

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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SC Court of Appeals

Hock RH, LLC, and York Preparatory
Academy,

Docket No.15-ALJ-17-0105-CC

Petitioners,

vs.

South Carolina Department of Revenue,

**ORDER GRANTING
RESPONDENT'S MOTION
FOR SUMMARY JUDGMENT**

Respondent.

APPEARANCES: For Petitioner: Stephen M. Cox, Esquire
For Respondent: Sean G. Ryan, Esquire

This matter is before the Administrative Law Court (ALC or Court) pursuant to cross motions for summary judgment filed on July 8, 2015 by the South Carolina Department of Revenue (Department or Respondent) and on July 10, 2015 by Hock RH, LLC and York Preparatory Academy (Petitioners). After careful consideration of the motions and legal memoranda, the Court grants Respondent's Motion for Summary Judgment.

BACKGROUND

York Preparatory Academy (YPA) is a public charter school organized under S.C. Code Ann. § 59-40-10, et. seq. YPA leased the property for its campus on Golden Gate Court in Rock Hill from Petitioner Hock RH, LLC (Hock) on or about November 12, 2012. The parcel consists of 45.01 acres and a building (the Premises). Hock owned the Premises for the entirety of Tax Year 2013. In February 2014, Hock conveyed the property to YPA and YPA became the fee simple owner of the property.

On November 4, 2013, YPA sought a property tax exemption for the Premises for Tax Year 2013 pursuant to S.C. Code Ann. §12-37-220(A)(2). On January 31, 2014, the Department denied the exemption on the grounds that the statute makes no allowances for leased properties to be exempted from the property tax. On February 20, 2014, Hock paid the 2013 tax for the Premises in the amount of \$271,801.51.

In May 2014, the South Carolina General Assembly passed Act. No. 208, codified as S.C. Code Ann. § 59-40-140(k) (Supp. 2014) [hereinafter referred to as § 140(k) or Act 208], which amended the preexisting section to create tax exemptions for charter schools, including property



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tax exemptions on school property, "whether owned or leased." On October 6, 2014 Petitioners submitted a protest demanding a refund of the 2013 property taxes Hock had paid. The Department issued its Department Determination on February 3, 2015 finding Petitioners are not entitled to a property tax exemption. Petitioners appealed that decision to this Court.

Subsequently, Petitioners and the Department filed cross-motions for summary judgment. In their motions, the parties asked the Court to grant summary judgment on the sole issue of whether § 140(k) applies retroactively and entitles Petitioners to a property tax exemption for the 2013 Tax Year and a tax refund.

MATERIAL FACTS NOT IN DISPUTE

The parties agree that the following material facts are not in dispute:

1. The property at issue is a parcel consisting of 45.01 acres located at 1047 Golden Gate Road, Rock Hill, South Carolina.
2. Hock owned the Premises throughout 2013. YPA leased the Premises from Hock throughout 2013 until February 2014. At that time, Hock conveyed the property to YPA.
3. YPA is a South Carolina nonprofit corporation, granted 501(c)(3) status by the Internal Revenue Service on February 14, 2011.
4. YPA used the Premises as a charter school throughout 2013.
5. On November 4, 2013, the Department received an Application for Exemption, requesting the Premises be exempt from property tax for Tax Year 2013. The application sought the exemption pursuant to § 12-37-220(A)(2).
6. On January 31, 2014, the Department denied YPA's Application for Exemption under § 12-37-220(A)(2) because the statute makes no allowances for leased properties to be exempted from property tax.
7. On February 20 2014, Hock paid the 2013 property tax for the Premises in the amount of \$271,801.51.
8. In May 2014, the South Carolina General Assembly passed Act 208, which amended § 140(k) and created a property tax exemption for charter schools, including those operated on leased property.

ISSUE

The sole issue before the Court is whether § 140(k), enacted in Act 208 of 2014, entitles Petitioners to a refund of their 2013 property taxes.

SUMMARY JUDGMENT

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Summary judgment should be granted when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. R.J. Hendricks, II v. Clemson Univ., 353 S.C. 449, 455, 578 S.E.2d 711, 714 (2003); Rule 56(c), SCRPC; see ALC Rule 68. In this case, the parties have stipulated to the facts. Since the Court agrees with the parties that there is no genuine issue of material fact, it finds that the disposition of this case by way of summary judgment is appropriate.

DISCUSSION

The South Carolina Supreme Court has held that the “usual roles of statutory construction apply to the interpretation of tax statutes.” Multi-Cinema, Ltd. v. S. C. Tax Comm'n, 292 S.C. 411, 413, 357 S.E.2d 6, 7 (1987). In Palmetto Net, Inc. v. S.C. Tax Comm'n, 318 S.C. 102, 109, 456 S.E.2d 328 389 (1995), the court held that the plain meaning rule must be applied when interpreting tax statutes. In South Carolina the cardinal rule of statutory interpretation requires the trier of fact to ascertain the intent of the legislature. State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002). In doing so, the court must give a reasonable and practical construction to the statute that is consistent with the purpose and policy expressed in the statute. Davis v. NationsCredit Fin. Servs. Corp., 326 S.C. 83, 484 S.E.2d 471 (1997). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 567 S.E.2d 240 (2002). The determination of legislative intent is a matter of law. Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995).

Where “the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578, 581 (2000). “What a

legislature says in the text of the statute is considered the best evidence of the legislative intent or will. Kirven v. Central States Health and Life Co. of Omaha, 409 S.C. 30, 409 S.E.2d 794 (2014).

Exemptions from taxing statutes exist through legislative grace, and a taxpayer asserting an exemption must bring itself squarely within the statute authorizing the exemption. Southern Weaving Co. v. Query, 206 S.C. 307, 313, 34 S.E.2d 51, 54 (1945). Thus, statutory language creating exceptions will not be strained or liberally construed in the taxpayer's favor. Charleston County Aviation Authority v. Wasson, 277 S.C. 480, 289 S.E.2d 416 (1982).

In 2014, the South Carolina General Assembly passed Act 208, which amended § 140(k) to address tax exemptions for charter schools. The section now states:

Charter schools are exempt from state and local taxation, except the sales tax, on their earnings and property whether owned or leased. Instruments of conveyance to or from a charter school are exempt from all types of taxation of local or state taxes and transfer fees.

Petitioners argue that Act 208 was enacted as a clarification of existing law and is therefore applicable to prior tax years. Petitioners cite language in the title of the Act, "an act . . . to clarify that property of charter schools exempt from taxation includes owned or leased property," in support of that argument. The Department argues that the amended statute allows an exemption for property leased by a charter school which did not exist prior to the amendment. Adopting Petitioners' view would require this Court to accept their assertion that S.C. Code Ann. § 12-37-220(A)(2) previously exempted property **leased** by schools from property taxation and that the Department's longstanding contrary interpretation and application of the statute was erroneous. In 1983 the South Carolina Court of Appeals approved the Department's position that property owned by another entity but utilized for the benefit of a school was not entitled to the exemption from ad valorem taxation under § 12-37-220(A)(2). Citadel Dev. Found. v. Greenville Cnty., 279 S.C. 443, 448, 308 S.E.2d 797, 800 (Ct. App. 1983). Thus, it is apparent that the Department has maintained the position that § 12-37-220(A)(2) exempts only property actually owned by a school for over 30 years if not much longer. That interpretation has been affirmed by the Court of Appeals and acquiesced in by the legislature through numerous amendments to the section of the statute.¹ Repeated re-enactment of a statute without substantial change amounts to

¹ For a history of the amendments to the relevant statute see the history and editor's notes to § 12-37-220 in the Code of Laws of South Carolina.

an implied legislative recognition and approval of an established executive construction of the statute. U.S. Rubber Products v. S. Carolina Tax Comm'n, 189 S.C. 386, 1 S.E.2d 153, 156 (1939). "The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons." City of Spartanburg v. Leonard, 180 S.C. 491, 186 S.E. 395, 397 (1936). Therefore, I must defer to the Department's longstanding interpretation and reject Petitioners' argument that Act 208 clarified existing law rather than creating a new exemption for property leased to a charter school.

We next turn to the question of whether Act 208 should be applied retroactively. The language of Act 208 contains no provision allowing for retroactive application of the exemption. Petitioners argue that language in the title of the Act, "an act . . . to clarify that property of charter schools exempt from taxation includes owned or leased property," provides evidence of legislative intent that the provision was meant to be applied retroactively.

In South Carolina, "In the construction of statutes there is a presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision or clear legislative intent to the contrary." Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973). "No statute will be applied retroactively unless that result is so clearly compelled as to leave no room for reasonable doubt." Hyder v. Jones, 271 S.C. 85, 88, 245 S.E.2d 123, 125 (1978). In the Hyder case, the Supreme Court quoted then Associate Judge Benjamin N. Cardozo:

The general rule is that statutes are to be construed as prospective only. It takes a clear expression of the legislative purpose to justify a retroactive application. Changes of procedure—i.e., of the form of remedies—are said to constitute an exception, but that exception does not reach a case where before the statute there was no remedy whatever. To supply a remedy where previously there was none of any kind is to create a right of action.

Jacobus v. Colgate, 217 N.Y. 235, 111 N.E. 837 (1916) at 838-839 (citations omitted). I do not find the title language to be a clear expression of legislative intent that the tax exemption should apply retroactively.

Our Supreme Court has held that where "the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Hodges, 341 S.C. 79. "What a legislature says in the text of the statute is considered the best evidence of the legislative intent or will. Kirven,

409 S.C. 30. Here, there is no ambiguity in the text of the statute and no need to resort to searching the title of the act for clues as to how to interpret the plain and unambiguous language. The plain language of Act 208 states, "Time effective. SECTION 2. This act takes effect upon approval by the Governor." I find the language of the Act to be plain and unambiguous. The Act was approved by the Governor on June 2, 2014. Therefore, the exemption from ad valorem taxation for real property leased by a charter school does not apply to the 2013 tax year.

ORDER

Accordingly, it is hereby

ORDERED that the Petitioners' Motion for Summary Judgment is **DENIED**; and it is further

ORDERED that the Department's Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.

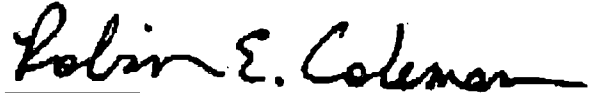


Deborah Brooks Durden
Administrative Law Judge

September 2, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have 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).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

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