

IN THE CIRCUIT COURT OF THE 6<sup>th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
PINELLAS COUNTY, FLORIDA

CASE NO:

20-703

SHELTAIR ST. PETERSBURG, LLC, a  
Florida limited liability company,

Plaintiff,

v.

MIKE TWITTY, Pinellas County  
Property Appraiser; CHARLES W. THOMAS,  
Pinellas County Tax Collector; and  
JIM ZINGALE, Executive Director of the  
Florida Department of Revenue of the  
State of Florida,

Defendants.

**COMPLAINT**

Plaintiff, SHELTAIR ST. PETERSBURG, LLC, a Florida limited liability company, hereby sues Defendants, MIKE TWITTY, Pinellas County Property Appraiser, CHARLES W. THOMAS, Pinellas County Tax Collector, and JIM ZANGLE, Executive Director of the Florida Department of Revenue of The State of Florida, and in support thereof, states as follows:

**JURISDICTION, PARTIES, AND VENUE**

1. This is an action for declaratory judgment to contest the denial of a refund for certain ad valorem taxes paid in excess of \$30,000.00 on real property situated and lying in Pinellas County, Florida.
2. This action seeks to contest the denial of a refund for certain ad valorem taxes paid on the ground that the taxes assessed are contrary to the State and U.S. Constitution and is therefore within the jurisdiction of this circuit court pursuant to Fla. Stat. §26.012(2)(e) and §194.171(1).
3. Plaintiff, SHELTAIR ST. PETERSBURG, LLC (“Plaintiff” or “Sheltair”), is a Florida limited liability company with its principal place of business in St. Petersburg, Pinellas

County, Florida, and is a taxpayer contesting the denial of a refund for certain ad valorem taxes that were paid in 2017. If ad valorem taxes are owed, Sheltair was responsible for the entire tax payment pursuant to a contract and has the written consent of the property owner to contest the denial of the refund. Sheltair further has standing to contest the assessments on the other grounds stated herein.

4. Defendant, MIKE TWITTY, is the duly constituted and elected Pinellas County, Florida Property Appraiser (“PCPA”) and this action is brought against him in his official capacity pursuant to Fla. Stat. §194.181.
5. Defendant, CHARLES W. THOMAS, is the duly constituted and elected Pinellas County, Florida Tax Collector (“PCTC”) and this action is brought against him in his official capacity pursuant to Fla. Stat. §194.181.
6. Defendant, JIM ZINGALE, is the Executive Director of the Florida Department of Revenue of the State of Florida (“FDOR”) and this action is brought against him in his official capacity pursuant to Fla. Stat. §194.181.
7. Venue is proper in Pinellas County, Florida pursuant to Fla. Stat. §194.171(1).
8. All conditions precedent to filing this action have been met, have occurred or have been waived.

#### **GENERAL ALLEGATIONS**

9. Plaintiff is the current lessee of certain real property located at St. Pete-Clearwater International Airport in St. Petersburg, Pinellas County, Florida, pursuant to that certain Assignment of Lease and Assumption Agreement dated January 12, 2005 and recorded in OR Book 14069, page 2293 of the Public Records of Pinellas County, Florida (the “Assignment”). A true and correct copy of the Assignment is attached hereto as **Exhibit “A”**.
10. The Assignment assigned that certain Lease Agreement with Renewal Options dated December 1, 1981 and six Amendments thereto as of the date of the Assignment. Since the date of the Assignment, that certain Lease Agreement with Renewal Options dated December 1, 1981 has been further amended an additional three times, for a total of nine amendments (the Lease Agreement and all amendments thereto shall be collectively

referred to herein as the “Lease”). A true and correct copy of the Lease is attached hereto as **Composite Exhibit “B”**<sup>1</sup>.

11. Prior to the ninth and last amendment to the Lease, a non-party, Sheltair of Clearwater, Inc. leased certain real property located at St. Pete-Clearwater International Airport in St. Petersburg, Pinellas County, Florida, pursuant to that certain Lease dated March 17, 1987 (“Clearwater Lease”). The former Folio Number of the premises leased under the Clearwater Lease was 34/29/16/00110/000/0005 (the leased premises under the Clearwater Lease shall be referred to hereafter as “Folio No. 0005”).
12. The Ninth and last Amendment to the Lease, that certain Ninth Amendment to Airport Lease dated November 22, 2016, recorded in OR Book 19427, Page 1758 of the Public Records of Pinellas County, Florida (“Ninth Amendment”), *inter alia*, terminated the Clearwater Lease and simultaneously added the leased premises thereunder, consisting of eight (8) hangars and additional land, from the Clearwater Lease to the Lease pursuant to that certain Conditional Consent Termination of Lease, as recorded in OR Book 19427, Page 1758 of the Public Records of Pinellas County, Florida on November 29, 2016. See Composite Exhibit “B”.
13. Thus on January 1, 2017, the land represented by Folio No. 0005 was no longer leased to Sheltair of Clearwater, Inc. and was instead part and parcel of the Lease, which Lease already enjoyed the statutory exemption from ad valorem taxation.
14. Sheltair of Clearwater, Inc. was thereafter dissolved as an entity.
15. The Ninth Amendment also added leased premises, consisting of two (2) hangars and additional land, that were previously controlled by that certain Lease dated July 8, 1986 between non-parties, AvAero Services, LLC and the County of Pinellas, Florida (“AvAero Lease”). The AvAero Lease was terminated pursuant to that certain Lessor Estoppel Certificate, Consent & Assignment of Lease Agreement, and Termination of Lease Agreement, as recorded in OR Book 19427, Page 1718 of the Public Records of Pinellas County, Florida on November 29, 2016. The former Folio Number of the premises leased

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<sup>1</sup> Certain attachments to **Composite Exhibit “B”** have been omitted due to volume.

under the AvAero Lease was 34/29/16/00110/000/0007 (the leased premises leased under the AvAero Lease shall be referred to hereafter as “Folio No. 0007”).

16. Thus on January 1, 2017, the land represented by Folio No. 0007 was no longer leased to AvAero Services, LLC and was instead part and parcel of the Lease, which Lease already enjoyed the statutory exemption from ad valorem taxation
17. The leased premises under the Lease are all owned by the County of Pinellas, Florida, a government body. Pinellas County is the lessor of the Lease and was also the lessor of the Clearwater Lease and the AvAero Lease.
18. Sheltair is a Federal Aviation Administration (“FAA”) regulated aircraft full service fixed base operator which provides goods and services to the general aviation public in the promotion of air commerce, and Sheltair utilizes the Premises in direct support of its operation at St. Pete-Clearwater International Airport.
19. The FAA defines a fixed base operator as an individual or firm operating at an airport and providing general aircraft services such as maintenance, storage, and ground, and flight instruction. See Federal Aviation Authority Order 5190.6B, Appendix Z.
20. The Lease provides, inter alia, to Sheltair the right to use the Premises “for an aircraft full service fixed base operation, (“FBO”) which provides aircraft fuel, fueling services, goods and services to the general aviation public in the promotion of air commerce, which shall be deemed an activity which serves a governmental, municipal or public purpose in accordance with Fla. Stat. §196.012(6) and in accordance with the Airport and County’s FBO minimum standards.” See **Composite Exhibit “B”**, *Ninth Amendment to Airport Lease*, ¶ 12.
21. Florida Statute §196.012(6) provides, in relevant part:

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.... Fla. Stat. §196.012(6).*

22. Additionally, Florida Statute §196.199(2)(a) provides, in relevant part:

(2) 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... authorities... shall be exempt from ad valorem taxation... when the lessee serves or performs a governmental, municipal, or public purposes or function, as defined in s. 196.012(6).... Fla. Stat. §196.199(2)(a).

23. Subparagraph 5 of Florida Statute §196.199 provides:

Leasehold interests in governmental property shall not be exempt pursuant to this subsection unless an application for exemption has been filled on or before March 1 with the property appraiser. The property appraiser shall review the application and make findings of fact which shall be presented to the value adjustment board at its convening, whereupon the board shall take appropriate action regarding the application. If the exemption in whole or in part is granted, or established by judicial proceeding, *it shall remain valid for the duration of the lease unless the lessee changes its use*, in which case the lessee shall again submit an application for exemption.... Fla. Stat. §196.199(5).

24. Florida Administrative Code 12D-7.016 states, in relevant part:

Leasehold interests in governmentally owned real property used in an aeronautical activity as a full-service fixed-base operation which provides good and services to the general aviation public in the promotion of air commerce are exempt from ad valorem taxation.... Fla.Admin.Code r 12D-7.016(6).

25. Since the date of the Assignment, from 2005 through 2016, Sheltair has been entitled to, and has received, an “aircraft full service fixed base operation” ad valorem tax exemption pursuant to Florida Statute §196.012(6) for the premises leased under the Lease.
26. In each of those years: (a) PCPA granted Sheltair the “aircraft full service fixed base operation” exemption for the Premises; (b) the Pinellas County Value Adjustment Board (“VAB”) certified the tax roll in which the Premises received the exemption from PCPA pursuant to Florida Statute §196.012(6); and (c) consequently no ad valorem taxes were assessed for twelve (12) consecutive years.
27. Since 2005 through the date of filing, there has been no change in circumstances or any material facts as related to Sheltair’s use of the Premises under the Lease, which use has consistently been for an aircraft full service commercial fixed base operation, an ad valorem exempt activity pursuant to Florida Statutes §196.199(2)(a) and §196.012(6) and FAC 12D-7.016. The Ninth Amendment to the Lease simply added additional hangars (and additional land) to the five (5) already present on the Premises, and all such hangars (those existing and those added via the 9<sup>th</sup> Amendment) are used for aircraft storage in satisfaction of the definition of FBO.
28. Pursuant to Fla. Stat. §196.199(5), once an ad valorem exemption is applied to a lease, it remains valid for the duration of the lease so long as the use under the lease does not change. As stated above the Ninth Amendment added additional hangars used for aircraft storage by Sheltair to those already present and thus the use under the Lease did not change.
29. In 2017, notwithstanding that the Ninth Amendment effectively added Folio No. 0005 and Folio No. 0007 to the exempt Lease and such addition of land to the lease was recorded in the public records for Pinellas County, and the prior AvAero Lease and Clearwater Lease were terminated in the public records for Pinellas County, the PCPA issued a Notice of Ad Valorem Taxes and Non-Ad Valorem Assessments (“Trim Notices”) for both premises.
30. The Trim Notice for Folio No. 0005 provided that One Million One Hundred Seventy-Six Thousand Six Hundred and 00/100 (\$1,176,600.00) Dollars of the assessed total value of Two Million Two Hundred Twenty Thousand and 00/100 (\$2,220,000.00) Dollars was taxable. A true and correct copy the Trim Notice for Folio No. 0005 is attached hereto as **Exhibit “C”**.

31. The Trim Notice for Folio No. 0007 provided that One Million Two Hundred Ninety-Three Thousand Five Hundred Two and 00/100 (\$1,293,502.00) Dollars of the assessed total value of Three Million One Hundred Sixty-Eight Six Hundred Two and 00/100 (\$3,168,602.00) Dollars was taxable. A true and correct copy of the Trim Notice for Folio No. 0007 is attached hereto as **Exhibit “D”**.
32. Despite the change of lessee of Folio No. 0005 and Folio No. 0007 under the Ninth Amendment, the Trim Notices were sent to the former lessees (Sheltair of Clearwater, Inc., which was by then a dissolved corporation, and AvAero Services respectively) and Sheltair was not made aware of the ad valorem taxes that were assessed until December 11, 2017.
33. On December 19, 2017, Plaintiff sent correspondence to the PCPA. This correspondence is attached hereto as **Exhibit “E”**<sup>2</sup>. In January 2018, Plaintiff was advised by the PCPA that the ad valorem taxes were outstanding, due and owing and required to be paid even though they were certified as owed by 3<sup>rd</sup> parties and not by Plaintiff.
34. On March 15, 2018, Plaintiff paid the ad valorem taxes assessed against Folio No. 0005 and Folio No. 0007 under protest in the total amount of Fifty Thousand Three Hundred Eighty-Three and 71/100 (\$50,383.71) Dollars. Copies of the checks are attached hereto as **Composite Exhibit “F”**.<sup>3</sup>
35. Florida Statute §197.182(1)(a) states, *inter alia*:
- ... the department shall pass upon and order refunds if payment of taxes assessed on the county tax rolls has been made voluntarily or involuntarily under any of the following circumstances: ...
2. A payment has been made when no tax was due.
3. A bona fide controversy exists between the tax collector and the taxpayer as to the liability of the taxpayer for the payment of the tax claimed to be due, the taxpayer pays the amount claimed by the tax collector to be due, and it is finally adjudged by a court of competent jurisdiction that the taxpayer was not liable for the payment of the tax or any part thereof.
- Fla. Stat. §197.182(1)(a)(2) and (3).
36. On July 18, 2019, Plaintiff sent correspondence to the PCTC with an Application for Refund of Ad Valorem Taxes for Folio No. 0005 and Folio No. 0007, advising PCTC that

<sup>2</sup> Certain attachments to **Exhibit “E”** have been omitted due to volume.

<sup>3</sup> The amounts for each check include additional taxes that were assessed for surface water. Plaintiff is not protesting the surface water taxes.

no tax was due as the property was exempt from ad valorem taxation pursuant to Florida Statutes §196.012(6) and §196.199(5). A true and correct copy of the correspondence is attached hereto as **Composite Exhibit “G”**<sup>4</sup>.

37. On December 18, 2019, the PCTC denied Plaintiff’s Applications for Refund of Ad Valorem Taxes for Folio No. 0005 and Folio No. 0007. A true and correct copy of the denial is attached hereto as **Composite Exhibit “H”**.

38. The PCPA, in its letter included with the denial from PCTC, explained that its reasoning for denying Plaintiff’s Applications was that Plaintiff “failed to submit an application for exemption” for 2017 and “did not submit a request to combine” Folio No. 0005 and Folio No. 0007 with the leased premises under the Lease. See Composite Exhibit “H”.

39. Contrary to the PCPA’s explanation, Florida Statute §196.199(5) provides that once an exemption is granted, *it shall remain valid for the duration of the lease*. Upon adding Folio No. 0005 and Folio No. 0007 to the Lease under the Ninth Amendment, both premises were automatically subject to the existing exemption for the Lease under Fla. Stat. §196.199(5). *The exemption according to the statute’s language runs with the lease, not the Folio number.*

40. Due to PCPA’s insistence that Plaintiff file an Application for Exemption, on February 28, 2018, Plaintiff filed two (2) Ad Valorem Exemption Applications and a Parcel Combination/Grouping Request for Folio No. 0005 and Folio No. 0007. A true and correct copy of the correspondence with the filings is attached hereto as **Composite Exhibit “I”**<sup>5</sup>.

41. In 2018, PCPA subsequently granted Plaintiff’s requests for ad valorem exemption for Folio No. 0005 and Folio No. 0007.

### **COUNT I: DECLARATORY JUDGMENT**

Plaintiff realleges and reincorporates Paragraphs 1 through 41 as if fully set forth herein.

42. There is a bona fide, actual, present and practical need for the declaration that Folio No. 0005 and Folio No. 0007 were automatically subject to the existing exemption from ad

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<sup>4</sup> Certain attachments to **Composite Exhibit “G”** have been omitted due to volume.

<sup>5</sup> Certain attachments to **Composite Exhibit “I”** have been omitted due to volume.



valorem taxation for the Lease pursuant to Florida Statutes §196.199(5) and that, accordingly, there was no tax due.

43. The declaration will deal with present, ascertained or ascertainable state of facts, in that the invalidity or illegality of the assessed 2017 ad valorem taxes against Folio No. 0005 and Folio No. 0007 is ascertained or ascertainable.
44. Plaintiff's right to a refund pursuant to Fla. Stat. §197.182 of the improperly assessed 2017 ad valorem taxes against Folio No. 0005 and Folio No. 0007 is dependent upon the facts or the law applicable to facts.
45. Sheltair, PCPA, PCTC, and FDOR have actual, present, adverse and antagonist interests in the assessed ad valorem taxation, either in fact or law.
46. All antagonistic and adverse interests are before the Court by proper process.
47. The relief sought is not merely the giving of legal advice by the Court or the answers to questions propounded from curiosity.

**WHEREFORE**, the Plaintiff, SHELTAIR ST. PETERSBURG, LLC, respectfully requests this Court:

- (a) Adjudge and declare that Folio No. 0005 and Folio No. 0007 were automatically subject to the existing exemption from ad valorem taxation for the Lease pursuant to Florida Statute §196.99(5);
- (b) Adjudge and declare that the assessed 2017 ad valorem taxes against Folio No. 0005 and Folio No. 0007 were improper, invalid and void because the property was automatically exempt from ad valorem taxation pursuant to Florida Statutes §196.99(5);
- (c) Adjudge and declare that the 2017 ad valorem taxes against Folio No. 0005 and Folio No. 0007 were improper, invalid and void as the tax roll was certified and the Trim Notices issued to 3<sup>rd</sup> parties which no longer leased the land as of January 1, 2017;
- (d) Adjudge and declare that there were no ad valorem taxes due for 2017 for Folio No. 0005 and Folio No. 0007;
- (e) Remove all levied ad valorem tax assessments from their respective tax bills and Order PCPA to take all other and further steps necessary to clear the property of all tax related encumbrances;

- (f) Adjudge that Sheltair shall be entitled to a full refund including interest for the 2017 ad valorem taxes paid under protest in error and on behalf of 3<sup>rd</sup> parties; and
- (g) Award Sheltair any and all further relief this Court deems just and proper, including attorneys' fees and costs pursuant to Florida Statute §86.081.

Dated: February 12, 2020

Respectfully submitted,

By: /s/ Jennie L. Conrad

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