

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

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

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

v.

Spartanburg County Assessor,.....Appellant.

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**BRIEF OF AMICUS CURIAE**  
**SOUTH CAROLINA DEPARTMENT OF REVENUE**

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## **STATEMENT OF ISSUE ON APPEAL**

Did the South Carolina Administrative Law Court (ALC) err in finding that the value of the improvements on a tract of agricultural use land is subsumed in the statutorily mandated value of the land in order to calculate the fair market value of agricultural property?

## **STATEMENT OF THE CASE**

The South Carolina Department of Revenue (Department) is tasked with providing instruction and oversight to the county assessors of South Carolina regarding the assessment and taxation of all classes of property and shall examine the books of the county tax officials to protect the interests of the State, counties, and other political subdivisions. S. C. Code Ann. § 12-4-520 (2014). In this regard, the Department is concerned about this ALC decision which is in contradiction to longstanding department policy regarding the assessment and valuation of agricultural real property. The Department's interest in providing accurate information to the county assessors regarding the valuation of agricultural real property gives rise to this amicus brief.

Pursuant to Rules 213 and 208(b)(6), SCACR, the Department adopts the Statement of the Case, Statement of Facts and Standard of Review of Appellant, Spartanburg County Assessor (Spartanburg County).

## **ARGUMENT**

THE ALC ERRED IN GRANTING SUMMARY JUDGMENT TO THE RESPONDENT BY FINDING THAT THE VALUE OF THE IMPROVEMENTS ON THE LOT ARE SUBSUMED IN THE STATUTORILY MANDATED VALUE OF THE LAND IN ORDER TO CALCULATE THE FAIR MARKET VALUE OF AGRICULTURAL REAL PROPERTY.

- I. Longstanding Department policy dictates that the agricultural real property be valued as the sum of the valuation of the soil capability plus the valuation of any structures on the land.

The appraisal of property in South Carolina consists of two processes—the classification of the property, and then the valuation of that property. In assessing property, the county assessor, or a staff member, a state licensed appraiser, will determine the classification of the property and any sub-classes (i.e. real or personal property, manufacturing, residential, commercial, agricultural, etc.), and then determine the valuation of the property based on accepted appraisal standards. The county auditor will then apply the local millage rate to the valuation to determine the final amount on the tax bill. There are definitions, procedures, and rules for each step of this process. One of these likely classifications, agricultural real property, is composed of different components, namely, the land or “dirt” itself, and then any structures located on the dirt as defined in S.C. Code Ann. § 12-43-230(a) (2014) and S.C. Code Ann. Regs. 117-1780.1 (2012). These provisions classify the property. Once the property is classified as agricultural real property, it then must be valued as the same, with each of the different components also being valued.

For decades, the Department has advised and trained county assessors and appraisers to value agricultural real property according to this combined approach of valuing the land using the soil capability method described below and then calculating the value of any structures on the land.<sup>1</sup> The county assessors in South Carolina have

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<sup>1</sup>While apparently not part of the transcript from the ALC, and likely not part of the Motion for Summary Judgment below, the process for valuing “the dirt” is quite complex. In the 1970’s Clemson University and the Soil Conservation Service mapped the many different soil types in the state. These soil types are listed in S.C. Code Ann. Regs. 117-1840.2 (2012), and the list is quite extensive. Once the appraiser has identified

followed this combined approach for decades. (See Affidavit of Sanford Houck, Jr., Montgomery v. Spartanburg Assessor, 13-ALJ-17-0104-CC, Spartanburg Assessor’s Motion, specifically paragraphs 7, 8, 8 [sic], 9, 10, 11). The process as followed for years requires valuing the land (dirt) as provided for in S.C. Code Ann. § 12-43-220 (2014) and then to value any non-exempt structures on the property pursuant to S.C. Code Ann. § 12-37-930 (2014):

All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

The ALC failed to give the appropriate deference to this interpretation, preferring to pick apart the specific words of the statute to reach its conclusion.<sup>2</sup> “The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons.” Sloan v. S.C. Bd. of Physical Therapy Examiners, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006), citing Emerson Elec. Co. v. Wasson, 287 S.C. 394, 397, 339 S.E.2d 118, 120 (1986). The ALC neglected to set forth any “compelling reasons” for not following this long-standing

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the location of the agricultural real property, the appraiser can consult special maps to determine the soil type or types on the property. The ultimate assessment would be based on the type of soil, the acreage involved and the capability of the soil as outlined in § 12-43-220(d)(2).

<sup>2</sup>The ALC failed to recognize the difference in “words of identification” versus “words of process” in applying this analysis as more fully discussed *infra* in section II.

policy.<sup>3</sup> Although the order cites this principle, the Department respectfully asserts that the rationale employed by the ALC to conclude that the Department's methodology should be ignored is just a recitation of the statutory definitions of "agricultural real property" without appreciating how these statutes are to work together.

The Respondent and the ALC have focused on the *South Carolina Property Tax* publication and cited to § 110.1 therein as supporting the court's "finding" that the Department's own publication agrees with the position of the Respondent. This support is misplaced in that the language cited in § 110.1 is the definitional section of "agricultural real property." As discussed below, the ALC has confused the definitional statutes with the valuation statutes. The Department's long-standing policy is that "agricultural real property" includes both land (dirt) and structures on the land such that the definition of the term encompasses both land and structures. Apart from the definition, however, the total value of the property should be determined by combining the values of each of these two components. Nothing that the ALC has cited in the Department publication contradicts that approach.

In addition, the Respondent states that this publication is prepared "for the South Carolina Assessors" and that the "county assessors must comply with these procedures and instructions." (Resp. Brief. pp. 12—13). The *South Carolina Property Tax* is a manual prepared by the policy section of the Department for the general public. It is not distributed to nor mandated for the county assessors' use. The code section cited by the Respondent for this proposition, namely S.C. Code Ann. § 12-60-1720 (2014), deals with

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<sup>3</sup>The order failed to specify findings of fact and conclusions of law. Perhaps since the parties apparently agreed that the facts were not in dispute at the ALC, the court preferred to issue its order with a "Discussion" and "Order".

the property tax appeal process, not the valuation of the property as discussed further below. Similarly, the Department, as a state agency, only has advisory authority over county assessors who are county employees. (See Section 12-4-520.)<sup>4</sup>

Finally, the guide at issue, the *South Carolina Property Tax* manual, includes a disclaimer that clearly states on the first page of the publication:

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. It is intended as a guide only, and the application of its contents to a specific situation will depend on the circumstances involved. This publication should not be relied on as a substitute for obtaining professional advice or for researching the specific sources of authority cited herein. Nothing in this publication supersedes, alters, or otherwise changes provisions of the South Carolina code, regulation, or the Department's advisory opinions. This publication should not be relied upon as it does not represent official Department policy. The Department would appreciate receiving comments about the publication or notification of any errors. Comments should be sent to: . . .

(emphasis added).

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<sup>4</sup>Following Respondent's argument to its logical conclusion would lead to a likely unintended result. Respondent cites § 12-60-1720 for the proposition that the county assessor must follow the directives of the Department. This provision states: "The department shall prescribe rules, procedures, forms, and instructions it considers appropriate and that are consistent with this article. Property tax assessors, auditors, and taxpayers shall comply with the department's [sic] regulations, rules, and procedures, and shall use the forms the department prescribes." (§ 12-60-1720) The plain language of this statute clearly states that ". . . taxpayers shall comply with the department's regulations, rules, and procedures . . ." thereby making the Respondent's position here essentially moot given that the Respondent is arguing against the Department's policy and procedure here. Reading this statute in this way is the result of microscopically considering specific words without looking at the overall statutory intent.

Despite the Respondent's assertions, this manual should not be construed as official Department policy. The language therein has not been promulgated as a regulation and has not been published as an official Department policy document, such as a Revenue Procedure, Revenue Ruling or Information Letter. The Respondent's reliance thereon is misplaced.

- II. The language cited by the ALC includes words of identification or description as opposed to words of procedure to describe the process of appraising the agricultural real property.

As noted above, the taxation of property in South Carolina consists of both the classification of property and then valuation of that property. Each part of the process has specific definitions, procedures, and rules. "Agricultural real property" is no different. Beginning with the classification,<sup>5</sup> § 12-43-230 states:

- (a) For the purposes of this article, **unless otherwise required by the context**, the words "agricultural real property" shall mean any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture. In the event at least fifty percent of a real property tract shall qualify as "agricultural real property", the entire tract shall be so classified, provided no other business for profit is being operated thereon. The term "agricultural real property" shall include real property used to provide free housing for farm laborers provided such housing is located on the tract of land that qualifies as agricultural real property.

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<sup>5</sup>Classifications actually arise from the S.C. Const., art. X, § 1 which states, "The General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property. The assessment of all property shall be equal and uniform in the following classifications . . ." (emphasis added).

(emphasis added).

Clearly this statute contemplates that structures are included in the definition of “agricultural real property.” Not only does the statute mention the “storage” of crops, but also the inclusion of housing for laborers. Significantly, however, these words are used as words of description or identification for the classification of the property, not as providing the method or formula (procedure) for calculating the value of the agricultural real property in question.

In contrast, § 12-43-220(d)(2), while using words of description, specifically defines the procedure used to calculate the value of the agricultural real property at issue:

(A) "Fair market value for agricultural purposes", **when applicable to land** used for the growth of timber, is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents of the lands for timber growth or by capitalization of typical net income of similar soil in the region or a reasonable area of the region from the sale of timber, not including the timber growing thereon, and **when applicable to land** used for the growth of other agricultural products the term is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region or a reasonable area of the region, not including the agricultural products thereon. **Soil capability when applicable to lands** used for the growth of timber products means the capability of the soil to produce such timber products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The term, **when applicable to lands used for the growth of other agricultural products**, means the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The term "region" means that geographical part of the State as determined by the

department to be reasonably similar for the production of the agricultural products. After average net annual earnings have been established for agricultural lands, they must be capitalized to determine use-value of the property based on a capitalization rate which includes:

1. an interest component;
- 2 a local property tax differential component;
3. a risk component;
4. an illiquidity component.

Each of these components of the capitalization rate must be based on identifiable factors related to agricultural use of the property. The interest rate component is the average coupon (interest) rate applicable on all bonds which the Federal Land Bank of Columbia, which serves South Carolina farmers, has outstanding on July first of the crop-years being used to estimate net earnings and agricultural use-value. Implementation of the provisions contained in this section is the responsibility of the department.

(emphasis added).

This section defines what is included in the definition of “fair market value for agricultural purposes.” The statute is written with a clear focus on the land, and recognizes that the soil capability of the land is a component of determining the fair market value of the land for agricultural purposes. (See footnote 2 above.) This concept is further developed in subsection (B) of this section which provides more specific information on the calculations necessary to derive the fair market value of the agricultural use property. That section states:

(B)(i) For tax year 1988 and subsequent tax years, fair market value for agricultural purposes must be determined by adjusting the applicable base year value by an amount equal to the product of multiplying the applicable base year value by a percentage factor obtained through the formula provided in this item. For tax year 1988, the applicable base year is 1981. The fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years.

(ii) The percentage factor provided in this item is derived from the most recent edition of the United States Department of Agriculture publication "AGRICULTURAL LAND VALUES AND MARKETS", specifically, from "Table 1--Farm Real Estate Values: Indexes of the average value per acre of land and buildings.. ." as listed for this State. The formula to determine the applicable percentage factor is the index of the year of change less the index of the base year with the resulting amount being divided by the index of the base year and rounded to the nearest whole number. For purposes of the formula, the base year is the last year in which values were adjusted under this item.

While subsection (B)(11) does obliquely reference "land and buildings" as it relates to the title of the table in a USDA publication, this reference to buildings is, again, a description as opposed to a specific methodology of the calculation. Although this statute does provide the general formula for calculating a portion of the fair market value for agricultural purposes, it clearly is primarily focused on the process for valuing the dirt involved in the calculation, as opposed to all of the components of "agricultural real property."

As noted above, agricultural real property is composed of different components, namely, the dirt and then any structures located on the dirt as defined in § 12-43-230(a) and Regulation 117-1780.1 which classify the property. Once the property is classified as agricultural real property, it then must be valued as the same. Section 12-43-220(d) provides specifics on valuing the dirt. The detail in this section could result from the concern that appraisers and assessors have less familiarity with this process, and would, therefore, need additional guidance on the "soil capability guidelines" as described in this statute and the related regulations (Regulation 117-1840.2(c)). Any appraiser licensed in South Carolina would be intimately familiar with the valuation of structures. These

appraisers, which include the county assessors and their staff, are required to be licensed by the state and to complete continuing education hours to maintain that license.<sup>6</sup> They would understand the varying approaches to valuing a building—whether that building is a residential property, a commercial “big box” store, or a storage shed on a piece of agricultural property. Any licensed appraiser could explain the various approaches to valuing this building—the cost approach, the income approach or the sales comparison approach. What appraisers may be less familiar with is the approach mandated by South Carolina law to value the dirt based on the soil earning capability as opposed to a straight market value valuation for agricultural use property. Hence, the specifications in § 12-43-220(d). These statutes provide the specifications for valuing the dirt - the “land”- with the implied understanding that the value of the structures located on the land would be added to the value of the dirt. The valuation of the structures is a routine task for these licensed appraisers, while the valuation of the dirt would require some guidance to comply with the statutory scheme mandated by the Legislature.<sup>7</sup>

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<sup>6</sup>Not all county assessors are licensed appraisers (fewer than seven are not licensed), but all county assessor’s offices are required to have a licensed appraiser on staff to conduct the appraisal of property in the county, pursuant to National Uniform Standards of Professional Appraisal Practice (USPAP) standards.

<sup>7</sup>Contrary to the Respondent’s apparent assertions, the statutes are silent on the actual process used to value any real property in this state, other than the soil capability process outlined in § 12-43-220(d). For example, there is no statute that states that for legal residence properties (another possible classification of property), the process for valuing shall be for the appraiser to either personally visit the property or to apply the provisions of a mass appraisal program written for this purpose to the specifications of this property. Presumably, the Legislature has left the actual process up to the professional, licensed appraisers, acting under the guidance of the Department and bound by USPAP to determine the proper process for valuing property.

- III. The legislative intent should be determined through study of the language in the statutes as a whole, without a forced or absurd construction.

The ALC's focus on the language of "buildings" in these statutes is misplaced.

A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law. See *Liberty Mut Ins. Co*, 363 S.C. at 622, 611 S.E.2d at 302; see also *Mid-State Auto Auction v Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (stating that in ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole).

State v. Brannon, 379 S.C. 487, 497, 666 S.E.2d 272, 277 (Ct. App. 2008).

Here, the legislative intent is to provide guidance to the appraisers for the unfamiliar process of valuing agricultural land using the soil capability method, not to discuss the inclusion of the value of the structures in the valuation of the dirt.

The courts have examined this analysis of language to discern legislative intent. The South Carolina Supreme Court recently addressed this point by saying, "A statute as a whole must receive practical, reasonable, and fair interpretations consonant with the purpose, design, and policy of lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of particular words." Sloan v. S.C. Bd. of Physical Therapy Examiners, 370 S.C. at 468-69, 636 S.E.2d at 606-07 (2006) (internal citations omitted.) The ALC should not have been bogged down with parsing each specific word, but should have looked instead to the statutory scheme as a whole. The specific sections of this chapter address the separate issues of classification and valuation. These are separate sections dealing with separate issues. These sections should be read cohesively together, but the separate processes should not be confused with one another.

Similarly, to construe these statutes so that the effect is that the value of a storage building, barn or other structure on the agricultural property is subsumed in the statutorily set value of the dirt is absurd. The building may simply be a “pole building,” but it could just as likely be a multi-story barn or storage building worth several tens of thousands of dollars or more.

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. *Stackhouse v Rowland*, 86 S.C. 419, 68 S.E. 561 (1910). If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect. *Id*

Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).


The legislative intent to tax all property unless exempt is clearly stated in S.C. Code Ann. § 12-37-210 (2014) which states:

All real and personal property in this State, personal property of residents of this State which may be kept or used temporarily out of the State, with the intention of bringing it into the State, or which has been sent out of the State for sale and not yet sold, and all moneys, credits and investments in bonds, stocks, joint-stock companies or otherwise of persons resident in this State shall be subject to taxation.

Clearly, the Legislature did not intend to, in effect, exempt the value of any structures on agricultural property by including the market value of those structures in the statutorily limited value of the dirt. The economic impact to the county of such an approach is significant.

**CONCLUSION**

For the reasons stated herein, the Department concurs in the request of the Appellant that this Court reverse the decision of the ALC and reinstate the Assessor's valuation of the property at issue.



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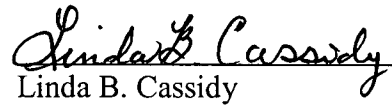
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