

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

Appellate Case No. 2017-002369
Opinion No. 5516 (S.C. Ct. App. Filed Sept. 14, 2017)

Charleston County Assessor.....Petitioner-Respondent,

v.

University Ventures, LLC.....Respondent-Petitioner.

UNIVERSITY VENTURES, LLC'S REPLY TO
CHARLESTON COUNTY ASSESSOR'S RETURN TO
UNIVERSITY VENTURES, LLC'S PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Pursuant to Rule 242(g), SCACR, Respondent-Petitioner University Ventures, LLC (the “Taxpayer”) submits this reply to Petitioner-Respondent Charleston County Assessor’s Return to Taxpayer’s Petition for Writ of Certiorari (the “Assessor’s Return”).

ARGUMENT

No one disputes the applicable valuation date for valuing the Taxpayer’s real property (the “Property”) in this ad valorem tax appeal is December 31, 2008 (the “Valuation Date”).¹ Petitioner-Respondent Charleston County Assessor (“Assessor”) chose to implement countywide equalization in tax year 2011 based on the Valuation Date. In 2009, between the Valuation Date and the tax year 2011 implementation, the Taxpayer completed improvements to the Property. Neither the Assessor nor the Taxpayer dispute the propriety of the tax year 2010 reassessment of the Property or the Assessor’s ability to include the value of the improvements in either tax year 2010 or 2012. It is the valuation of the Property for tax year 2011 based on its condition as of the Valuation Date which is at issue.

The Assessor seeks to value the Property non-uniformly in implementing a statutorily required countywide reassessment and equalization program in 2011. See, S.C. Code Ann. 12-43-217 (2014) (emphasis added). In effect, the Assessor is “backdating” the Property’s value to a date prior to the completion of the improvements. To achieve uniformity and equalization, the Assessor cannot include the value of the improvements which did not exist on the uniform Valuation Date.

By misapplying the statutorily mandated equalization program and creating a two year gap between valuation and implementation, the Assessor has created her own problem. In the

¹ In the Assessor’s Petition for Writ of Certiorari (the “Petition”), the Assessor acknowledges at least four (4) times that the uniform valuation date for equalization of values for all real property in Charleston County, including the Property, is December 31, 2008. Petition, pp. 3, 11, 12 and 13.

Assessor's Return, the Assessor again fails to recognize that the Assessor's creation of this gap, during which the hotel improvements were completed and appropriately taxed, mandates valuing the Property as "vacant land"² in order to achieve the equalization and uniformity mandated by South Carolina law in countywide reassessments. S.C. Code Ann. 12-43-210(A) (2014).

In the Assessor's Return, the Assessor, without citing any authority, states that "[o]nce the value is added to the Property value, it remains on the books regardless of whether the date of value precedes the completion of the improvement." Assessor's Return, p. 4. The Assessor does not address the fact that the statutory method of equalization does not anticipate or contemplate the "backdating" of a property's value. The Assessor pays lip service to the uniform date of value for equalization purposes while claiming she can assume that as of December 31, 2008, a hotel existed on the Property which everyone acknowledges it did not. The gap between the tax year 2011 implementation and the Valuation Date, which arises solely as a result of the Assessor's misapplication of applicable law, coupled with the improvements in the interim, creates the conundrum before the Court of Appeals and this Court.

The Court of Appeals correctly determined the Assessor's "strained and unpersuasive" interpretation and application of South Carolina Code §12-43-217 created a multi-year gap between the Valuation Date and the implementation of the countywide appraisal and equalization in tax year 2011.³ Charleston Cty. Assessor v. University Ventures, LLC, 421 S.C. 194, 205, n.7, 805 S.E. 2d 216, 222, n.7 (Ct.App. 2017). The Assessor ignored the statutory requirements for a uniform and equitable countywide appraisal and equalization program and the common law requirements that taxing statutes be construed in favor of the taxpayer. See, S.C. Code Ann. 12-

² The Assessor acknowledges the Property was vacant land as of the Valuation Date. See, Assessor's Return, p. 2.

³ The Assessor created the problem by delaying implementation of the last two countywide appraisal and equalization programs. See Charleston Cty. Assessor, 421 S.C. at 206, 805 S.E.2d at 223.

43-217(A); Beaufort Cty. Assessor v. Sally Walker, 1997 WL 725106, Docket No. 97-ALJ-17-0206-CC)(S.C. ALJD Nov. 6, 1997).

The appropriate inquiry is what is the Property's value as of December 31, 2008, the date stipulated by the parties and used by the Assessor in implementing a countywide appraisal and equalization program in tax year 2011? The Assessor's proposition that a non-existent, fully stabilized hotel existed on the Property on the uniform Valuation Date results in the Property being assessed differently than other properties in Charleston County for tax year 2011. The Taxpayer is entitled by law to have its Property valued as of the same uniform date as every other Charleston County taxpayer. See South Carolina Code § 12-43-210(A)(2014). Stated differently, the Court of Appeals' attempt to reconcile the multi-year gap resulting from the Assessor's misapplication of South Carolina law and the statutory directive that improvements not be taxed until fit for the use intended creates a novel question of law.

CONCLUSION

For the reasons set forth above and in the Taxpayer's Petition for Writ of Certiorari, the Court should grant the Taxpayer's Petition for a Writ of Certiorari.

Respectfully submitted,

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December 27, 2017

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Shirley C. Robinson, Presiding Administrative Law Judge

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ALC Case No. 14-ALJ-17-0150-CC

Charleston County AssessorPetitioner-Respondent,

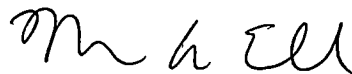
v.

University Ventures, LLCRespondent-Petitioner.

PROOF OF SERVICE

I certify that I have served copies of RESPONDENT-PETITIONER UNIVERSITY VENTURES, LLC'S REPLY TO PETITIONER-RESPONDENT CHARLESTON COUNTY ASSESSOR'S RETURN TO PETITIONER UNIVERSITY VENTURES, LLC'S PETITION FOR WRIT OF CERTIORARI, by depositing copies of the same with Federal Express postage prepaid on December 27, 2017, to the following:

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