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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Docket No. 13-ALJ-17-0104-CC

William J. Montgomery,. . . . .Respondent,

v.

Spartanburg County Assessor,. .. .. Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENT

The Administrative Law Court's ("ALC") decision should be reversed and the Spartanburg County Assessor's ("Assessor") valuation of the Property[1] reinstated.

I. RESPONDENT'S IRRELEVANT CONTENT SHOULD BE IGNORED

Here, one issue—only one issue—needs resolution: South Carolina Code Annotated section 12-43-220(d)'s meaning of "fair market value for agricultural purposes." (Appellant's Brief, at p. 1) Despite this single dispute concerning valuation methodology, Taxpayer's Respondent's Brief repeatedly treats in a disputed manner the following two entirely undisputed issues: (i) both structures and land are real property; and (ii) both structures and land are classified as agricultural use property. Rather than being disputed issues, the Parties agree and the ALC concurred.

A. Arguments Presenting Undisputed Issues Should be Ignored as Irrelevant

Classification of the Property as agricultural use property is undisputed since the ALC's Order explains "[t]he parties . . . agree . . . the proper assessment ratio is four percent." (ALC Order, at p. 2.) Further, the position that agricultural real property includes not only land but also structures is also undisputed, as noted in the ALC's Order: "[t]he parties agree that the structures on the Property are related to the agricultural activities and uses of the Property." (*Id.*)

Despite being undisputed, Taxpayer repeatedly presents these issues as though a dispute exist. Each such exposition by Taxpayer is irrelevant and should be ignored *Cf.*

[1] As used herein, the term "Property" means the real property located at 891 Mount Lebanon Road, Pauline, South Carolina 29374, Tax Parcel 6-68-00-016 00

Nichols v Briggs, 18 S. C. 473, 479 (1883) (striking a portion of the pleadings because "[a]n allegation is irrelevant when it has no substantial relation to the controversy.")

B. Taxpayer's Statements Asserting How the Property is Used Should be Ignored as Irrelevant

Taxpayer utilizes two full pages setting out "Facts" replete with details of how the property is "used as Montgomery's farm." (Respondent's Brief, at pp. 4–5.) Use is relevant only to deciding an agricultural use classification. *See* S.C. Code Ann. § 12-43-230 (defining agricultural real property based on whether the property is "used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man"). Given that the Parties agree the Property is agricultural real property, Taxpayer's "Facts" serve only to obscure and distract from the analysis of the sole issue in this case: valuation methodology.

C. Taxpayer's Arguments Asserting Agricultural Real Property Includes Land and Structure Should be Ignored as Irrelevant

In a similar fashion, Taxpayer repeatedly couches his discussion of the undisputed issue that land and structures are real property—more precisely agricultural real property—in a fashion seeking to clothe that issue in controversy. (*See* Respondent's Brief, at p. 11 (stating that the "definition of 'real property' (and likewise 'agricultural *real property*') includes all structures attached thereto."); *Id* at p. 13 ("South Carolina's statutes repeatedly indicate that agricultural real property includes the attached structures."); *Id* at p. 13 ("[T]he regulations hold that agricultural real property includes attached structures "); *Id* at p. 14 n.5 ("[T]he regulations hold that agricultural real property includes attached structures.")). No controversy exists—the Assessor in his Appellant's Brief wholly agrees that real property includes both land and structures. Just

like the "use of the property issue," Taxpayer's discussions recounting the undisputed conclusion that real property includes land and structures should be ignored.

II. THE STATUTORY SCHEME TAXING REAL PROPERTY SUPPORTS THE ASSESSOR'S ARGUMENT

The sole issue in this case—and the disagreement between the Parties—is how to satisfy the valuation methodology of South Carolina Code Annotated section 12-43-220(d). That section requires valuing agricultural real property at "fair market value for agricultural purposes."

In the Appellant's Brief, the Assessor outlines a logical, analytical structure complying with the valuation requirements for agricultural real property:

(1) all real property, including agricultural real property, is taxable (S.C. Code Ann. § 12-37-210);

(2) land is a component of agricultural real property (*See* S.C Code Ann. § 12-37-10(1));

(3) structures are a component of agricultural real property (*See* S.C. Code Ann § 12-37-10(1));

(4) structures on agricultural land are not exempt from taxation and, therefore, must be taxed (S C. Code Ann. § 12-37-220(B)(13), (14), & (15));

(5) the land component of agricultural real property is valued under the soil capability valuation method, applicable only to ***land*** as required by S C. Code Ann. § 12-43-220(d)(2)(A);

(6) structures on agricultural real property, not being subjected to a specified valuation method (as land is) and not being exempt, must be valued (S.C. Code Ann § 12-37-210); and

(7) because no specific valuation method is prescribed for valuing structures on agricultural land, the structures are valued under the willing buyer and willing seller method in S.C. Code Ann. § 12-37-930.

The Assessor's position, as outlined above, relies upon specific statutory authority. Thus, the Taxpayer's assertion that the Assessor "cites no direct statutory authority specifically requiring, directing or allowing his method" of valuing agricultural real property is false (Respondent's Brief, at p. 26.) On the other hand, Taxpayer, rather than addressing the Assessor's straight forward argument, makes several confusing and incorrect arguments requiring correction.

A. The Department's Unofficial Publications do not Support Taxpayer's Argument

Taxpayer argues that a publication entitled *South Carolina Property Tax* (2010) and certain continuing education seminar materials prepared by the South Carolina Department of Revenue ("SCDOR") support the Taxpayer's interpretation. (Respondent's Brief, at pp. 9–14.) Such an assertion is incorrect for three reasons.

First, SCDOR's unofficial, instructional publications referenced by the Taxpayer are not the law In fact, the *South Carolina Property Tax* publication contains an express disclaimer[2] regarding its authority.

Second, the Taxpayer does not point to any statement in these SCDOR publications adopting or endorsing Taxpayer's interpretation of section 12-43-220(d)(2)(A). Rather, Taxpayer relies on statements affirming the undisputed conclusion that agricultural real property comprises both land and structures. The Assessor agrees

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[2] The *South Carolina Property Tax Manual*, to which Taxpayer cites liberally and on which Taxpayer relies, contains this express disclaimer "This publication does ***not*** constitute tax, legal or other advice The opinions expressed in any section of this publication are the individual opinions of the author of that section and ***should not be attributed to the South Carolina Department of Revenue*** This publication is written in general terms and ***may not contain all of the specific requirements or provisions of cited authority*** and the authorities are subject to change This publication should not be relied upon as it does ***not*** represent official Department policy (*S C Property Tax*, at Disclaimer Page (emphasis added)) Mr Sandy Houck's Affidavit, which is discussed later in this Reply Brief, contains no such disclaimer or other limitation (*See* Affidavit of S Houck)

agricultural real property comprises both land and structures. Thus, Taxpayer's argument referencing SCDOR publications does not address—let alone resolve—the valuation issue.

Third, Mr. Sandy Houck, who has been employed by SCDOR for over 35 years and is authorized to speak on behalf of SCDOR, provided an Affidavit to the ALC supporting the Assessor's position (*See* Affidavit of S. Houck). Mr. Houck's Affidavit is SCDOR's official pronouncement of its administrative policy and expression of SCDOR's interpretation of how agricultural real property should be valued for *ad valorem* taxation purposes. *Id* SCDOR's interpretation of the statutes governing agricultural real property valuation is entitled to respectful deference. *Goodman v City of Columbia*, 318 S.C. 488, 491, 458 S.E.2d 531, 532 (1995). The Court should reject Taxpayer's argument to the contrary.

B. The USDA Table Referenced in Section 12-43-220(d) Neither Establishes Land Values nor Supports Taxpayer's Argument

The values in the United States Department of Agriculture table entitled "Table 1 – Farm Real Estate Values: Indexes of the average value per acre of land and buildings" ("USDA Table") neither apply to nor set the use value for agricultural real property. Instead, determining the values for a variety of types of agricultural land rests solely with SCDOR. The General Assembly mandated SCDOR perform that task and reinforced that demand by regulations:

> Section 12-43-220(d)(2) of the [Code] provides that implementation of the use value procedures for timberland and cropland, as provided in Code Section 12-43-220 shall be the responsibility of the Department of Revenue. Under this authority, the values in this regulation must be used by county assessors for assessment of cropland and timberland.

S.C. Code Ann. Regs. 117-1840 2(c)(1).

Thus, Taxpayer's argument that the "1991 Agricultural Use Values [set forth in the USDA Table] still apply today," is contrary to the law. Had the USDA Table been used to calculate the value of Taxpayer's Property, the Taxpayer would be disputing a much larger tax bill. Indeed, the land values established by the USDA Table are far greater than the values established by SCDOR. (*Compare* S.C. Code Ann. Regs. 117-1840.2(c), *with* USDA Table)

As the Assessor explained in his Appellant's Brief, section 12-43-220 merely references the USDA Table as an inflation index. (Appellant's Brief, at pp 14–16.) Prior to South Carolina Act 106 of 1997 permanently establishing land values at SCDOR's 1991 levels, the USDA Table established how much SCDOR could elevate land values each year. *Compare* S.C. Code Ann. § 12-43-220(d)(2)(B)(ii), *with* 1997 S.C. Act No. 106 The ALC erred in interpreting the USDA Table as altering the taxation scheme outlined in section 12-37-930 and section 12-43-220(d)(2). Thus, this Court should reject Taxpayer's argument.

C. The 2007 South Carolina Real Property Valuation Reform Act (S.C. Code Ann. § 12-37-3110 et seq.) has no Bearing on or Application to This Case

Taxpayer asserts the 2007 South Carolina Real Property Valuation Reform Act ("Act") "verifies that the General Assembly never intended for structures and improvements to be assessed separately from the agricultural property on which they sit." (Respondent's Brief, at p. 20). The inaccuracy of such a statement cannot be more certain. The Act explicitly states it does not affect the valuation of agricultural real property. *See* S.C. Code Ann. § 12-37-3170(A) ("[n]othing in this article affects the

provisions of Section 12-43-220(d) that define and apply to 'fair market value for agricultural purposes' for real property in agricultural use.").

This language puts the point beyond dispute: the Act can have no effect on the meaning of the term "fair market value for agricultural purpose." To then rely on the Act to determine the meaning of the term "fair market value for agricultural purposes " would itself be contrary to the plain intent and statement of the General Assembly.

D. South Carolina Code Annotated Section 12-37-930 Applies to the Valuation of Agricultural Real Property

Taxpayer attempts to dismiss the language of South Carolina Code Annotated section 12-37-930 by stating the section applies only to real property not in use as agricultural real property. (Respondent's Brief, at pp. 28–31.) Taxpayer's argument is simply incorrect.

The plain and direct language of section 12-37-930 states "[a]ll property must be valued for taxation at its true value in money . . . ." Thus, unless otherwise changed by the General Assembly, section 12-37-930 applies to ***all property***, whether real, personal, or agricultural.[3] *See* S C. Code Ann. § 12-37-930.

Further, section 12-37-930 contains none of the limitations referenced by Taxpayer. (Respondent's Brief, at pp. 28–31.) Rather, section 12-37-930's willing buyer and willing seller standard is a broadly applicable statute that informs every aspect of South Carolina's *ad valorem* taxation of property. Indeed, when the General Assembly deviates from the willing buyer and willing seller standard of 12-37-930 it has done so

[3] The only change in valuing agricultural real property which deviates from the valuation method of section 12-37-930 is the special legislative requirement in section 12-43-220(d) to value ***land*** under the soil capability method

for land values, not structure values.[4] Thus, in the instant case, the General Assembly has again followed the same pattern by choosing to establish a use value for only land (the soil capability method) and leaving section 12-37-930 to value the structures.

Contrary to the above described taxing pattern of the General Assembly, Taxpayer asks this Court to read section 12-43-220(d)(2)(A) with no regard for the overall taxation scheme. The Court is asked to adopt a valuation method (one based solely on soil capability) that equates structures as having no value. Doing so wholly contradicts any other valuation method imposed by the General Assembly. Rather than an entire break with the existing scheme of valuation, this Court should adopt the Assessor's and SCDOR's interpretation of the term "fair market value for agricultural purposes." Doing so harmonizes section 12-43-220(d)(2)(A) with South Carolina's overall taxation scheme. *See Hodges v Rainey*, 341 S C 79, 88, 533 S.E 2d 578, 583 (2000) ("Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." (citing *Butler v Unisum, Ins* , 323 S.C. 402, 475 S.E.2d 758 (1996))).

III. SECTION 12-43-220(D) IS A TAX EXEMPTION STATUTE STRICTLY CONSTRUED AGAINST THE TAXPAYER

As presented in the Assessor's Appellant's Brief, the plain language of South Carolina Code Annotated section 12-43-220(d)(2)(A) resolves this case in favor of the Assessor. However, to the extent this Court finds any uncertainty in the meaning of section 12-43-220(d)(2)(A), the statute must be construed ***against*** Taxpayer.

Taxpayer asserts he is entitled to receive a special valuation under section 12-43-220. (Respondent's Brief, at p. 29 ("[A]gricultural real property must be taxed using a

[4] *See, e g* , S C Code Ann § 12-43-215 ("When owner-occupied residential property assessed pursuant to Section 12-43-220(c) is valued for purposes of ad valorem taxation, the ***value of the land must be*** determined on the basis that its highest and best use is ***for residential purposes*** ") (emphasis added))

"*special valuation*" that only applies to agricultural real property—its "fair market value for agricultural purposes." (emphasis in original)) This Court held "section 12-43-220 is a tax exemption statute." *Ford v Beaufort County Assessor*, 398 S.C. 508, 515–16, 730 S.E.2d 335, 339 (Ct. App. 2012) (*cert denied* April 16, 2014) (citing *CFRE, LLC v Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). "The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption." *Home Med Sys, Inc v S C Dept of Revenue*, 382 S.C 556, 564, 677 S.E.2d 582, 587 (2009) (citing *TNS Mills, Inc v S C Dept of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998)). *See also Southeastern–Kusan, Inc v S C Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981) ("As a general rule, tax exemption statutes are strictly construed against the taxpayer.").

Accordingly, since Taxpayer claims entitlement to a "special valuation," such special treatment is treated as a tax exemption under section 12-43-220(d)(2)(A). *See Ford*, 398 S.C. at 515–16, 730 S.E.2d at 339. As an exemption provision, this Court must construe section 12-43-220(d)(2)(A) ***against*** Taxpayer. Such law is well-settled; Taxpayer is simply incorrect in asserting otherwise.

IV. THE LEGISLATIVE HISTORY OF SECTION 12-43-220 DOES NOT SUPPORT TAXPAYER'S ARGUMENTS

Again, while the Court need look no further than the plain language of South Carolina Code Annotated sections 12-43-220 and 12-37-930, should the Court believe an ambiguity exist, the legislative history of section 12-43-220 is informative and supports the Assessor's position. South Carolina Act 618 of 1976 altered the section 12-43-220(d)(1) by changing the words "agricultural real property" to the words "agricultural

land." However, Act 133 of 1979 reversed the change—the word "land" was replaced with the words "real property." ***This change does not affect the issue involved in this case.***

Section 12-43-220(d)(1) deals with the ***assessment ratio*** that should apply to agricultural real property. The assessment ratio is an entirely different issue than deciding how agricultural real property is ***valued***. Prior to South Carolina Act 133 of 1979, the plain language of the statute would have applied the 4% assessment ratio ***only*** to agricultural land, leaving structures assessed at a 6% assessment ratio.

By changing the language of section 12-43-220(d)(1) to "real property," Act 133 assured all agricultural real property—including both land *and* structures—must be assessed and taxed at 4% of its value. This change demonstrates that the General Assembly clearly understood the significant difference between the terms "real property" and "land " The General Assembly, through Act 133, made sure that the 4% assessment ratio applied to all agricultural real property—not just land In contrast, the General Assembly chose ***not*** to change the language of section 12-43-220(d)(2)(A) from "land" to "real property." Thus, the change by Act 133 supports the Assessor's interpretation of the term "fair market value for agricultural purposes." The Parties and the Court must respect the General Assembly's word choice.

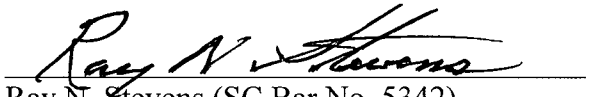
The Taxpayer's interpretation of the legislative history ignores the fact that Act 133 changed only section 12-43-220(d)(1), the section dealing with the assessment ratio applicable to agricultural real property. Rather, no change occurred to section 12-43-220(d)(2), the section addressing how agricultural real property is ***valued***. Thus, the

Court should reject Taxpayer's efforts to conflate and confuse the assessment ratio determination with the valuation process.

CONCLUSION

The Assessor respectfully asks this Court to reverse the decision of the Administrative Law Court and reinstate the Assessor's valuation of the Property.

Respectfully submitted,



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Deborah Brooks Durden, Administrative Law Judge

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William J. Montgomery, ... Respondent,

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Spartanburg County Assessor, ... Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that on June 9, 2014 s/he has caused a copy of Appellant's Initial Reply Brief to be served upon all parties of record by placing a copy of the same in the United States Mail, postage prepaid, addressed as follows:

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June 9, 2014

VIA UNITED STATES MAIL

Honorable Jenny Abbott Kitchings
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Re: Appellate Case No. 2013-002697
William J. Montgomery vs. Spartanburg County Assessor
Docket No. 13-ALJ-17-0104-CC

Dear Ms. Kitchings:

Pursuant to Rule 208, SCACR, enclosed for filing please find an original and one copy of Appellant Spartanburg County Assessor's Initial Reply Brief with Proof of Service. Please return the file-stamped copy of the same to me in the enclosed, self-addressed, stamped envelope.

As copied on this letter, and as evidenced by the Proof of Service, we are providing a copy of Appellant's Initial Reply Brief to all counsel of record. Should you have any questions regarding this matter, please do not hesitate to contact me.

With best regards, I am

Sincerely,

Ray N. Stevens

RNS/ccq
Enclosures

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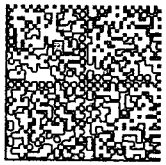

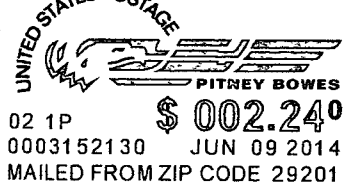

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