DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

HILLSBOROUGH COUNTY AVIATION AUTHORITY,

Appellant,

v.

BOB HENRIQUEZ, as Hillsborough County Property Appraiser,

Appellee.

No. 2D20-3602

July 7, 2023

Appeal from the Circuit Court for Hillsborough County; Gregory P. Holder, Judge.

Marie A. Borland, Robert E.V. Kelley, Jr., and B. Benjamin Dachepalli of Hill, Ward & Henderson, P.A., Tampa; and Chris W. Altenbernd of Banker Lopez Gassler P.A., Tampa, for Appellant.

William D. Shepherd of Hillsborough County Property Appraiser's Office, Tampa (withdrew after briefing and oral argument), for Appellee.

Benjamin K. Phipps of The Phipps Firm, Tallahassee, for Amicus Curiae Florida Airports Council.

Kraig Conn of Florida League of Cities, Inc., Tallahassee, for Amicus Curiae Florida League of Cities.

Richard L. Richards and Alejandra Muñiz Marcial of Richards Legal Group, Coral Gables for Amici Curiae National Air Transportation Association and Florida Aviation Association; and Lars H. Liebeler of Lars Liebeler PC, Washington, DC, for Amicus Curiae National Air Transportation Association.

LABRIT, Judge.

This appeal involves a dispute between two governmental entities: the Hillsborough County Aviation Authority and the Hillsborough County Property Appraiser, Bob Henriquez. At bottom, the parties disagree on whether certain of Aviation Authority's airport properties qualify for a tax exemption under sections 196.199(2) and 196.012(6), Florida Statutes (2019). Although Aviation Authority argues several bases for reversal, we need only address one point. Because the properties serve a governmental purpose as defined in section 196.012(6), we reverse the judgment in Mr. Henriquez's favor and instruct the trial court to enter judgment for Aviation Authority.

I.

For several years, Aviation Authority has applied for an ad valorem tax exemption for fifteen different properties that it owns and leases to private entities. The properties are located within regional and international airports in Hillsborough County, and their uses are not materially disputed. The lessees use the properties for fixed-base operations (FBOs)[1] and similar activities that include aircraft maintenance and repair, fueling, flight instruction, and air cargo

[1] Although the term "fixed-base operations" is not defined in chapter 196, the Florida Administrative Code defines a fixed-base operator as "an individual or firm operating at an airport and providing general aircraft services such as maintenance, storage, ground and flight instruction." Fla. Admin. Code R. 12D-7.016; *see also* FAA Order No. 5190.6B app. C, Advisory Circular No. 150/5190-6 app. 1 § 1.1(i) (defining a fixed-base operator as "[a] business granted the right by the airport sponsor to operate on an airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, etc.").

transport.[2] In its applications, Aviation Authority claimed that these properties were exempt under sections 196.199(2) and 196.012(6) because their uses meet the statutory definition of "governmental purpose."

For many years, the then-elected property appraiser approved these exemptions. But in 2019, Mr. Henriquez changed course and denied Aviation Authority's applications for exemption—in whole or in part—on all fifteen properties. In his denial notice, Mr. Henriquez cursorily explained that these "propert[ies] no longer me[t] the statutory criteria for [g]overnment use" and cited a handful of statutes, cases, and sections of the Florida Constitution.

Aviation Authority appealed this decision to the Value Adjustment Board (VAB)—the governmental body charged with handling tax disputes. *See generally* § 194.032, Fla. Stat. (2021). The VAB overturned Mr. Henriquez's denial notices, reinstating the exemptions for

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[2] A few of the properties were vacant and held out for lease at the time of the events below. The law presumes that "vacant land held by a municipality is in use exclusively for a public purpose if it is not actually in use for a private purpose on tax assessment day." *Sun 'N Lake of Sebring Improvement Dist. v. McIntyre*, 800 So. 2d 715, 722 (Fla. 2d DCA 2001) (citing *City of Sarasota v. Mikos*, 374 So. 2d 458, 460 (Fla. 1979)). The evidence in the record is insufficient to overcome this presumption. *See Page v. City of Fernandina Beach*, 714 So. 2d 1070, 1078 (Fla. 1st DCA 1998) (holding that vacant lots the city owned were exempt where "[t]he property appraiser did not prove and the trial court did not find that any of the vacant lots were 'actually in use for a private purpose on tax assessment day' "); *cf. Sun 'N Lake of Sebring Improvement Dist.*, 800 So. 2d at 722 ("[A]ctive marketing of lots to private interests for use as private homesites overcomes the presumption that vacant land is held exclusively for a public purpose."). Therefore, and because we also conclude that the leased properties were used for an exempt governmental purpose under the applicable statutes, the vacant properties are likewise exempt.

the 2019 tax year. Mr. Henriquez then filed suit in circuit court, seeking to overturn the VAB's decision and tax the properties. He brought the action under section 194.036(1)(a), which permits a property appraiser to "appeal"[3] a VAB decision if he or she "determines and affirmatively asserts in any legal proceeding that there is a specific constitutional or statutory violation" in the decision.

Consistent with this provision, Mr. Henriquez's complaint alleged that there was a statutory violation in the VAB's decision. He specifically alleged that the VAB improperly reinstated the exemptions because the properties are not exempt under sections 196.199(2) or 196.012(6). Mr. Henriquez also confirmed below that his suit did not allege a constitutional violation, only a statutory one.[4] Aviation Authority answered Mr. Henriquez's complaint and raised four affirmative defenses, one of which asserted that the properties are used for aviation and airport purposes, that certain of the properties are used as FBOs, and that all are exempt under sections 196.199(2) and 196.012(6).

The parties filed competing motions for summary judgment. In its motion, Aviation Authority argued that the lessees' uses of the properties fall squarely within the statutory exemptions and the definition of "governmental purpose" in section 196.012(6). Mr. Henriquez argued in response, and in support of his own summary judgment motion, that

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[3] Although the statute refers to this process as an appeal, "actions brought in the circuit court pursuant to . . . section 194.036 . . . are original actions, not appeals." *Crossings At Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793, 801 n.6 (Fla. 2008).

[4] In discussing the basis for Mr. Henriquez's suit under section 194.036(1)(a), the trial court asked Mr. Henriquez's counsel: "[Y]ou're not alleging a specific constitutional violation, are you?" Counsel responded: "No, not at all. We [are] not arguing that any of the statutes are unconstitutional."

these statutory exemptions "must meet the constitutional test of serving a 'governmental-governmental' purpose," such that the property must be both owned by the government and used for "the administration of some phase of government." Mr. Henriquez maintained that the lessees' uses did not satisfy the second part of this constitutional test, so the properties were not exempt under sections 196.199(2) and 196.012(6).

Agreeing with Mr. Henriquez, the trial court granted Mr. Henriquez's motion for summary judgment and denied Aviation Authority's motion for summary judgment. The trial court found that "while the activities undertaken by the[] tenants are useful to the public and the users of the airports in particular, the uses are not the administration of some phase of government" so they are not exempt under sections 196.199(2) and 196.012(6). This appeal ensued.

"Because the facts were not in dispute and the issue before the trial court was purely legal, we review the court's entry of summary judgment de novo." *Baldwin v. Henriquez*, 279 So. 3d 328, 332 (Fla. 2d DCA 2019); *see also Fla. Dep't of Revenue v. New Sea Escape Cruises, Ltd.*, 894 So. 2d 954, 957 (Fla. 2005) (explaining that interpretation of a tax statute is "a legal matter subject to a de novo standard of review").

II.

A. Sections 196.199(2) and 196.012(6)

Aviation Authority requested—but Mr. Henriquez denied—ad valorem tax exemptions under sections 196.199(2) and 196.012(6). These statutes exempt leasehold and other interests in government property if they meet certain criteria. Section 196.199(2)(a) states that leasehold interests are exempt "only when the lessee serves or performs a governmental, municipal, or public purpose or function, as defined in [section] 196.012(6)." Section 196.199(2)(a) further provides that "[i]n all

such cases, all other interests in the leased property shall also be exempt from ad valorem taxation."[5]

Section 196.012(6), in turn, defines a "governmental, municipal or public purpose" as follows:

> 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. **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 [section]

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[5] By its plain language, section 196.199(2)(a) exempts leasehold interests in government-owned property and "all other interests" in that property if the lessee serves or performs a governmental, municipal, or public purpose as defined in section 196.012(6). In the proceedings below, the trial court found that the property interests in dispute, and the interests that Mr. Henriquez taxed, were the government-owned fee simple interests in the leased properties and not the lessees' leasehold interests. Because section 196.199(2)(a) treats these interests the same where the lessee uses the property for an exempt purpose, we need not consider or decide the precise nature of the property interests involved.

> 332.004(1) by municipalities, agencies, special districts, authorities, or other public bodies corporate and public bodies politic of the state, a spaceport as defined in [section] 331.303, or which is located in a deepwater port identified in [section] 403.021(9)(b) and owned by one of the foregoing governmental units, subject to a leasehold or other possessory interest of a nongovernmental lessee that is deemed to perform an aviation, airport, aerospace, maritime, or port purpose or operation shall be deemed an activity that serves a governmental, municipal, or public purpose.

(Emphasis added.) This definition goes on, but its remainder is not applicable here.

The legislature first adopted sections 196.199 and 196.012 as part of a 1971 tax reform act through which the legislature sought to tighten exemption requirements. *See* ch. 71-133, Laws of Fla.; *Canaveral Port Auth. v. Dep't of Revenue*, 690 So. 2d 1226, 1229 (Fla. 1996). At the time, the legislature's definition of "governmental, municipal or public purpose" was much shorter, and it appeared in subsection (5) of section 196.012.[6] It stated in full:

> 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 of Florida or any of its political subdivisions, or any municipality, agency, 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. The term "governmental purpose" shall include a direct use of property on federal lands in connection with the federal government's space exploration program. Real property and tangible personal property owned by the federal government and used for defense and space

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[6] The legislature later renumbered this definition as subsection (6). *See* ch. 88-102, § 1, Laws of Fla.

> exploration purposes or which is put to a use in support thereof shall be deemed to perform an essential national governmental purpose and shall be exempt.

Ch. 71–133, § 1, Laws of Fla.

In 1993, the legislature amended this provision to "expand[] the definition of governmental, municipal or public purpose to include certain aviation activities." Ch. 93–233, Laws of Fla. This 1993 amendment added the second sentence of the applicable version of section 196.012(6) that now deems "an activity undertaken by a lessee . . . in connection with the conduct of an aircraft full service [FBO]" to serve a governmental purpose. *Id.* Then, in 1997, the legislature amended section 196.012(6) again to "specify[] additional activities that are deemed to serve [governmental, municipal or public] purposes." Ch. 97–255, Laws of Fla. The 1997 amendment specified that "[a]ny activity undertaken by a lessee . . . that is deemed to perform an aviation or airport . . . purpose" is deemed to serve a governmental purpose. *Id.* at § 25. This language, modified only slightly since then,[7] now appears as the third sentence of section 196.012(6).

The trial court found that the properties do not serve a "governmental purpose" under these statutory definitions because their uses do not satisfy the judge-made governmental-governmental test. Because this test underpins the trial court's findings, we review it below.

B. The Governmental-Governmental Test

Shortly after the legislature passed its tax reform act in 1971, our supreme court considered these legislative reforms in *Williams v. Jones*, 326 So. 2d 425 (Fla. 1975), and *Volusia County v. Daytona Beach Racing & Recreational Facilities District*, 341 So. 2d 498 (Fla. 1976). The

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[7] In 1999, the legislature added language pertaining to spaceports and aerospace activities. *See* ch. 99–256, § 11, Laws of Fla.

supreme court first determined in *Williams* that "[t]he exemptions contemplated under [s]ections 196.012(5) and 196.199(2)(a) . . . relate to 'governmental-governmental' functions as opposed to 'governmental-proprietary' functions." 326 So. 2d at 433. The following year, it applied this governmental-governmental standard in *Volusia County* to hold that leased municipal property used as a for-profit racetrack was not exempt from ad valorem taxation under article VII, section 3(a), of the Florida Constitution.[8] 341 So. 2d at 502; *see also Fla. Dep't of Revenue v. City of Gainesville*, 918 So. 2d 250, 260 (Fla. 2005).

Through a series of cases that followed, our supreme court developed the governmental-governmental test. *City of Gainesville*, 918 So. 2d at 260. Now, "for private leaseholds of municipal property, the 'governmental-governmental' test governs eligibility for the constitutional tax exemption in article VII, section 3(a)." *Id.* And this test mirrors the definition of "governmental, municipal or public purpose" that the legislature adopted in 1971. *Compare* ch. 71-133, § 1, Laws of Fla., *with City of Gainesville*, 918 So. 2d at 260. That is, under the governmental-governmental test, an "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.' " *City of Gainesville*, 918 So. 2d at 260.

The supreme court's application of this test in two cases involving the Sebring raceway perhaps best exemplifies its use. The first case, *Sebring Airport Authority v. McIntyre* (*Sebring I*), 642 So. 2d 1072, 1073

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[8] Article VII, section 3(a) provides that "[a]ll property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation."

(Fla. 1994), came before the court after a leaseholder challenged the taxation of its leasehold interest in property owned by Sebring Airport Authority. The leaseholder, Sebring International Raceway, sought an exemption under the same statutes at issue here—sections 196.199(2)(a) and 196.012(6)—the latter of which contained no express exemption for racetracks or similar uses at the time. *See id.* The trial court denied the exemption and entered summary judgment for the property appraiser. *Id.*

On appeal, the supreme court approved this decision in *Sebring I*. *Id.* at 1074. It concluded:

> Serving the public and a public purpose, although easily confused, are not necessarily analogous. A governmental-proprietary function occurs when a nongovernmental lessee utilizes governmental property for-proprietary and for-profit aims. We have no doubt that Raceway's operation of the racetrack serves the public, but such service does not fit within the definition of a public purpose as defined by section 196.012(6). Raceway's operating of the race for profit is a governmental-proprietary function; therefore, a tax exemption is not allowed under section 196.199(2)(a).

Id. at 1073–74 (footnote omitted). The court also noted that "government functions concern the administration of some phase of government," *see id.* at 1074 n.1, which is language the trial court here used in finding the properties nonexempt.

After the decision in *Sebring I* issued, the legislature amended section 196.012(6) in 1994 to add the following language to its definition of "governmental, municipal or public purpose":

> 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.

Ch. 94–353, § 59, Laws of Fla. Sebring International Raceway again applied for a tax exemption—this time under the amended statute—and the issue ultimately reached the supreme court in *Sebring Airport Authority v. McIntyre* (*Sebring II*), 783 So. 2d 238, 243 (Fla. 2001). Before getting there, however, the issue came before this court and we declared the 1994 amendment to section 196.012(6) unconstitutional. *Sebring Airport Auth. v. McIntyre*, 718 So. 2d 296, 297 (Fla. 2d DCA 1998).

The supreme court affirmed this result in *Sebring II*, and in so doing, it elaborated on the governmental-governmental test. *See* 783 So. 2d at 241, 246–48. The court explained that this standard is "constitutionally required" to determine whether the use of leased government property serves a "public purpose" as article VII, section 3(a) mandates. *Id.* at 246 (citing *Williams*, 326 So. 2d at 433). Thus, "the 'public purpose' standard applicable in tax exemption cases is the 'governmental-governmental' standard first established in *Williams*, later confirmed in *Volusia County*, and consistently applied in subsequent cases involving claimed tax exemptions for private leasehold interests." *Id.* at 247. And the statutory amendment before the court in *Sebring II*—which purported to exempt sports facilities and other venues—"simply [did] not comport with this standard or the constitutional requirements." *Id.* at 251.

Mr. Henriquez did not assert—nor could he[9]—that the amendments to section 196.012(6) applicable here are unconstitutional. Instead, Mr.

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[9] The statute under which Mr. Henriquez brought this action, section 194.036(1)(a), states that "nothing herein shall authorize the

Henriquez's suit alleged that there was a statutory violation in the VAB's decision under sections 196.199(2) and 196.012(6). Therefore, we focus our review on whether the VAB's decision violated these statutes and whether the trial court erred in concluding that it did.

III.

"[I]t is well settled that all property is subject to taxation unless expressly exempt, and exemptions are strictly construed against the party claiming them." *Cap. City Country Club, Inc. v. Tucker*, 613 So. 2d 448, 452 (Fla. 1993); *see also Boca Airport, Inc. v. Fla. Dep't of Revenue*, 56 So. 3d 140, 142 (Fla. 4th DCA 2011). It is likewise well-settled that "[t]he starting point for any statutory construction issue is the language of the statute itself—and a determination of whether that language plainly and unambiguously answers the question presented." *X.S. v. State*, 356 So. 3d 898, 899–900 (Fla. 2d DCA 2023) (quoting *State v. Peraza*, 259 So. 3d 728, 730 (Fla. 2018)); *see also Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022) ("[T]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997))). The question here is whether FBOs and comparable aviation activities on airport property serve an exempt "governmental

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property appraiser to institute any suit to challenge the validity of . . . any duly enacted legislative act of this state." This proscription on a property appraiser's authority "preserve[s] the historical rule that a public official acting in his or her official capacity does not have standing to initiate an action challenging the validity of a statute." *Crossings At Fleming Island Cmty. Dev. Dist. v. Echeverri*, 991 So. 2d 793, 796 (Fla. 2008); *see also Turner v. Hillsborough Cnty. Aviation Auth.*, 739 So. 2d 175, 179 ("[E]ven if a property appraiser is convinced that an enactment is unconstitutional, we interpret section 194.036(1)(a) to prohibit that official from instituting legal proceedings to challenge its validity.").

purpose" under the applicable statutes. The plain language of the statutes answers this question.

Section 196.012(6) defines—in mandatory terms—"governmental purpose" to include "an activity undertaken by a lessee . . . in connection with the conduct of an aircraft full service [FBO]" and "[a]ny activity undertaken by a lessee . . . that is deemed to perform an aviation[or] airport . . . purpose." It is undisputed that many of the properties operate as FBOs. These uses fall squarely within the legislature's definition of "governmental purpose" in section 196.012(6). And the remaining properties are used for substantially equivalent activities such as fueling, repairing, and maintaining aircraft. Like FBOs, these aviation activities on airport property satisfy the plain language of the statutory definition of "governmental purpose." Therefore, pursuant to section 196.199(2)(a), the lessees' interests in these properties "shall be exempt from ad valorem taxation."

In concluding otherwise, the trial court looked beyond the plain language of the statutes and found that the properties do not satisfy the governmental-governmental test. However, in *Williams*—the genesis of the governmental-governmental test—the supreme court determined that "[t]he exemptions contemplated under [s]ections 196.012(5) and 196.199(2)(a) . . . relate to 'governmental-governmental' functions as opposed to 'governmental-proprietary' functions." 326 So. 2d at 433. In other words, the activities the legislature deemed exempt under sections 196.199(2)(a) and 196.012(5)—now 196.012(6)—relate to governmental-governmental functions. *See id.*; *see also Turner v. Hillsborough Cnty. Aviation Auth.*, 739 So. 2d 175, 179 (Fla. 2d DCA 1999) (explaining that through section 196.012(6), "the legislature deemed certain uses of property by certain lessees to be governmental uses" and that "[u]ntil this

statute [is] declared unconstitutional, it [is] presumed constitutional, and all property appraisers ha[ve] a duty to apply it").

We recognize that the legislature has significantly expanded the definition of "governmental purpose" since *Williams* considered it, and that the legislature cannot create exemptions that have no constitutional basis. *See Sebring II*, 783 So. 2d at 247. But Mr. Henriquez does not raise—and in fact has explicitly disavowed—any constitutional challenge to the applicable statutes, and we are not free to voluntarily undertake one. *See Wright v. City of Miami Gardens*, 200 So. 3d 765, 781 (Fla. 2016) (Canady, J., concurring) ("It is a well established principle that the courts will not declare an act of the legislature unconstitutional unless its constitutionality is challenged directly by one who demonstrates that he is, or assuredly will be, affected adversely by it. . . . Courts should not voluntarily pass upon constitutional questions which are not raised by the pleadings.").

Mr. Henriquez also does not seriously dispute that the properties fall within the statutory definition of "governmental purpose" in section 196.012(6).[10] He argues instead that we must interpret the statutory text in a "constitutional manner" by applying the governmental-governmental test. But the result he proposes—a determination that the

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[10] In his brief, Mr. Henriquez agrees that "[t]aken on its own, [section 196.012(6)] might suggest these properties could be entitled to . . . an exemption." Mr. Henriquez also conceded at oral argument that the properties fall within the statutory text, but—in his view—they satisfy the statute only if the governmental-governmental test is ignored. But as we have already discussed, the governmental-governmental test determines whether a tax exemption is constitutionally permitted, and Mr. Henriquez's suit alleged only a statutory violation. While the governmental-governmental test certainly applies to interpret tax statutes in other instances, the statutes expressly and specifically exempt FBOs and the other uses at issue here.

properties do not serve a "governmental purpose"—directly contravenes the plain language of the statute that expressly and mandatorily deems FBOs, aviation, and airport activities to serve a "governmental purpose." And "we lack 'power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.' " *State Farm Fire & Cas. Ins. v. Wilson*, 330 So. 3d 67, 72 (Fla. 2d DCA 2021) (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)).

The lessees' uses of the properties are unique in that they must occur at an airport, and their uses are essential to airport operations. Aircraft cannot be fueled, repaired, or hangared, and cargo planes cannot be loaded or unloaded, in a mall or at an office park, in contrast to shops, restaurants, and hotels that may be desirable at an airport but can operate elsewhere. While this factor is not determinative, it is consistent with the intent of the tax statutes—"that, unless expressly exempted, the holders of leases of publicly-owned land shall bear the same tax burden as private property owners who devote their land to the same uses." *Walden v. Hillsborough Cnty. Aviation Auth.*, 375 So. 2d 283, 285 (Fla. 1979); *cf. Fla. Dep't of Revenue v. James B. Pirtle Constr. Co.*, 690 So. 2d 709, 711 (Fla. 4th DCA 1997) ("The primary consideration in the construction and interpretation of tax statutes is to ascertain and give effect to legislative intent, determined primarily from the language of the statute." (citing *Miele v. Prudential-Bache Sec., Inc.*, 656 So. 2d 470, 471 (Fla. 1995))). Private property owners cannot devote their land to the "same uses" as those of the subject lessees, so exempting the lessees' uses does not grant them an unfair advantage or contravene legislative intent.

Despite the plain statutory language that exempts these uses, the trial court found they are not exempt based in part on several cases that predated the statutory amendments that specifically added FBOs and other aviation activities to the definition of "governmental purpose." One such case was *Page v. City of Fernandina Beach*, 714 So. 2d 1070 (Fla. 1st DCA 1998). Like this case, *Page* considered whether FBOs qualify for an ad valorem tax exemption. *See id.* at 1075. But wholly unlike this case, *Page* evaluated this issue under the 1991 version of section 196.012(6), which did not include the now-operative language that expressly exempts FBOs. *See id.* at 1073 & n.3. Therefore, while *Page* concluded that FBOs were not constitutionally exempt, it did not consider the issue before this court—whether FBOs and other aviation uses qualify for a statutory exemption under the current version of sections 196.199(2)(a) and 196.012(6).

Page is notable, however, because "the [l]egislature 'is presumed to have adopted prior judicial constructions of a law unless a contrary intention is expressed.' " *City of Gainesville*, 918 So. 2d at 264 (quoting *Fla. Dep't of Child. & Fams. v. F.L.*, 880 So. 2d 602, 609 (Fla. 2004)). The 1993 and 1997 amendments to section 196.012(6) express a contrary intention to *Page* and the precedents upon which it is based with respect to aviation-related exemptions. These amendments remain intact, and the cases that postdate them have concluded that section 196.012(6) exempts FBOs and other aviation activities. *See Boca Airport, Inc.*, 56 So. 3d at 144 (concluding that private companies operating FBOs on government-owned properties serve a governmental, municipal or public purpose and are exempt from ad valorem taxation under sections 196.199(2)(a) and 196.012(6)); *Nolte v. Paris Air, Inc.*, 975 So. 2d 627, 628 (Fla. 4th DCA 2008) (affirming finding that airport property "leased

by long term leases to full service [FBOs] who provide goods and services to the general aviation public in the promotion of air commerce, serves a municipal, governmental or public purpose or function and is therefore exempt" from taxation); *Nikolits v. Runway 5-23 Hangar Condo. Ass'n*, 847 So. 2d 1054, 1055 (Fla. 4th DCA 2003) (holding that airplane hangars constituted aviation facilities that performed a governmental, municipal, or public purpose, and were specifically exempt from taxation under section 196.012(6)). We reach the same conclusion here.

IV.

Mr. Henriquez alleged that the VAB's decision violated sections 196.199(2)(a) and 196.012(6). In granting summary judgment to Mr. Henriquez on this claim, the trial court found that the properties do not qualify for exemptions under these statutes because their uses do not serve a "governmental purpose." But the statutes themselves define "governmental purpose" to expressly and specifically include the uses of these properties.[11] Thus, the properties qualify for ad valorem tax exemptions under sections 196.199(2)(a) and 196.012(6). We reverse the judgment in favor of Mr. Henriquez and remand for entry of judgment in favor of Aviation Authority.

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[11] This panel is aware of the decisions in *Gulf Marine Repair Corporation v. Bob Henriquez*, No. 2D20-2613, and *Tampa Port Authority v. Bob Henriquez*, No. 2D20-2605. While all three of these cases share the basic characteristic of being appeals from orders granting summary judgment in favor of the property appraiser on the issue of a lessee's entitlement to exemption from taxation under sections 196.012(6) and 196.199(2)(a), the similarities end there. As our colleagues recognized in *Gulf Marine*, the legislature did not include language in section 196.012(6) to specifically exempt proprietary, for-profit activities undertaken by lessees at deepwater ports. Op. at 15. By contrast, the legislature has expressly exempted the aviation uses at issue in this case.

We also conclude that this case presents an issue of great public importance—one which is likely to impact taxpayers and property appraisers throughout the state. As the supreme court has noted, the taxation of leased interests in government-owned property has taken an "erratic path" over the years. *Cap. City Country Club, Inc.*, 613 So. 2d at 450. This time, the path led to our court in the context of a property appraiser's suit alleging a statutory violation under section 194.036(1)(a). And while Mr. Henriquez raises valid points concerning the necessity of the governmental-governmental test to determine if a tax exemption is constitutionally permitted, we cannot ignore the plain language of the statutes he contends were violated. Recognizing the importance of the governmental-governmental test, however, we certify the following question as one of great public importance:

> WHERE PROPERTY IS EXPRESSLY EXEMPT FROM AD VALOREM TAXATION UNDER A SPECIFIC STATUTE AND THE STATUTE'S CONSTITUTIONALITY IS NOT CHALLENGED, DOES THE GOVERNMENTAL-GOVERNMENTAL TEST OVERRIDE AN EXPRESS STATUTORY EXEMPTION AND ULTIMATELY DETERMINE WHETHER THE PROPERTY IS EXEMPT FROM TAXATION?

Reversed and remanded; question certified.

BLACK and SMITH, JJ., Concur.

Opinion subject to revision prior to official publication.