

Bond Case Briefs

Municipal Finance Law Since 1971

TAX - FLORIDA

City of Largo v. AHF-Bay Fund, LLC

Supreme Court of Florida - March 2, 2017 - So.3d - 2017 WL 823607

City brought action against property owner, which was exempt from ad valorem taxes as non-profit operator of affordable housing, for failure to make annual payment under payments-in-lieu-of-taxes (PILOT) agreement.

The Circuit Court entered judgment in favor of city. Owner appealed. The District Court of Appeal reversed and remanded and certified question.

The Supreme Court of Florida held that:

- Affordable housing property exemption does not prohibit payment of ad valorem taxes that equal amount of taxes that would be due if property owner waived exemption and entered into contract;
- PILOT agreement was not void as contrary to public policy; and
- PILOT agreement did not violate state constitutional provision providing that cities could only impose taxes as permitted by law.

Statutory affordable housing property exemption does not expressly prohibit the payment of ad valorem taxes or payments that equal the amount of taxes that would be due if a property owner decides to waive the exemption and enter into a contractual agreement.

Payments-in-lieu-of-taxes (PILOT) agreement between city and property owner, under which owner that was exempt from ad valorem taxes as non-profit operator of affordable housing agreed to make annual payments to city in amount equal to portion of ad valorem taxes to which city would otherwise be entitled to receive for property if taxable, was not void as contrary to public policy. City and owner entered into voluntary agreement supported by valid consideration, parties agreed on method of calculating consideration for their agreement and performed their respective obligations for period of time, and contract supported public policy favoring affordable housing for low-income families by enabling owner to procure funding necessary for building of apartment complex.

Payments-in-lieu-of-taxes (PILOT) agreement between city and property owner, under which owner that was exempt from ad valorem taxes as non-profit operator of affordable housing agreed to make annual payments to city in amount equal to portion of ad valorem taxes to which city would otherwise be entitled to receive for property if taxable, did not violate state constitutional provision providing that cities could only impose taxes as permitted by law. Payments negotiated by city and owner were not taxes, as city did not act by sovereign right in entering into agreement, since its decision to accept owner's offer and enter into agreement was proprietary, as opposed to unilateral act by sovereign right for purpose of supporting government functions, and city's obligation under agreement was not citywide.