interpretation of law were to stand. First, the removal of the legislature's tax exemption for FBOs would impose an unintended tax burden upon FBOs within Hillsborough County. The tax burden would render those FBOs less competitive with FBOs doing business in neighboring counties. General aviation consumers in Hillsborough County would be impacted as well because FBO taxes burdens will be passed through to consumers in the form of higher fuel, hangar, maintenance and service fees.

Second, imposition of the ad valorem tax upon FBOs in Hillsborough County would interfere with the County's ability to make economically efficient decisions that benefit taxpayers. There is a large body of research analyzing the benefits available to municipal governments who outsource certain governmental functions.⁶ The Circuit Court's ruling will limit the ability

⁶ See, e.g., Government Outsourcing: A Practical Guide for State and Local Governments, School of Public and Environmental Affairs, Indiana

of Hillsborough to engage in the most efficient strategy to reduce government costs, which includes the option of outsourcing essential airport support services to qualified FBOs. To the extent that existing FBOs are economically burdened by the tax and therefore less likely to enter into leases with the County to provide FBO services, the County itself is still responsible for providing these services.

CONCLUSION

The judgment of the Circuit Court should be reversed.

University, January 2014. Available at:
<https://oneill.indiana.edu/doc/research/govt-outsourcing-2014.pdf>

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 3, 2021, I electronically filed the foregoing via the Florida Courts e-filing Portal and that a true and correct copy of the foregoing has been served via Electronic Mail to the following:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this document complies with the applicable font and word count limit requirements of Florida Rule of Appellate Procedure 9.045 and Rule 9.210(a)(2)(B). The font is 14-point Arial. The word count is 2,752. It has been calculated by the word-processing system excluding the content authorized to be excluded under the rule.

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