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, ... Appellant,

v.

South Carolina Department of Transportation, and John V. Walsh, Deputy Secretary of Transportation for Engineering,..... Respondents.

RESPONDENT'S FINAL BRIEF

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Statement of the Case

Will Montgomery owns a 150 acre farm at 891 Lebanon Rd., Pauline, South Carolina, in Spartanburg County, TMS#: 6-68-00-016.00 ("Parcel," "Farm," "Tract" or "Property"). Montgomery appealed the Property's 2011 tax assessment. The County Board of Assessment Appeals ruled for the County in a split decision. Montgomery appealed to the Administrative Law Court. After cross motions for summary judgment and an extended hearing, the Administrative Law Court ruled for Montgomery (R. pp. 2-10). The Court ruled that the value of the structures on the agricultural real property were already included in, and subsumed by the tract's statutory fair market value for agricultural purposes (Agricultural Use Value).

The Assessor argued that he had a long-standing practice of assessing the full fair market value of all structures on a tract of agricultural real property and then adding that value to the tract's Agricultural Use Value. The Assessor argued that his practice should effectively abrogate the plain language of S.C. CODE ANN. § 12-43-220. The Court rejected that argument:

> The language in Sections 12-37-10(1) and 12-43-220-230 is ***unambiguous***. ***It is clear*** that the ***"fair market value for agricultural purposes" includes land*** used for the growth of agricultural products ***and*** the ***buildings or improvements on that land***. South Carolina's statutes, regulations and case law, as well as the DOR's instructional publications, all support the Petitioner's position that structures located on a tract of agricultural real property, which are not used as a "legal residence" or "other business for profit," are classified as agricultural real property and their taxable value is included in the tract's "fair market value for agricultural purposes."

(R. p. 7) (emphasis added). The Court further reasoned, "Finally, I am convinced by the legislative history of the relevant statutes that the General Assembly intended for the value of buildings and improvements to be subsumed within the calculation of [a tract's]

Agricultural Use Value." (R. p. 7). "Therefore, in 2011 the Agricultural Use Value for Taxpayer's Property already included the value of the structures on Taxpayer's Property. The Assessor's separate assessment and taxation of the Taxpayer's farm buildings was improper and constituted a double taxation." (R. pp. 8-9). The Court concluded:

> Based on the foregoing, I find that judgment should be entered in favor of the Petitioner. The statutory classification of "agricultural use value" includes the value of the structures located on Petitioner's property. Therefore, the property that is the subject of this matter should be assessed and taxed based on its "fair market value for agricultural purposes." That value must be calculated using the formula set forth in S.C. Code Ann. § 12-43-220(D)(2). ***Buildings and improvements located on the property may not be separately valued because their value is included in, and subsumed by, the fair market value for agricultural purposes.***
>
> . . .
>
> The Petitioner's Property identified as TMS #6-68-00-016.00 shall be assessed and taxed based on its agricultural use value alone ***without adding a separate value for the improvements on the Property.***

(R. p. 10) (emphasis added).

The Assessor appealed to this Court.

Facts

The Assessor classified Montgomery's Tract as "agricultural real property." Three buildings sit on the Property: two small barns or sheds (the "barn") and a small mobile home that was once an office for a used car dealership (the "house"). Montgomery purchased the house for $6,000.00[1], moved it to the Property, and established it as the headquarters for his farm (R. p. 35, par. 5). It has never been anyone's "legal residence" (R. p. 35, par. 8). The house is used as Montgomery's farm office and is the headquarters for his farm operations (R. p. 35, par. 9). The day's farming tasks are often planned there. (R. p. 35, par. 9). It also serves as a meeting place for contractors and workers, and a shelter for the persons who perform farm work and maintenance. (R. p. 35, par. 9). The house contains bunk beds and sometimes houses the people who use the tractors, implements, equipment and tools, who cultivate the soil, who spray the herbicides, who plant the seeds and trees, and who spread the lime and fertilizer as a part of farming operations (R. p. 36, par. 11). The house may also be used overnight one or two nights a year for hunting trips, but Montgomery hasn't spent the night in the house in six or seven years (R. p. 36, par. 15). Montgomery lives nearby in Spartanburg, and he owns and operates a feed and seed store just a few miles down the road in Pauline (R. p. 36, par. 13). Accordingly, there is little need for him to use the house except for when he is conducting farming operations. (R. p. 36, par. 13). Montgomery estimated that more than 98% of the times he stayed at the house he was actively farming (R. p. 36, par. 12).

[1] Even though Taxpayer paid $6,000 for this building, the Assessor has assessed its "fair market value" at $33,000.

The farm's structures are used to store farming equipment, tools, ATV's used in farm operations, spraying equipment, spreaders, tractors, tractor and tractor implement parts and manuals, fertilizer, lime, seed, herbicides, and other supplies used in farming operations (R. p. 35, par. 10). This is where farming equipment is cleaned, repaired, refueled, serviced, and otherwise maintained. (R. p. 35, par. 10). The buildings are predominantly used for agricultural activities. (R. p. 36, par. 16). These structures have not been used for some other business for profit, but rather serve functions related to the agricultural use of the real estate (R. p. 35, par. 8).

The Assessor has agreed that the majority of the Parcel is being used for agricultural purposes—primarily forestry (R. p. 35, par. 7). Initially, the Assessor valued the vast majority of the Tract using its statutory "fair market value for agricultural purposes" or Agricultural Use Value, but the Assessor improperly carved out and separately assessed the structures and 1 acre surrounding the structures at 6% percent of their "fair market value" (R. p. 35, par. 6). Prior to the hearing, the Assessor reassessed the Tract's *entire* 150.4 acres at four percent (4%) of its "fair market value for agricultural purposes," but continued his practice of assessing the buildings at four percent (4%) of their "fair market value," and adding this amount to the Tract's statutory "fair market value for agricultural purposes" (R. p. 35, par. 7).

Montgomery contends that the value of these structures is subsumed in the statutory calculation of the Property's agricultural use value, and separately assessing the structures is contrary to the plain language of the statutes.

ARGUMENT

I. WHEN THE ASSESSOR APPEALS A SUMMARY JUDGMENT RULING, THE COURT SHOULD APPLY THE SUMMARY JUDGMENT STANDARD, GIVE THE BENEFIT OF THE DOUBT TO THE TAXPAYER, AND STRICTLY CONSTRUE THE TAXATION STATUTES AS WRITTEN.

A. WHEN THE ASSESSOR APPEALS AN ADVERSE RULING ON SUMMARY JUDGMENT, THE COURT SHOULD APPLY THE SAME SUMMARY JUDGMENT STANDARD.

This is a case of statutory interpretation. Because the Administrative Law Court granted summary judgment to Montgomery, this Court reviews that decision with the standard of review for summary judgment rulings. *See* Savannah Riverkeeper v. SCDHEC, 400 S.C. 196, 205, 733 S.E.2d 903, 907 (2012). Summary Judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP. "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 SC 440, 452, 548 S.E.2d 868, 874 (2001).

B. WHEN THE COURT CONSTRUES TAXATION STATUTES, IT SHOULD GIVE THE BENEFIT OF THE DOUBT TO THE TAXPAYER.

Second, our Supreme Court and the United States Supreme Court have repeatedly held that in construing taxation statutes, the ***taxpayer*** is entitled to the benefit of the doubt, and the statutes must be strictly construed ***against*** the taxing authority.

> Generally, a court must apply the rules of statutory interpretation to resolve the ambiguity and discover the intent of the legislature. ***However, [i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt.*** [W]here the language relied upon to bring a particular person within a tax law is ***ambiguous*** or is ***reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded***, any substantial doubt being resolved in his favor.

Alltel Communications, Inc. v. SCDOR, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012) (some internal citations omitted) (emphasis added).

> "[T]he ALC referenced the settled principle that any substantial doubt ***in the application of a tax statute must be resolved in favor of the taxpayer.*** . . . *see also* SCANA Corp. v. S.C. Dep't of Revenue, 384 S.C. 388, 394 n. 3, 683 S.E.2d 468, 471 (2009) (Beatty, J., dissenting) (noting general rule that where substantial doubt exists as to the construction of tax statutes, the doubt must be resolved against the government)."

Alltel Communications, Inc. v. SCDOR, 399 S.C. 313, 318,731 S.E.2d 869, 872 (2012).

> In construing the statutes under which the tax has been assessed, our Supreme Court has pointed out in numerous cases that ***the taxpayer must receive the benefits in cases of doubt in the enforcement of tax statutes.*** . . . And this likewise is the rule of construction laid down by the Supreme Court of the United States in the case of United States v. Merriam, 263 U.S. 179, 44 S.Ct. 69, 68 L.Ed. 240, 29 A.L.R. 1547, where that court said that in statutes levying taxes, the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used, and if the words are doubtful, the ***doubt must be resolved against the government and in favor of the tax payer.***

Cooper River Bridge, Inc. v. S.C. Tax Comm'n, 182 S.C. 72, 76, 188 S.E. 508, 509–510 (1936) (emphasis added). *See also*, S.C. Nat'l Bank v. S.C. Tax Comm'n, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989) ("In the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt."); both *cited in* Charleston Cnty. Assessor v. LMP Properties, Inc., 403 S.C. 194, 743 S.E.2d 88 (Ct. App. 2013).

C. THE COURT SHOULD STRICTLY CONSTRUE TAXATION STATUTES AS WRITTEN.

Third, courts must interpret the taxation statutes as written, and they are not free to amend the statutes or fill in the gaps.

> Courts are "confined to what the statute says, not what it ought to say, for we have no right to modify a statute's application under the guise of judicial interpretation. In other words, when a statute is clear on its face, it is

> improvident to judicially engraft extra requirements to legislation just because doing so may further the intent behind the statute."

Grier v. AMISUB of South Carolina, Inc., 397 S.C. 532, 540, 725 S.E.2d 693, 698 (2012) (citations omitted). Courts "have no legislative authority and cannot vary a statutory scheme and this is true no matter how logical the basis of the variance." Benat v. State Farm Mut. Ins. Co., 286 S.C. 132, 134, 333 S.E.2d 57, 58 (Ct. App. 1985). "[I]t is beyond th[e] Court's power to effect a change in the statutes enacted by the Legislature." The "Court does 'not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly.'" Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007) (*quoting* Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996)) (other citations omitted).

"In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Lexington Law Firm v. S.C. Dep't of Consumer Affairs, 382 S.C. 580, 588, 677 S.E.2d 591, 595 (2009) (citations omitted). "[L]egislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *Id.*; *see also*, Rabbit Point Farm Limited v. Charleston County Assessor, No: 97-ALJ-17-0501-CC, 1998 WL 85460 (S.C. Admin. Law Ct. 1998).

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. The determination of legislative intent is a matter of law.
>
> 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. The best evidence of intent is in the statute itself: "What a legislature says in the ***text of a statute*** is considered the best evidence of the legislative intent or will.

> Therefore, the courts are bound to give effect to the expressed intent of the legislature.
>
> If a statute's terms are clear and unambiguous, they must be taken and understood in their ***plain, ordinary and popular sense***, unless it fairly appears from the context that the Legislature intended to use such terms in a technical or peculiar sense. The prime object, of course, in the construction of a statute is to ascertain and give effect to the legislative intent.

Media Gen. Communications, Inc. v. S. Carolina Dep't of Revenue, 388 S.C. 138, 147-48, 694 S.E.2d 525, 529-30 (2010) (citations omitted) (emphasis added).

II. THE STATUTES, REGULATIONS, AND DEPARTMENT OF REVENUE PUBLICATIONS, CLEARLY INDICATE THAT "FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES" INCLUDES THE VALUE OF THE STRUCTURES.

South Carolina's Constitution and statutes require certain properties to be assessed as "agricultural real property." South Carolina statutes require that "agricultural real property" be valued and assessed at its "fair market value for agricultural purposes," also known as "Agricultural Use Value," which is statutorily set based on "the productive earning power based on soil capability." *See* S.C. CODE ANN. § 12-43-220. The South Carolina Department of Revenue establishes categories of soil and classifications. Counties must use these categories and classifications when assessing the value of agricultural real property.

South Carolina's statutes, regulations and case law, as well as the Department of Revenue's instructional publications, all demonstrate that structures located on a tract of agricultural real property that are not used as a "legal residence" or "other business for profit," are classified as agricultural real property and their taxable value is included in the

tract's "fair market value for agricultural purposes."[2] Therefore, the value of Montgomery's farm structures was already included in the Parcel's Agricultural Use Value, and it was improper for the Assessor to tax them separately at "fair market value."

The issue in this case is whether structures on a tract of agricultural real property may be assessed and taxed at full "fair market value," separately from the property on which they sit; or whether the taxable value of the structures is already included in and subsumed by the tract's "fair market value for agricultural purposes" referenced in S.C. CODE ANN. § 12-43-220(d).

A. The South Carolina Constitution Requires a Separate Method of Taxation for Agricultural Real Property.

The South Carolina Constitution requires certain properties to be taxed as "agricultural real property." "Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to: (A) four percent of its value ***for such purposes***." S.C. CONST. art. X, § 1 (emphasis added); *see also* S.C. CODE ANN. § 12-43-220(d)(1)(A).

B. The South Carolina Code and Regulations and SCDOR Instructional Publications' Definitions of "Agricultural Real Property" Include Structures.

Under South Carolina law, if at least 50% of a tract of real property is used for agricultural purposes, the entire tract must be classified and assessed as "agricultural real property" and the Assessor may not carve out and separately assess a small portion of the Tract (such as the structures attached thereto), even if it is not being used strictly for

[2] The Assessor suggests that Montgomery's argument exempts the structures from taxation (Appellant's Brief, p. 11 n. 26). That is not Montgomery's argument; rather the valuation of the structures is included in the fair market value of the tract for agricultural purposes.

agricultural purposes. S.C. CODE ANN. § 12-43-230; Jasper County Tax Assessor v. Westvaco Corp., 305 S.C. 346, 347-48, 409 S.E.2d 333, 334 (1991). Improvements such as a farmhouse, barn, or outbuilding do not change the essential agricultural character of a tract of agricultural real property. Each is part and parcel of a farming enterprise. *See* Rabbit Point Farm Limited, No: 97-ALJ-17-0501-CC, at *3, 1998 WL 85460 (S.C. Admin. Law Ct. 1998).

There are only two exceptions to this rule: (1) "legal" residences of the taxpayer or his immediate family, and (2) when the real property is being used for some other "business for profit." *See* S.C. CODE ANN. §§ 12-43-230, 12-43-220(c)(1); S.C. CODE REGS. 117-1780.1 – 117-1780.3. These two statutory exceptions establish the only circumstances under which part of an agricultural real property tract can be assessed and taxed at its full fair market value. The Parties agree that neither exception applied to Montgomery's Property in 2011. Besides the two noted exceptions, the statutory method of classifying and valuing a tract of agricultural real property is comprehensive and includes all improvements located on that tract of agricultural real property. The Assessor has departed from the statutes by taxing the Tract at its Agricultural Use Value, and then carving out, assessing, and taxing **all** structures located on the Tract at full "*fair market value.*" This amounts to an improper double taxation.

The statutory definition of "real property" (and likewise "agricultural *real property*") includes all structures attached thereto. "'Real property' shall mean not only land, . . . but also ***all structures*** and other things therein contained or annexed or ***attached thereto*** which pass to the vendee by the conveyance of the land." S.C. CODE ANN. § 12-37-10 (1) (emphasis added); (R. pp. 183-205) and S.C. CODE REG. 117-1700.1.

South Carolina statutes require properties classified as "agricultural real property" be valued and assessed at a statutory value called its "fair market value for agricultural purposes" or "Agricultural Use Value." S.C. CODE ANN. § 12-43-220(d). This statutory value includes the value of structures on the agricultural real property.

As noted above, the Assessor initially classified the house and one (1) acre as "other property," then assessed and taxed them at 6% of their full fair market value. The Assessor's historical treatment of the farmhouse or office, the barns and one (1) acre differently from the rest of the Parcel, and his assessment at 6% of their full fair market value was improper. The Assessor now agrees that the entire Parcel is properly classified as "agricultural real property," which should be taxed at 4% (Appellant's Brief, p. 2).

Section 12-43-230 defines "agricultural real property."

> 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.

S.C. CODE ANN. § 12-43-230 (emphasis added).

South Carolina's statutes repeatedly indicate that agricultural real property includes the attached structures.[3] South Carolina's Regulations do so as well. The Regulations also

[3] For example:

support the same statutory scheme for classification and valuation of agricultural real property.[4] Like the statutes, the regulations hold that agricultural real property includes attached structures, and that the values of the structures on agricultural real property are subsumed within the "fair market value for agricultural purposes." They are not valued and taxed separately.

Publications by the South Carolina Department of Revenue follow the statutes and regulations, and support the analysis of the taxpayer, Montgomery. The South Carolina Department of Revenue publishes a guide for South Carolina Assessors entitled *South Carolina Property Tax* (2010) ("the D.O.R. Guide" or the "Guide") (R. pp. 45-139). The Guide and similar publications contain "procedures" or "instructions" that the Department of Revenue is required to issue, and county assessors must comply with these procedures and instructions. *See* S.C. CODE ANN. § 12-4-560; § 12-60-1720. SCDOR also publishes the Guide on its website.

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(1) structures used to store crops (such as silos or granaries, hay barns, tobacco barns and drying sheds, or other crop storage buildings or structures), S.C. CODE ANN. § 12-43-230(a);
(2) structures used to raise, store, feed, breed or manage livestock (such as poultry houses, hog sties, stables or barns), *Id.*;
(3) structures used in the preparation of farm products – particularly those for dairying (such as milking parlors, and other milk or dairy product production and storage facilities), *Id.*;
(4) structures used as free *housing* for farm laborers, *Id.*;
(5) dockside *facilities*, S.C. CODE ANN. § 12-43-220(d)(5); and,
(6) structures used in agritourism such as roadside stands, wineries, education barns, farm schools, farm stores, on-farm fee fishing and hunting, and dude ranches. S.C. CODE ANN. § 12-43-233.

[4] *See* S.C. CODE REG. 117-1700.1 (real property and agricultural real property include the structures attached thereto); S.C. CODE REG. 117-1780.1-1780.2 (defining what real property qualifies as agricultural real property); S.C. CODE REG. 117-1780.2, -1780.3 (if at least 50% of a tract qualifies as "agricultural real property" the entire tract shall be classified as agricultural real property); S.C. CODE REG. 117-1780.2, -1780.3 (any portion of an agricultural real property tract that is used for a legal residence or for some "other business for profit" shall be excluded from the agricultural real property classification); S.C. CODE REG. 117-1840 (providing tables of the values for the fair market value for agricultural purposes of agricultural real property).

The Guide and other SCDOR publications follow the same analysis for classification and valuation of agricultural real property.[5] Montgomery provided the Administrative Law Court with additional SCDOR materials specifically prepared and dedicated to the topic of valuing agricultural real property as part of county assessor continuing education seminar materials. S.C. DEP'T. OF REVENUE (PROPERTY DIV.), VALUATION OF AGRICULTURAL PROPERTY IN SOUTH CAROLINA (2010) (hereinafter "Valuation of Ag. Property") (R. pp. 183-205). Similar to the Guide, this publication follows the process of assessing agricultural real property agreeing with the Taxpayer's position.[6]

[5] *See* (R. pp. 45-139) § 110.1 (2010) (real property and agricultural real property include the structures attached thereto); D.O.R. Guide § 212 (real property used for agricultural purposes is classified as agricultural real property); D.O.R. Guide § 222.2 (defining what real property qualifies as agricultural real property); D.O.R. Guide § 212 (agricultural real property shall be assessed and taxed at 4% of its fair market value for agricultural purposes); D.O.R. Guide §§ 212, 222 ("fair market value for agricultural purposes" is a "special valuation" that applies to agricultural real property); D.O.R. Guide § 222.1 ("fair market value for agricultural purposes" is based on the productive earning capacity of the soil); and, D.O.R. Guide § 222.2 (agricultural real property includes dockside facilities and free housing for farm laborers).

[6] *See* VALUATION OF AG. PROPERTY (R. pp. 183-205), 3-5 (defining what real property qualifies as agricultural real property, and specifying agricultural real property includes dockside facilities and free housing for farm laborers); *Id.* at 3 (if at least 50% of a tract qualifies as "agricultural real property" the entire tract shall be classified as agricultural real property); *Id.* at 15-17 (agricultural real property shall be assessed and taxed at 4% of its fair market value for agricultural purposes); *Id.* at 17 ("fair market value for agricultural purposes" is based on the productive earning capacity of the soil); *Id.* at 20-21 (agricultural real property receives a "*special assessment*").

C. The Historical Development of S.C. CODE ANN. § 12-43-220 Demonstrates that Agricultural Real Property's "Fair Market Value for Agricultural Purposes" Includes Not Only the Value of Land, But Also the Value of the Structures Located There.

1. The General Assembly amended S.C. CODE ANN. § 12-43-220 explicitly to include the value of farm structures in a tract's "fair market value for agricultural purposes".

Agricultural real property is taxed at its "fair market value for agricultural purposes" or Agricultural Use Value. The General Assembly defines "fair market value for agricultural purposes," how it is applied, and how it must be calculated in S.C. CODE ANN. § 12-43-220(d)(2). Agricultural Use Values were first enacted in 1975 by Act 208 §2(d) (R. pp. 206-215).[7] Similar to today's § 12-43-220(d), Act 208 provided a tax break for agricultural "real property". However, Act 618 of 1976 (R. pp. 219-221), § 5 amended Act 208 of 1975, §2(d) changing the statutory language from "agricultural *real property*" to "agricultural ***land.***"[8] Act 618 also added what is now §12-43-220(d)(2)(A), but it did not contain references to "land" for growth of timber until three years later.

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[7] 1975 Act 208, §2(d) stating in part: "(d) Agricultural **real property** which is actually used for such purposes shall be taxed on an assessment equal to four percent of its fair market value for such purposes..."

[8] 1976 Act 618, §5 (underline and 2nd bold added) stated:

> **SECTION 5. Tax assessment on agricultural land.** – Section 2(d) of Act 208 of 1975 is amended to read:
>
> "(d)(1) Agricultural **land** which is actually used for such agricultural purposes shall be taxed on an assessment equal to
>
> (A) Four percent of its fair market value for such agricultural purposes for owners or lessees who are individuals or partnerships and certain corporations which do not:
>
> . . . .
>
> (2) 'Fair market value for such agricultural purposes' 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 like soil in the locality or a reasonable area of the locality, not including the agricultural products thereon. Soil capability means the capability of the soil to produce typical agricultural products of the area considering any natural deterrents to the potential capability of the soil as of the current assessment date.

The General Assembly then changed the reference from agricultural "***land***" back to agricultural "***real property***" in Act 133 of 1979, §2 (R. p. 182).[9]

For a period of three (3) years in 1976-1978, South Carolina's agricultural real property valuation statute (what is now §12-43-220(d)) specifically applied **only** to **agricultural "land."** However, in 1979 the General Assembly purposefully amended §12-43-220(d)(1), so that the agricultural assessment value, the "fair market value for agricultural purposes" would apply ***not only*** to agricultural "***land,***" but also to agricultural "**real property**" which includes ***both the land and all structures***. The change from agricultural "land" to "real property" was the only change made to §12-43-220(d)(1).

The Assessor's contention that a tract's Agricultural Use Value only applies to agricultural "land" (Appellant's Brief, pp. 9-11) may have been valid from 1976-1979. But by enacting Act 133 of 1979, the General Assembly decisively changed the language of §12-43-220(d) so that the property valuation "fair market value for agricultural purposes" would apply to and include not only land, but also all its structures. This portion of §12-43-220(d)(1) has not changed since it was amended by Act 133 of 1979. Accordingly, in

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[9] 1979 Act 133 stated:

> **No. 133**
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> **An Act To Amend Sections 12-43-220 And 12-43-230, Code Of Laws Of South Carolina., 1976, As Amended, Relating To Equalization And Reassessment Program For Real Property, And To The Definition Of The Term "Agricultural Real Property" For Purposes Of Tax Assessment, So As To Change The Reference From Agricultural Land To Agricultural Real Property And To Include Property Used To Provide Free Housing For Farm Laborers In The Definition Of "Agricultural Real Property".**
>
> . . .
>
> **Taxing of real property**
>
> SECTION 2. Subitem (1) of item (d) of Section 12-43-220 of the 1976 Code, as last amended by Act 438 of 1978, is further amended by **striking the word "land" on line one and inserting "real property"**. When amended, the subitem shall read:
>
> " (1) Agricultural **real property** which is actually used for such agricultural purposes shall be taxed on an assessment equal to:
>
> (A) Four percent of its fair market value for such agricultural purposes . . . ."

(emphasis added)

2011 the Agricultural Use Value for Montgomery's Property already included the value of the structures on Montgomery's Property. The Assessor's separate assessment and taxation of Montgomery's barn, non-residential house was improper and constituted a double taxation.

The Assessor claims the General Assembly has acquiesced in the DOR and County's longstanding administrative practice of assessing farm structures separately at full "fair market value" (Appellant's Brief, pp. 19-21). He reasons that if the General Assembly was dissatisfied with how the County and DOR have interpreted the agricultural real property valuation statutes, it could have provided an alternate method of valuation in one of the many amendments to §12-43-220 since its enactment in 1975 (Appellant's Brief, p. 21). The General Assembly did exactly that with Act 133 of 1979 when it amended §12-43-220(d) to clarify that agricultural "real property" (which includes both land and buildings) rather than just agricultural "land," would be assessed using "fair market value for agricultural purposes."[10]

2. References to "land" in reference to growth of timber or crops in § 12-43-220(d)(2) did not express the General Assembly's intent to exclude building values from the definition of "fair market value for agricultural purposes."

The Assessor asserts that the multiple references to "fair market value for agricultural purposes" applying to "land" used for growth of timber or other agricultural products in §12-43-220(d)(2) is proof that Agricultural Use Value only applies to land, and does not include the structures thereon (Appellant's Brief, pp. 9-11). The frequent use of

[10] *See also*, Montgomery v Spartanburg County Assessor, No. 13 ALJ-17-0104-CC (S.C. Admin. Law Ct. 2013), at *6-7. (R.pp.7-8).

the term "land" in §12-43-220(d)(2) was added by Act 199 of 1979, Part II, §23. A review of Act 199 shows the General Assembly included an introductory paragraph in Act 199, § A identifying South Carolina's substantial timber production, and expressing the need to distinguish property used for farming trees from property used to grow other crops. The introductory paragraph states as follows:

> A. The General Assembly ***finds*** that a ***substantial part*** of the lands used for the growth of agricultural products in this State is in fact ***used for the growth of timber***. The remainder of land used for the growth of agricultural products is applied to the growth of many other diverse agricultural products. ***Because of this situation*** the General Assembly finds that the ***income from timberlands should be used to determine the use value of such lands and income of lands used to produce other agricultural products should be used to determine the use value of those lands***. The General Assembly further finds that a locality may appropriately include more than one county and be designated as a region.

(R. p. 226) (emphasis added).

The General Assembly determined that property used for timber growth should be valued differently from property used to produce other agricultural products. Therefore, references to timber or crop "land" in §12-43-220(d)(2) were attempts to distinguish areas used for growing timber from areas used to grow other products, and not an expression of the General Assembly's intent to define "fair market value for agricultural purposes" as applying only to land.

Furthermore, subsequent to adding the references to "land" in 1979, the General Assembly specifically included a building component in the statutory method for calculating Agricultural Tax Value in Act 558 of 1988, §1. The subsequent addition of a building component to the method for calculating "fair market value for agricultural purposes" reconfirms the General Assembly's intent to have the value of farm buildings included in a tract's Agricultural Use Value. *See* § S.C. CODE ANN. § 12-43-

220(d)(2)(B)(i-ii) (including the USDA Table 1 – "Value per acre of land and buildings") *See* (R. pp. 39-42).

D. "Fair Market Value for Agricultural Purposes" Specifically Includes a *Building* Component.

South Carolina statutes dictate how "fair market value for agricultural purposes" must be calculated. The statutory method for calculating "fair market value for agricultural purposes" is set out in § 12-43-220(d), and it calculates the value of farm land and buildings together. Section 12-43-220(d)(2)(B)(ii) prescribes how "fair market value for agricultural purposes" must be calculated, stating "[t]he 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." S.C. CODE ANN. § 12-43-220(d)(2)(B)(ii) (emphasis added) (R. pp. 39-42).

Section 12-43-220(d)(2)(B)(i) states that the "fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years." Therefore, the values contained in Table 1 of the 1991 USDA publication applied in 2011, and shall apply from now on.

In addition to Table 1 referenced above, the 1991 USDA publication *Agricultural Land Values and Markets* also contained a nearly identical table, ***Table 5.—Average per acre value of farmland, by State*** (R. p. 43), which included the average value per acre of ***only*** farmland. Had the General Assembly intended to tax the buildings separately from the land in the calculation of "fair market value for agricultural purposes," it could have referenced Table 5 (which excluded building values) instead of Table 1 (which included

the values of both land and buildings) in § 12-43-220(d)(2)(B)(i), but the General Assembly referenced Table 1, land ***and buildings***. Under S.C. CODE ANN. § 12-43-220(d), assessors were specifically directed to include a building value component when calculating the 1991 "fair market value for agricultural purposes," and these same 1991 Agricultural Use Values still apply today.

E. The 2007 South Carolina Real Property Valuation Reform Act Confirms that the General Assembly Does Not Intend for Agricultural Structures to be Valued Separately at Their Full Fair Market Value.

The 2007 South Carolina Real Property Valuation Reform Act (the "Reform Act") verifies that the General Assembly never intended for structures and improvements to be assessed separately from the agricultural property on which they sit. *Id.* at S.C. CODE ANN. § 12-37-3110.

The Reform Act mandated that the "fair market value" of *improvements and additions* to property be added to the value of the real property on which they sit. S.C. CODE ANN. § 12-37-3140(A)(2). However, § 12-37-3170 specifically provided that **nothing** in the Reform Act would affect the statutory provisions which define and apply to "fair market value for agricultural purposes." The Reform Act would apply only to the imposition of rollback taxes when real property is ***changed from*** agricultural use. *See* S.C. CODE ANN. §§ 12-37-3170, and 12-37-3150(9). The General Assembly specifically ***exempted*** from the Reform Act improvements to ***agricultural*** real property.

Had the General Assembly intended for the value of structures and other improvements located on a tract of agricultural real property to be assessed and taxed separately from the Agricultural Use Value of the agricultural real property on which they sit (as the Assessor contends), ***they would not have specifically exempted agricultural real***

property from the Reform Act. Under Assessor's scenario, there would be no reason to exempt agricultural structures from the Reform Act. Exempting farm improvements from the Reform Act's provisions also contradicts the Assessor's claim that the General Assembly has supported or acquiesced in Assessor's improper valuation of agricultural real property.

F. Several Administrative Law Court Decisions Have Held that the Value of Structures on Agricultural Real Property are Included in the Property's Agricultural Use Value.

On three other occasions, taxpayers have presented this same issue to the Administrative Law Court. In three similarly clear cases, three other judges in the Administrative Law Court have ruled that the value of the taxpayer's structures located on tracts of agricultural real property was included in the property's "fair market value for agricultural purposes" or Agricultural Use Value. Dotsy, LLC v. Greenwood County Assessor, No. 13-ALJ-17-0061-CC (S.C. Admin. Law Ct. 2014); Smith et al. v. Clarendon County Assessor, No.: 11-ALJ-17-0191-CC, 2011 WL 7119293 (S.C. Admin. Law Ct. 2011); and Rabbit Point Farm Limited v. Charleston County Assessor, No: 97-ALJ-17-0501-CC, 1998 WL 85460 (S.C. Admin. Law Ct. 1998).

1. Dotsy, LLC v. Greenwood County Assessor

Dotsy case similar to Montgomery. Dotsy is the owner of a family farm in Greenwood County, consisting of five tracts. Two of the tracts had houses on them and multiple barns storage sheds and outbuildings. Neither house had been anyone's legal residence for 20 years. Nevertheless, the assessor had carved out the two houses and 10 acres on which the houses sat, classified them as "other real property," and taxed them at 6% of their fair market value. After Dotsy appealed, the assessor agreed that all of the real

property should be considered agricultural real property. The assessor sought to tax the land pursuant to the agricultural use value and add to that figure the fair market value of the buildings situated on the land. Like Montgomery, Dotsy contended that the Agricultural Use Value included the land and the structures. The assessor argued that she had used her method of taxation for many years. The Court was not persuaded.

> While a court typically defers to an agency's construction of its own regulation, where the plain language of the statute is contrary to the agency's interpretation, the Court will reject its interpretation. Brown v. S.C. Dept. of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 341 S.C. at 85, 533 S.E.2d at 581 (2000) (citations omitted). ***The language*** in Sections 12-07-10(1), 12-43-220 and 12-43-230 ***is unambiguous. It is clear that the "fair market value for agricultural purposes" includes*** land used for the growth of agricultural products and ***the buildings or improvements on that land.*** South Carolina's statutes, regulations and case law, as well as the DOR's instructional publications, all support Dotsy's position that ***structures located on a tract of agricultural real property***, which are not used as a "legal residence" or "other business for profit," ***are classified as agricultural real property and their taxable value is included in the tract's "fair market value for agricultural purposes***."

Dotsy, LLC v. Greenwood County Assessor, No. 13-ALJ-17-0061-CC, * 4-5 (SC Admin. Law Ct., 2014) (emphasis added).

2. Smith et al. v. Clarendon County Assessor

The Smith case similarly involved the classification, valuation, and assessment of two houses previously used as residences, as well as multiple barns, sheds and outbuildings. The assessor had assessed all structures at their full fair market value and then added it to the Agricultural Use Value of the Smiths' property. Smith et al. v. Clarendon County Assessor, No.: 11-ALJ-17-0191-CC, 2011 WL 7119293 (S.C. Admin. Law Ct. 2011). Relying on § 12-43-230, the Administrative Law Court found the majority of the taxpayers' property was used for agricultural purposes and qualified as agricultural

real property, and therefore, the entire property "both land and structures" must be classified and assessed as "agricultural real property." Smith, 2011 WL 7119293, at *2-3.

Like the Spartanburg Assessor, the Clarendon County Assessor argued that the Smiths' structures must be valued at their "true money value" or "fair market value" and then added to the agricultural use value. However, the Smith court held that although "fair market value' is the usual method of valuation for general real and personal property," the ***only*** time that "fair market value" should be applied to agricultural real property is when establishing the property's value for the assessor's own records in case the property became subject to roll-back taxes. *Id.* at *3.

The Smith court agreed with the taxpayers that property properly classified as agricultural real property (including structures) must be assessed at its "fair market value for agricultural purposes," and a tract's "fair market value for agricultural purposes" already includes the value of the structures located thereon. *Id.* at *3-4. The Smith court concluded its decision by holding,

> The statutory classification of ***'agricultural use value' clearly includes the value of the structures*** located on Petitioners' property . . . . Therefore, the properties that are the subject of this matter should be ***assessed and taxed based on their "fair market value for agricultural purposes***."

Smith, 2011 WL 7119293 at *4 (emphasis added). The Administrative Law Court later affirmed its holding in its Order on the Assessor's Motion for Reconsideration. "To properly rule on the issues contested, the Court was required to first determine whether certain structures should be classified as part of the agricultural real property, and secondly, whether these structures should be ***assessed and taxed based on 'fair market value for agricultural purposes***." (R. p. 231). The Administrative Law Court ruled for Taxpayers on both points: "In the Order addressing the Motion and Cross-Motion for Summary

Judgment, the Court agreed with Taxpayer and ruled that ***'agricultural use value' includes the value of the structures*** located on Taxpayers' property." (R. p. 231).

3. Rabbit Point Farm Limited v. Charleston County Assessor

Thirteen years prior to the Smith case, the ALC held in Rabbit Point Farm Limited v. Charleston County Assessor, No: 97-ALJ-17-0501-CC, 1998 WL 85460 (S.C. Admin. Law Ct. 1998) that the structures and improvements on a tract of agricultural real property were classified as agricultural real property and must be assessed and taxed as part of the property's fair market value for agricultural purposes. In Rabbit Point Farm all of the taxpayer's 300.3 acre parcel had been classified and assessed as agricultural real property except for one acre containing a house with an attached wooden ramp leading to a dock and boat house. The assessor had assessed the one acre and the house with its improvements at 6% of their fair market value, and the taxpayer appealed. *Id.* at *2.

The Assessor asserted the construction of the house and other improvements changed the character of the property, and disqualified it from the agricultural classification. Rabbit Point Farm, 1998 WL 85460, at *3. The Administrative Law Court disagreed, finding that the house was used in conjunction with the agricultural usage of the property and primarily for the maintenance and upkeep of the farm and also served as a farm office. The Court determined that the use of the house was incidental to the farm business conducted there. *Id.*

The Court construed the applicable statutes and regulations by their plain and ordinary meaning without resorting to subtle or forced construction, and found the taxpayer's house, which had not been used as a legal residence, was:

> an improvement similar to a barn or outbuilding, which does not change the essential agricultural character of the property. Each is part and parcel of a

> farming enterprise. . . . Even though the construction of a building or house on a property constitutes an improvement to the real property, unless it changes the character of the property and the usage of the property, . . . ***the property retains its agricultural classification for tax purposes***.

Id. (emphasis added).

The Court ordered, "the Taxpayers' property containing 300.3 acres, ***specifically including the farm house and attachments*** . . . must be classified as agricultural real property" and assessed as such. Rabbit Point Farm, 1998 WL 85460, at *4 (emphasis added).

In summary, each time this issue has come before the administrative law court, the court has ruled in favor of the taxpayer and held that South Carolina's taxation laws prohibit the separate valuation and taxation agricultural real property and the structures located on it. The Administrative Law Court in Montgomery, Dotsy, Smith and Rabbit Point Farm each held that even improvements not strictly associated with agriculture did not affect the character of the agricultural real property; they remained classified as agricultural real property, and the value of the improvements was included in and subsumed by the property's fair market value for agricultural purposes.

Montgomery's Parcel of agricultural real property contains buildings that are used in conjunction with his farming operations. No improvement on Montgomery's Parcel has changed the agricultural character of the Property. Montgomery's structures are part of the agricultural real property, and their value is subsumed by and already included in the calculation of the Parcel's Agricultural Use Value or "fair market value for agricultural purposes." Therefore, it was improper for the Assessor to separately value and assess Montgomery's structures at full "fair market value" and then add that value to the Tract's "fair market value for agricultural purposes." Because the buildings' values were already

included in the property's agricultural use value, their separate assessment constituted an improper double taxation.

III. WHEN THE STATUTES, REGULATIONS, AND DEPARTMENT OF REVENUE PUBLICATIONS DO NOT AUTHORIZE THE ASSESSOR TO ADD THE FAIR MARKET VALUE OF BUILDINGS TO THE "FAIR MARKET VALUE FOR AGRICULTURAL PURPOSES," HE VIOLATES THE PLAIN LANGUAGE OF S.C. CODE ANN. § 12-43-220.

A. No Statutory Authority Exists Directing or Implying That Agricultural Structures Must or May Be Assessed at Full Fair Market Value Separately from the Agricultural Property Where They Sit.

The Assessor cites ***no direct statutory authority*** specifically requiring, directing or allowing his method of separately assessing and taxing all structures and improvements on tracts of ***agricultural*** real property at their full "fair market value," as opposed to the method required by statute: "fair market value for agricultural purposes."

> No method of determining tax liability is valid unless authorized by statute and assessed in conformity to its terms. Accordingly, tax assessments may only be made in strict conformity with taxation statutes. . . . *A tax assessment statute will* ***not be extended*** *by construction to things* ***not directly named or described*** *in the statute.*

84 C.J.S. *Taxation* § 530 (emphasis added). The Assessor fails to identify any statutory authority providing that structures on agricultural real property shall be assessed as anything other than part of that tract's Agricultural Use Value. Not only does the Assessor fail to identify statutory authority allowing his scheme of assessment, he cites ***no other legal authority*** requiring or directing his assessment method. The Assessor's method of determining Taxpayer's tax liability is not authorized by statute, and the Assessor's failure to make its tax assessment on a statutory basis is an error of law. *See* 84 C.J.S. *Taxation* §§ 530, 569.

The Assessor argues that his long-standing practice to tax structures on agricultural real property separately (Appellant's Brief, pp. 19-21). However, the Assessor failed to show that the DOR has ever provided instructional materials to county assessors suggesting or directing they assess agricultural real property by this method. The Assessor also failed to cite any provision from the DOR Guide, the VALUATION OF AG. PROPERTY materials, or any other DOR publication requiring or allowing taxation of agricultural property according to the method that the Assessor espouses. The DOR's taxing methodology did not change after Act 133 of 1979 changed the statutory language from "agricultural *land*" to "agricultural *real property*." The taxation methodology used by the Department of Revenue and county assessors failed to keep current with changes in the statutory language.

The VALUATION OF AG. PROPERTY and the DOR Guide were prepared in fulfillment of the DOR's statutory duty to prepare manuals, guides, and other aids for the equitable assessment of all properties. S.C. CODE ANN. § 12-4-560. The Guide is more than 90 pages long. It is posted on the SCDOR website, and it is distributed to county assessors statewide to assist and instruct them in assessing real property. The Guide contains ***no directive or even implication*** that the Assessor is to first calculate a tract's "fair market value for agricultural purposes," and then add the full "fair market value" of the buildings or structures on the property. The same is true for the DOR continuing education seminar materials entitled "VALUATION OF AGRICULTURAL PROPERTY IN SOUTH CAROLINA." If the Assessor's valuation method were statutorily mandated, the DOR Guide and CLE materials would address them.

B. Structures on Agricultural Real Property Cannot Be Separately Assessed at Full Fair Market Value Pursuant to the General Valuation Statute S.C. CODE ANN. § 12-37-930.

The Assessor contends that he may distinguish land and structures in applying Agricultural Use Value (Appellant's Brief, p. 5). The Assessor claims that agricultural structures must be separately assessed at their "true value in money"[11] or full "fair market value" pursuant to S.C. CODE ANN. § 12-37-930 (Appellant's Brief, pp. 5-7). Conversely, the Administrative Law Court has ruled in accord with the principle that real estate should not be assessed and taxed separately as land and structures: "The value of the taxpayer's property consists of the whole property, and not of separate items of land and improvements. 84 C.J.S. *Taxation* § 404 (1954)." Barrett v. Georgetown County Assessor, No. 95-ALJ-17-0294-CC, 1995 WL 929813 (S.C. Admin. Law Ct. 1995) (Stevens, J.). "Real estate is assessed in its entirety and is not an assessment of separate portions of the property. . . . A residence consists of a lot and a house as a whole, not as separate parts." Weddle v. Charleston County Assessor, No.: 95-ALJ-17-0525-CC, 1995 WL 930077 (S.C. Admin. Law Ct. 1995) (Stevens, J.).

Section 12-37-930 is a general catch-all valuation statute that values normal real property at its full "fair market value". Assessor contends that absent the presence of an alternate method of valuation, all property must be valued at its "fair market value" under § 12-37-930. Assessor also contends that an unlabeled paragraph at the end of §12-43-220 provides for assessment of farm buildings at fair market value under §12-37-930 (Appellant's Brief, p. 8). The language on which the Assessor depends states: "[a]s used

[11] Property's "true value in money" under S.C. CODE ANN. § 12-37-930 is the price a willing buyer would pay a willing seller, also referred to as its "fair market value."

in this section, ***fair market value*** with reference to real property means ***fair market value*** determined in the manner provided pursuant to Article X of the Constitution of this State, Section 12-37-930 and Article 25, Chapter 37 of this title." S.C. CODE ANN. §12-43-220 (emphasis added). This portion of §12-43-220 which references §12-37-930 corresponds to "fair market value" instead of "fair market value ***for agricultural purposes***".

"Fair market value" and "fair market value *for agricultural purposes*" are two completely different valuations. They are not interchangeable, and the Assessor has cited no statutory authority for combining the two methods, as he seeks to do. Ordinary real property is taxed at "fair market value." Agricultural real property is not. That kind of taxation would put many farmers out of business. Instead, agricultural real property must be taxed using a "*special valuation*" that only applies to agricultural real property—its "fair market value for agricultural purposes." *See* (R. pp. 45-139). This method of valuation and assessment of Agricultural Real Property encompasses the land and the structures.

South Carolina treats agricultural real property valuation differently from all other real property. The Guide also distinguishes the valuation of agricultural real property from the valuation of other real property. Ordinary property is to be appraised to determine fair market value. "***Real property (other than agricultural real property . . .) is appraised*** to determine fair market value." (R. pp. 53-54) (emphasis added); *See also* (R. p 58) [12] Agricultural real property is not appraised. Because agricultural real property is distinct, S.C. CODE ANN. § 12-37-930 does not apply to agricultural real property.

Furthermore, section 12-37-930 cannot be extended to things not directly named or

[12] **§ 221.4. Valuation of Real Property**. Real property, ***other than agricultural real property*** (see §222 below) . . . is appraised to determine fair market value." (R. p. 58) (emphasis added).

described in the statute. *See* 84 C.J.S. *Taxation* § 530.

> The legislature may determine the method or manner in which different forms of property may be valued for taxation. In such cases, the method prescribed by the legislature must be followed unless shown to be impossible or impracticable in the particular case or inconsistent with constitutional standards. Indeed, the ***failure to make tax assessment on statutory basis is an error of law***.

84 C.J.S. *Taxation* §§ 569, 410 (emphasis added) (*quoted in part by* S.C. Tax Comm'n. V. S.C. Tax Bd. of Review, 278 S.C. 556, 561, 299 S.E.2d 489, 492 (1983)).

Section 12-37-930 does not address "fair market value ***for agricultural purposes***," nor does it address the valuation of structures or improvements on agricultural real property. The statute does not authorize the Assessor's method of determining Taxpayer's tax liability, and the Assessor's failure to make its tax assessment on a statutory basis is an error of law. *See* 84 C.J.S. *Taxation* §§ 530, 569.

Section 12-37-930 is a general statute, not a specific one. While the general rule may be to assess property at its full "fair market value," when there is a general rule and an applicable exception, the exception controls.

> Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, ***the more specific statute will be considered an exception to, or a qualifier of, the general statute*** and given such effect. Wilder v. South Carolina Hwy. Dep't., 228 S.C. 448, 90 S.E.2d 635 (1955). *See also* Wooten ex rel. Wooten v. S.C. Dep't of Transp., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) (a specific statutory provision prevails over a more general one); Atlas Food Sys. & Servs., Inc. v. Crane Nat'l VenD.O.R.s Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995) (general rule of statutory construction is that a ***specific statute prevails over a more general one***).

Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (emphasis added). "Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to: (A) Four percent of its fair market

value for such agricultural purposes." S.C. CODE ANN. § 12-43-220(d)(1)(A), *See also*, S.C. CONST. art. X, § 1. This is the specific provision that prevails over the general provision. *See* (R. pp. 57, 63-64).

The assessment of agricultural real property at its "fair market value for agricultural purposes" is an exception to the general rule. Accordingly, the exception controls here, and agricultural real property and the structures located thereon are not assessed at "fair market value," but rather, at their "fair market value for agricultural purposes."

C. Assessor's Long-Time Administrative Practice of Separately Assessing Agricultural Land and Agricultural Structures Is Not Controlling, and is Not Approved by the General Assembly.

Assessor and the DOR contend it has been their administrative practice to separately assess agricultural land and agricultural structures for more than thirty (30) years. Assessor also claims that the legislature has acquiesced in this 30 year practice of assessing agricultural structures at their full "fair market value" separately from the agricultural land on which they sit, creating a strong presumption of approval by the legislature (Appellant's Brief, pp. 19-20).

The legislative intent of a statute shall prevail over an administrative agency's interpretation. The Courts of this State have repeatedly recognized this principle.

> While the construction of a statute by the officials charged with its administration, which has been acquiesced in by the Legislature for a long period of time, should be given great weight, Etiwan Fertilizer Co. v. S.C. Tax Commission, 217 S.C. 354, 60 S.E.2d 682, the final responsibility for the ***interpretation of the law rests with the courts***. "***At most, administrative practice is a weight in the scale, to be considered, but not to be inevitably followed.*** * * * While we are of course bound to weigh seriously such rulings, ***they are never conclusive.***"

Stone Mfg. Co. v. S. Carolina Employment Sec. Comm'n, 219 S.C. 239, 249, 64 S.E.2d 644, 648 (1951) (citations omitted) (emphasis added). While the Court may "give great

weight to an agency's long-standing construction of a statute, such a construction is not dispositive." Plyler v. Evatt, 313 S.C. 405, 408, 438 S.E.2d 244, 246 (1993) (citing Gilstrap v. South Carolina Budget and Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992)). "An administrative construction affords no basis for the perpetuation of a patently erroneous application of the statute." State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575-76 (2010) (internal quotations omitted). Where "the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation." Media Gen. Commc'ns, Inc., at 149-50, 694 S.E.2d at 530-31 (quoting Brown v. Bi–Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003)). The plain language of the statutes, regulations and DOR publications, as well as the Administrative Law Court's prior case law require a different interpretation than those given by the Assessor and the Department of Revenue.

Furthermore, the legislature has not approved or acquiesced in the practice of separately valuing agricultural structures at full "fair market value" and then adding that value to a tract's "fair market value for agricultural purposes." To the contrary, by Act 133 of 1979, the General Assembly intentionally rewrote §12-43-220 so that the assessment value of **both** agricultural land and the attached structures would be included in a tract's "fair market value for agricultural purposes." The legislature later added a building component to the statutory calculation of "fair market value for agricultural purposes" in Act 558 of 1988, §1. The legislature also went out of its way to ensure that the 2007 South Carolina Real Property Valuation Reform Act would not affect the valuation of agricultural real property.

The general rules of statutory interpretation are different for taxation statutes. All ambiguities in a taxation statute must be construed in favor of the taxpayer and against the

government. If the agricultural valuation statutes are ***reasonably susceptible*** of an interpretation precluding separate assessment of Petitioner's agricultural structures at full "fair market value," the "fair market value" assessment of Petitioner's structures shall be prohibited. *See* Alltel Communications, Inc. v. SCDOR, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012).

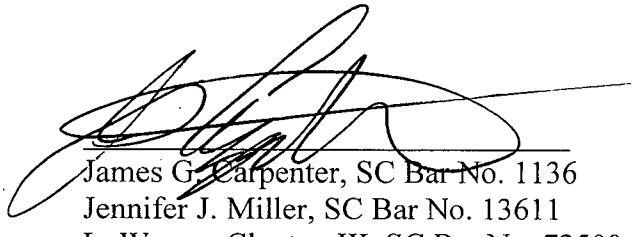
The Administrative Law Court has already ruled that real property's 'agricultural use value' ***clearly includes the value of the structures*** in the Montgomery, Dotsy, and Smith case decisions. (R. pp. 2-10); Dotsy, LLC v. Greenwood County Assessor, No. 13-ALJ-17-0061-CC (S.C. Admin. Law Ct. 2014); Smith et al. v. Clarendon County Assessor, No.: 11-ALJ-17-0191-CC, 2011 WL 7119293 at *4 (S.C. Admin. Law Ct. 2011). The Administrative Law Court ruled the agricultural taxation statutes are reasonably susceptible to an interpretation that precludes separate assessment of Montgomery's agricultural structures at full "fair market value."

CONCLUSION

The Administrative Law Court's ruling complies with the South Carolina Constitution, its statutes, legislative history, case law, regulations, and the Department of Revenue's instructional publications, and three other administrative law court rulings from three other judges. Based on the foregoing authorities, this Court should affirm the grant of Judgment to Montgomery. The structures on his Property may not be carved out and assessed separately, but rather his agricultural real property Tract includes its structures, and their taxable value is already included in and subsumed by the Tract's "fair market value for agricultural purposes."

Respectfully submitted,

THE CARPENTER LAW FIRM, P.C.



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THE STATE OF SOUTH CAROLINA

In the Court Of Appeals

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

William J Montgomery..... Respondent,

V.

Spartanburg County Assessor..... Appellant

CERTIFICATE OF COMPLIANCE WITH S.C. RULE 211(b)

The undersigned attorney hereby certifies that the foregoing Respondent's Final Brief complies with the South Carolina Rule 211(b).

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