

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Riverside Partners, LP,

Petitioner,

vs.

Aiken County Assessor,

Respondent.

) Docket No. 14-ALJ-17-0162-CC
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FINAL ORDER

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SC Court of Appeals

Hearing Date:
For Petitioner:
For Respondent:

May 27, 2015
Martin Becker, *pro se*
James M. Holly, Esq.

STATEMENT OF THE CASE

This matter is before the Administrative Law Court ("ALC") for a final order and decision following a contested case hearing pursuant to S.C. Code Ann. § 12-60-2540(A) (2014). Riverside Partners, LP ("Petitioner") is seeking a refund of property taxes paid in the years 2007, 2008, and 2009 due to what they deem to be a misclassification of the type of property. Aiken County Assessor Richard Jantzen ("Respondent") is denying the necessity of a refund for several reasons. Carl Sanders, Jr., as principal of Riverside Partners, LP, filed a Notice of Appeal with this Court on or about March 24, 2014. After notice to the parties, the court held a hearing on May 27, 2015. Present at the call of the case were the parties and Mr. Holly. Evidence was introduced and testimony presented. After carefully weighing all the evidence, this Court finds that the Petitioner is time-barred by the applicable statute of limitations from receiving its requested relief.

FINDINGS OF FACT

Having considered the arguments of both parties at the hearing, and taking into consideration the burden of persuasion by the parties, the court makes the following Findings of Fact by the existence of substantial evidence:

1. The Court has personal and subject matter jurisdiction.
2. Notice of the date, time and place and the nature of the hearing was given to all parties.

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SC ADMIN. LAW COURT

3. Petitioner owns the real property at issue that is located in Aiken County, South Carolina and identified as by their TMS numbers as 014-00-02-138, 014-00-12-179, and 014-00-12-180. For ease of reference, these parcels will be referred to by the last three digits of these numbers. These parcels were created when a larger parcel was sold and divided in 2006.

4. At the time of their creation, these parcels were labeled as "residential" due to their location in a planned residential subdivision now known as River North. Because of this classification, they were given the 6% classification ratio. As with all properties, assessment notices were sent each year beginning the year after their creation (in this instance, 2007). The properties were also reassessed in 2010 as part of the county-wide reassessment that occurs every five (5) years.

5. The first conversation between the parties regarding these parcels happened in 2012, when Petitioner informed Respondent that these parcels could not be developed in their entirety. Petitioner expressed a wish to set aside parts of these parcels as "green space," and was informed by Respondent that any areas marked as such would be assigned a lesser value. Petitioner was further informed that, in order to cut out these portions, a plat or engineering designation would be needed to show what property was being set aside and what was not. After this meeting, Respondent reviewed the currently recorded plat for the properties and found that parcel 138 was marked entirely as green space, though the other two parcels showed no such designation.

6. After the meeting, Petitioner's engineer created a plat with the following designations:

- a. 014-00-02-138: 14.21 acres of green space + 9.4 acres of pond out of 23.61 total acres
- b. 014-00-12-179: 6.92 acres of green space out of 36.23 total acres

- c. 014-00-12-180: 13.65 acres of green space + 12.69 acres pond out of 36.76 acres

The designations of "pond," "green space," and "common area" were all assigned the same value by the Respondent and the terms can be used interchangeably for purposes of this matter.

7. Based on this presentation, the parties agreed to adjust the designated portions of those parcels with respect to the updated designations of land use from that point forward, meaning that the taxes for 2012 and all subsequent years were adjusted. Refunds were not granted for prior years.

8. After this adjustment, Petitioner filed a claim for refund pursuant to S.C. Code Ann. §12-60-2560 (2014) in which he requested a refund for alleged excess taxes paid since 2007 on all three (3) parcels. This request was sent to the Audit and Review Committee, which is comprised of the Assessor, Treasurer, and Auditor for Aiken County. A majority decision was made to grant the refund for 2010 and 2011 regarding parcel 138 due to the error in classification regarding land use. The Committee declined a grant of any further relief for parcels 179 and 180 based on the information of record with Aiken County.

9. After the Audit and Review Committee's decision, Petitioner appealed his refund request to the Aiken County Assessment Review Board. The Board granted refunds on all three parcels for 2010, 2011, and 2012, but declined to grant relief for 2007, 2008, and 2009.

10. Petitioner relies on the statutory provision of S.C. Code Ann. § 12-60-1755 (2014) to justify refunds for the years 2007, 2008, and 2009. This section is entitled "Crediting of erroneous property tax payments" and reads as follows: "If a taxpayer or his agent pays property taxes in error, or the payment is erroneously credited, the treasurer shall credit the amount paid against the actual liability of the taxpayer for the tax year in question. This section applies for any

tax year for which proof is provided.” The Court considers this to be a novel issue of law because there appears to be no other application of this statute in this manner.¹

11. Respondent relies on a series of statutes that ultimately provide two sets of limitations that the Petitioner must overcome in order to prevail in this matter. First, the statute under which a refund is allowed - S.C. Code Ann. §12-60-2560 (2014) – requires that the claim for a refund be filed in accordance with S.C. Code Ann. §12-60-1750 and S.C. Code Ann. §12-54-85(F). The former of these sections states in pertinent part that, “notwithstanding any other provision of law, no refund of property taxes must be given...for errors of valuation unless the assessment was appealed in accordance with Section...12-60-2510.” Sections (A)(3) and (A)(4) of 12-60-2510 refer to the appropriate times for appeal based on whether the tax year at issue was an assessment or nonassessment year. Respondent maintains that Petitioner did not comply with these sections other than in 2012 and, therefore, is entitled to no other relief than what it has received. Furthermore, as previously mentioned, S.C. Code Ann. §12-60-2560 refers to S.C. Code Ann. §12-54-85(F), which states that “[e]xcept as provided in subsection (D), claims for credit or refund must be filed within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later.”² Based on this, Respondent avers that Petitioner is barred from claiming refunds on the years at issue in this case (2007, 2008 and 2009).

CONCLUSIONS OF LAW

Based upon the above findings of fact, I conclude the following as a matter of law:

¹ The hardbound code annotations (Code of Laws of South Carolina 1976 Annotated, 2014 edition (West)) point to two Attorney General opinions as guidance for interpretation of this section. 1) “A taxpayer may request a refund of taxes paid to a county upon property not situated or located within its boundary. (Decided under former law.) 1970-71 Op. Atty. Gen, No 3122, P 72 (April 30, 1971) 1971 WL 17496.” 2) “Auditors may refund illegally collected license fees for mobile homes. (Decided under former Code 1962 § 65-2654.) 1967-68 Op Atty Gen, No 2445, p 103 (April 18, 1968) 1968 WL 8847.”

² Subsection (D) refers to issues with the Internal Revenue Service, which are not in play in this matter.

1. The South Carolina Administrative Law Court has jurisdiction over this matter pursuant to S.C. Code Ann. § 12-60-2540(A) (2014), S.C. Code Ann. § 1-23-600 (2014), and S.C. Code Ann. §§ 1-23-310 *et seq.* (2014).

2. While this matter reaches this court somewhat in the posture of an appeal, the proceeding before this court is a *de novo* contested case hearing to determine the appropriate valuation of the property in question based upon the evidence presented at the hearing. *See Smith v. Newberry County Assessor*, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) (“When a tax assessment case reaches the ALJ in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the ALJ is a *de novo* hearing.”); *see also Reliance Ins. Co. v. Smith*, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) (“[A]lthough a case involving a property tax assessment reaches the ALJ in the posture of an appeal; the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing.”).

3. Section 12-60-2510(A)(4) of the South Carolina Code provides that “(i)n years when there is no notice of property tax assessment, the property taxpayer may appeal the fair market value, the special use value, the assessment ratio, and the property tax assessment of a parcel of property at any time.” S.C. Code Ann. § 12-60-2510(A)(4) (2014). Petitioners appealed the assessments at issue here between six (6) and eight (8) years after the notices of assessment would have been issued. Because this appeal is in the form of a request for a refund, it is governed by S.C. Code Ann. §12-60-2560 (2014), which incorporates §12-54-85(F) and its three (3) year statute of limitations. For these reasons, the Petitioner’s claim is not timely and this Court does not have jurisdiction.

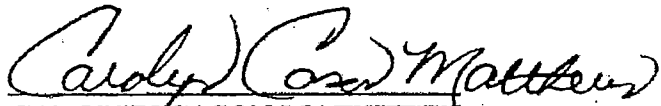
4. The Court appreciates the Petitioner's ingenuity in interpretation of the statute it relies upon to circumvent the statute of limitations (S.C. Code Ann. § 12-60-1755 (2014)). Petitioner, who represented himself in this case, was thoroughly knowledgeable regarding the statutes involved in this case, and presented very creative interpretations and applications of those statutes. This section, however, specifically applies to tax payments made in error. In the facts at bar, the only year that had a true error was 2012 regarding parcel 138, and this was remedied prior to the matter reaching this Court. The tax years at issue now (2007, 2008; and 2009) contain no similar errors. Though there is little guidance by way of legislative intent, the Attorney General's Opinions that refer to this section show that an error must be extreme, obvious, and not a matter of opinion or interpretation. Therefore, this Court cannot allow Petitioner's use of this statute to grant it jurisdiction.

ORDER

Based upon the above findings of fact and conclusions of law, it is hereby:

ORDERED that the Petitioner's claim for refunds on the parcels 014-00-02-138, 014-00-12-179, and 014-00-12-180 in Aiken County, South Carolina for the tax years 2007, 2008, and 2009 is **DENIED**.

AND IT IS SO ORDERED.

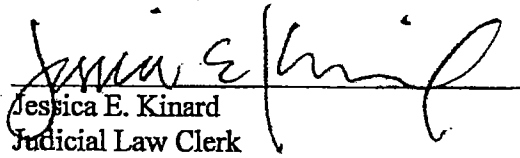

CAROLYN CASON MATTHEWS
Administrative Law Judge

June 24, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Jessica E. Kinard, hereby certify that I have, on this date, served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid; in the Interagency Mail Service; or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

June 24, 2015
Columbia, South Carolina


Jessica E. Kinard
Judicial Law Clerk