

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

19967

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley Robinson, Administrative Law Judge

Case No.: 11-ALJ-17-0430-CC

Field House Properties,

Appellant,

v.

South Carolina Department of Revenue

Respondent.

RECORD ON APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Field House Properties, LLC,

Petitioner,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 11-ALJ-17-0430-CC

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

STATEMENT OF THE CASE

Petitioner Field House Properties, LLC (Petitioner) filed a request for a contested case hearing with the Administrative Law Court (ALC or Court) seeking to have this Court reject a determination made by the South Carolina Department of Revenue (Respondent) that real property subdivided into parking spaces for sale is not exempt from property tax as inventory. The parties filed cross motions for summary judgment. For the reasons set forth below, the Court grants the motion for summary judgment filed by Respondent and denies the motion for summary judgment filed by the Petitioner.

BACKGROUND

In December 2006, Petitioner purchased an undeveloped parcel of real property near the University of South Carolina football stadium. Petitioner paved the parcel before subdividing out approximately 99 parking spaces. Petitioner then began selling the parking spaces. In October 2008, the Richland County Assessor (the Assessor) issued the Petitioner Notices of Classification, Appraisal, and Assessment of property taxes for fifty-five (55) spaces not yet sold. The assessment valued each parking space at \$25,000 and assessed taxes totaling \$37,526 for the entire parcel. Petitioner challenged the assessment by arguing that S.C. Code § 12-37-220(B)(30) exempted the subdivided parcel as "inventory."

FILED

February 10, 2012

SC ADMIN. LAW COURT

On November 10, 2008, the Assessor notified the Petitioner of its decision not to adjust the assessment. Subsequently, by letter dated December 11, 2008, the Petitioner notified Respondent of its position regarding the parking spaces. On April 2, 2009, Respondent's Property Tax Division notified the Petitioner of its determination that the parcel was not exempt from property tax because the "all inventory" exemption under Section 12-37-220(B)(30) will only be applied to personal property. On December 4, 2009, the Petitioner paid to the Richland County Assessor all 2008 property taxes assessed on the parcel. The Petitioner filed with Respondent a claim for refund dated March 9, 2010, again asserting that the parking spaces should be exempted as inventory.

On March 26, 2010, Respondent denied the Petitioner's claims for refund based upon the same grounds as stated in its April 2, 2009 letter. Petitioner protested the denial by letter dated June 24, 2010. Respondent issued its final determination to the Petitioner on July 18, 2011, denying Petitioner's refund request.

Petitioner timely filed its request for a contested case hearing before the ALC.

STANDARD OF REVIEW

Rule 68 of the Rules of Procedure for the Administrative Law Court provides that "[t]he South Carolina Rules of Civil Procedure may, where practicable, be applied in proceedings before the Court to resolve questions not addressed by these rules." Rule 56(c), SCRCP, provides that summary judgment shall be granted if it is shown "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See also Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005); Cafe Assocs., Ltd. v. Gerngross, 305 S.C. 6, 406 S.E.2d 162 (1991). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn there from must be viewed in the light most favorable to the nonmoving party. Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 61, 504 S.E.2d 117, 121 (1998).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). Furthermore, summary judgment should not be granted even when there is no dispute as to the evidentiary facts if there is dispute as to the conclusions to be drawn from those facts. Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C. 1, 605 S.E.2d 744

(Ct. App. 2004). However, summary judgment should be granted when plain, palpable and undisputed facts exist on which reasonable minds cannot differ. Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 376, 597 S.E.2d 181, 183 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the non-moving party may not simply rest on mere allegations or denials contained in the pleadings. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Bennett v. Investors Title Ins. Co., 370 S.C. 578, 635 S.E.2d 649 (Ct. App. 2006); see also Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004).

DISCUSSION

The Petitioner and Respondent have filed cross motions for summary judgment. The question presented for resolution by this Court is whether subdivided parking spaces are exempt from property tax as inventory pursuant to S.C. Code Ann. § 12-37-220(B)(30). Based upon the filings of the parties, and the applicable law, the Court finds that there is no genuine issue of material fact and that Respondent is entitled to judgment as a matter of law.

Statutory Construction

The cardinal rule of statutory construction is to give effect to the intent of the legislature. S.C. Coastal Conservation League v. S.C. Dep't of Health and Env'tl. Control, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010); Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)). Legislative intent is first and foremost determined by the language of the statute. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (citing Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997)). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." S.C. Coastal Conservation League, 390 S.C. at 425-26, 702 S.E.2d at 250; see,

also Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). “Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning.” Id., 390 S.C. at 425, 702 S.E.2d at 250. The literal language of a statute should be disregarded only when the result is so plainly absurd that it clearly could not have been the intent of the legislature. Kiriakides v. United Artists Commc’ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (citing Stackhouse v. Rowland, 86 S.C. 419, 68 S.E. 561 (1910)).

“The legislature is presumed to have fully understood the meaning of the words used in a statute and, unless this meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense.” Pee v. AVM, Inc., 344 S.C. 162, 168, 543 S.E.2d 232, 235 (Ct. App. 2001). “Where the legislature chooses not to define a term in the statute, courts should interpret the term in accordance with its usual and customary meaning.” Id. at 168, 543 S.E.2d at 235 (citing Adoptive Parents v. Biological Parents, 315 S.C. 535, 543, 446 S.E.2d 404, 409 (1994)). “The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in light of its manifest purpose. Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2005). “Once the Legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their notions of public policy.” State Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 20, 382 S.E.2d 11, 14 (Ct. App. 1989).

Section 12-37-220(B)(30) provides an exemption from property tax for “[a]ll inventories.” The plain language of the statute shows the Legislature intended for inventory to include only tangible personal property. Although the term “inventory” is not defined by statute, the “courts have looked to the usual dictionary meaning to supply its meaning.” Lee v. Thermal Engineering Corp., 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002). Black’s defines inventory as “raw materials or goods in stock.” Black’s Law Dictionary 830 (7th ed. 1999). Furthermore, for purposes of bankruptcy law, Black’s defines the term as “personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service; raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock.” Id. Likewise, inventory has been defined for property tax purposes as tangible personal property. Homes by Ayres v. Comm’r of Internal Revenue, 795 F.2d 832,

836, n.5 (9th Cir. 1986) ("The Tax Court has held that merchandise does not include real property. This conclusion is supported by accounting literature which defines merchandise as tangible personal property.").

Legislative History of Title 12

Not only does the traditional plain meaning of inventory include only tangible goods, but nothing in the history of Title 12 shows the Legislature intended to broaden that definition to include real property. In determining the Legislature's intent under § 12-37-220(B)(30), it is proper to trace the provision's history and the history of related statutes. Jones v. Southern Farm Bureau Cas. Co., 251 S.C. 446, 163 S.E.2d 306 (1968) (citing Palmetto Lumber Co. v. Southern Ry., 154 S.C.129, 151 S.E.2d 279 (1929)). The 1976 version of the Code set a general, uniform assessment rate of six percent for taxation of "[a]ll inventories of business establishments." S.C. Code Ann. § 12-43-220(b). That provision is still in place today. More importantly, while § 12-37-220(B)(30) now overrides the six percent rate by exempting all inventories, the history of the subsection shows the Legislature only specifically considered tangible goods in allowing the inventory exemption.

In 1976, prior to the enactment of § 12-37-220(B)(3), the Code set forth rates for taxing "merchant's inventories" and rules for fixing the "the value of the inventories." S.C. Code Ann. §§ 12-37-1410 and 12-37-1420. Similarly, Article 9 of the 1976 version of the Code required manufacturers to make a return of "all manufactured articles which have been offered for sale at retail or which have been available for sale at retail." S.C. Code Ann. § 12-37-1320 (1976). The Legislature later made clear that § 12-37-1320 was describing a manufacturer's retail inventory by changing the wording to exempt from tax "all inventories of manufacturers, except manufactured articles which have been offered for sale at retail or which have been available for sale at retail." Act No. 472, 1980 S.C. Acts 1401 (codified at § 12-37-220(A)(6)). Act No. 540, 1986 S.C. Acts 4877 provided for abrogation of property tax on inventory: it exempted, "[e]ffective for the 1988 and subsequent taxable years, all inventories of business establishments." Act No. 540, 1986 S.C. Acts 4877 (codified at § 12-37-220(B)(30)). Act No. 361, 1992 S.C. Acts 2075 changed subsection (B)(30) to exempt "[a]ll inventories." Act No. 363, 1996 S.C. Acts 2226 repealed §§ 12-37-1410 and 12-37-1420 relating to merchants. Thus, the Legislature only specifically considered tangible goods in allowing the inventory exemption.

In other words, not only does the traditional plain meaning of inventory include only tangible goods, but nothing in the history of Title 12 shows the Legislature intended to broaden the traditional meaning to include real property.

Further supporting the exclusion of real property from inventory is the Legislature's longstanding taxation of real property held and subdivided for purposes of sale, notwithstanding the inventory exemption. "Statutes pertaining to the same subject should be harmonized." Smith v. S.C. Highway Comm'n, 138 S.C. 374, 136 S.E.2d 487 (1927). "A statute must be interpreted so as to avoid absurd results." State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Since 1979, the Legislature has specifically provided a tax rate for certain undeveloped parcels subdivided into lots for sale:

Notwithstanding the requirement that real property is required by law to be appraised at fair market value for ad valorem tax purposes, when undeveloped acreage is surveyed into subdivision lots and the conditional or final plat is recorded with the appropriate county official, the county assessor shall appraise each lot as an individual property and then discount his gross actual market value estimate of the developer's lot holdings . . .

Act No. 145, 1979 S.C. Acts 252 (codified at S.C. Code Ann. § 12-43-224 (2000)). Thus, rather than classifying subdivided lots held for sale as inventory, the Legislature has addressed them separately and provided a discounted tax to them. In 2000, the Legislature narrowed the discount to parcels subdivided into "at least ten building lots." S.C. Code Ann. § 12-43-225 (Supp. 2010). Accordingly, although the parking spaces at issue do not fall under the current subdivided lots provision, the statutes show that the Legislature never intended for inventory to include subdivided lots for sale. To conclude otherwise would lead to disharmony and absurd results by rendering §§ 12-43-224 and 12-43-225 meaningless.

Federal Tax Law

Federal law also supports the conclusion that real property subdivided into parking spaces for sale is not exempt from property tax as inventory. While inventory is not specifically defined by the South Carolina Code, S.C. Rev. Rul. #91-7 advises looking to federal income tax law for guidance in defining inventory for property tax purposes:

[T]here are several situations in which the income tax treatment of an item is dispositive of the property tax treatment. . . . For federal income tax purposes, inventory is defined as **merchandise** purchased for resale. . . .

Another federal income tax concept which is helpful in defining whether an item is considered inventory is treatment on sale.

S.C. Rev. Rul. #91-7 (emphasis added).

Federal income tax law limits inventory to merchandise because tax law has always treated the sale of goods as fundamentally different from the sale of land. In Homes by Ayres, the issue was whether inventory accounting could accurately reflect income from the construction and sale of tract housing developments. The Ninth Circuit ruled that a taxpayer could not use inventory accounting to report income from the sale of tract housing. Homes by Ayres, 795 F.2d at 835. Specifically, the court discussed the tax system's treatment of profit from the sale of land, and it made the same distinction that S.C. Rev. Rul. #91-7 makes between gains from holding capital and gains from ordinary income:

It has consistently been held that the costs of improvements to subdivided real estate held for sale are capital expenditures, allocable to the basis of the taxpayer in the various unsold lots. Gain from the sale of property is defined as 'the excess of the amount realized therefrom over the adjusted basis.' Section 1012 states that the basis of property is its cost, with some exceptions not relevant in this case. When subdivided lots are sold, "the cost or other basis of the entire property shall be equitably apportioned among the several parts, and the gain realized or loss sustained on the part of the entire property sold is the difference between the selling price and the cost or other bases allocated to such part."

The court held that a taxpayer may only inventory property other than merchandise for income tax purposes if Internal Revenue Code § 471 expressly permits it or if the Tax Commissioner specifically allows it. Id. at 836. In conclusion, the court ruled that I.R.C. § 471 does not expressly allow a taxpayer to use inventory accounting for property other than merchandise, and that "[t]he Commissioner has consistently maintained that real property cannot be inventoried for tax purposes." Id. at 835-36.

Petitioner also argues that federal law allows treating the spaces as inventory for two reasons: 1) the IRS accepted its 2007 federal income tax partnership return, which characterized the parking spaces as inventory; and 2) Petitioner claims IRC § 1237 defines real property subdivided for resale as inventory. This Court disagrees with Petitioner's first argument. The mere fact that a return is processed as submitted does not constitute the consent of the IRS Commissioner that the inventory accounting was proper. To be authoritative, the Commissioner must consent through a regulation or similar formal written document, such as a revenue ruling.

See id. at 834. Moreover, federal guidelines regarding methods of accounting for income expressly prohibit including in inventory “[r]eal estate held for sale by a real estate dealer in the ordinary course of business.” IRS Publication 538, Accounting Periods and Methods, at 17 (March 2008). Thus, a processed return without more does not constitute consent of the Commissioner or official IRS policy, *a fortiori* federal tax law, to which the Department could look for guidance.

The Court also disagrees with Petitioner’s second argument as it appears the Petitioner misreads the section. This section discusses when subdivided property is held for sale in the ordinary course of business:

Any lot or parcel which is part of a tract of real property in the hands of a taxpayer other than a C corporation shall not be deemed to be held primarily for sale to customers in the ordinary course of trade or business at the time of sale solely because of the taxpayer having subdivided such tract for purposes of sale or because of any activity incident to such subdivision or sale [if the following conditions are met.]

The above provision does not define real property subdivided for resale as inventory. It simply states that a taxpayer does not hold a parcel for sale in the ordinary course of business simply because it is subdivided as long as he has held it for five years and does not otherwise sell or develop real estate in the ordinary course of business. The purpose of the statute is to make mere subdivision of a parcel insufficient evidence to show the taxpayer is selling the property as a business rather than holding it as an investment, an important distinction of consequence for income tax rates. Additionally, the accompanying Treasury Regulation specifically states the section “has no application in determining whether or not real property is held by a taxpayer primarily for sale in his business if any requirement under the section is not met.” Treas. Reg. § 1.1237-1(a)(4) (1960). Whether a parcel is held for sale in the ordinary course of business is an altogether different question from its status as inventory. As was implicit in Homes by Ayres, even land sold to produce ordinary income is not treatable as inventory for federal income tax purposes.

Agency Policy

The Department’s longstanding administrative policy is not to treat real property as inventory. See S.C. Rev. Rul. #91-7; 27 S.C. Code Ann. Regs. 117-1700.2 (Supp. 2010) (identifying inventory of merchants as personal property). An agency’s administrative position

is entitled to great weight and should not be overruled absent compelling reasons. Multi-Cinema Ltd. v. S.C. Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). In this case, the taxpayer has not presented a compelling reason to alter this longstanding policy.

In sum and for the foregoing reasons, as a matter of law, real property subdivided into parking spaces for sale is not exempt from property tax as inventory.

ORDER

Because no genuine issues of material fact exists as to the Petitioner's subdivided parking spaces and because subdivided real property is not exempt from tax as inventory under § 12-37-220(B)(30), the Department is entitled to judgment as a matter of law. Accordingly,

IT IS HEREBY ORDERED that the Department's Motion for Summary Judgment is **GRANTED**, and that the Petitioner's Motion for Summary Judgment is **DENIED**.

AND IT IS SO ORDERED.

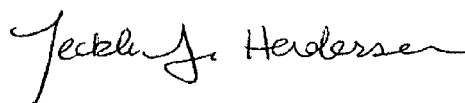


SHIRLEY C. ROBINSON
Administrative Law Judge

February 10th, 2012
Columbia, South Carolina

CERTIFICATE OF SERVICE

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



Teckla S. Henderson
Judicial Law Clerk to
The Honorable Shirley C. Robinson

February 10, 2012
Columbia, South Carolina

South Carolina Administrative Law Court (SC ALC)

Request for Contested Case Hearing FORM

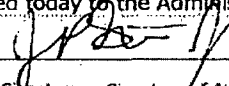
Last Name: Field House Properties, LLC	First:	Middle:	☐ Mr. ☐ Mrs.	☐ Miss ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: 1600 Gervais Street	City: Columbia			State and Zip: South Carolina 29201	
Home Number:	Work Number:	Cell Number: (803) 467-8722		*E-Mail Address: tripp@rqasc.com	

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

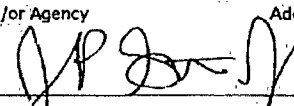
REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No	If No, please complete the following:
Are you represented by an Attorney? ☒ Yes ☐ No	Are you represented by a CPA? ☐ Yes ☒ No
Name of Attorney: J. Preston Strom, Jr.	Name of CPA:
Mailing Address: 2110 Beltline Blvd	Mailing Address:
City, State and Zip: Columbia, South Carolina 29204	City, State and Zip:
Work Number, Cell Number and E-mail Address: 803-252-4800, 803-414-1700, petestrom@stromlaw.com	Work Number, Cell Number and E-mail Address:

CASE INFORMATION

Name of the Agency that issued the decision: Department of Revenue (Example - Dept. of Revenue, Dept. of Insurance, DHEC)	
In order to have your case processed, you must attach the agency decision. Is it attached?: ☒ Yes ☐ No	If no, please explain:
Date the decision was issued: July 18, 2011	Date the decision was received: July 27, 2011
Please provide a brief statement regarding why the hearing is being requested and the relief sought: The taxpayer seeks review of the Department of Revenue's Determination that parking spaces held by the taxpayer as inventory do not qualify for the "all inventories" exempted from property taxation pursuant to S.C. Code Ann. Section 12-37-220(B)(30). The taxpayer seeks exemption of the taxpayer's park spaces from property taxation and seeks a refund for all property taxes paid.	
Payment via ☒ Check ☐ Money Order ☐ Cash for \$ submitted today to the Administrative Law Court via	(applicable filing fee pursuant to ALC Rule 71) is being ☐ U.S. Postal Service ☒ Hand-delivery
 X Your Signature or Signature of Attorney/CPA	August 16, 2011 Date

CERTIFICATE OF SERVICE (MUST BE COMPLETED)

Your Name:	Date:	City:	State:
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):			
Department of Revenue	301 Gervais Street, P.O. Box 125	Columbia, South Carolina 29214	
Name and/or Agency	Address	City, State and Zip	
Name and/or Agency	Address	City, State and Zip	
 X Your Signature or Signature of Attorney/CPA	August 16, 2011 Date		

DEPARTMENT DETERMINATION

Taxpayer:

Field House Properties, LLC
1600 Gervais Street
Columbia, SC 29201

Period Involved:

Property tax for 2008

Refund Claim \$37,526

Matter in Dispute:

Is a parcel of real property subdivided into parking spaces for sale exempt from property tax as inventory?

Determination:

Real property subdivided into parking spaces for sale is not exempt from property tax as inventory.

Relevant Facts:

1. In December of 2006, the taxpayer purchased an undeveloped parcel of real property near the University of South Carolina football stadium to develop as a tailgating area. The taxpayer paved the parcel and installed a metal roof, common restrooms, a storage building, and two gates before subdividing out approximately 99 parking spaces. The taxpayer then began selling the parking spaces.
2. In October 2008, the Richland County Assessor issued the taxpayer Notices of Classification, Appraisal, and Assessment of property taxes for 55 spaces not yet sold. The assessment valued each parking space at \$25,000 and assessed taxes totaling \$37,526 for the entire parcel.
3. By letter to the Assessor dated September 12, 2008, the taxpayer challenged the assessment, arguing that S.C. Code Ann. § 12-37-220(B)(30) (2000) exempted the subdivided parcel as "inventory." On October 30, 2008, the taxpayer filed a formal Application for Review of Appraisal/Assessment with the Assessor.
4. On November 10, 2008, the Assessor notified the taxpayer of the Assessor's decision not to adjust the assessment and of the taxpayer's right to appeal the decision to the Richland County Board of Assessment Appeals. The taxpayer

filed an appeal by letter dated December 10, 2008. However, the taxpayer, believing that the Board did not have authority under S.C. Code Ann. § 12-60-2530(A) (2000) to rule on claims relating to property tax exemptions, also notified the Department of its position by letter dated December 11, 2008.

5. On or about February 10, 2009, the taxpayer provided the Department an incomplete Application for Exemption for the parcel. On April 2, 2009, the Department's Property Tax Division (Division) notified the taxpayer that the parcel was not exempt from property tax because "inventory" under § 12-37-220(B)(30) does not extend to real property.
6. On or before December 4, 2009, the taxpayer paid to Richland County all 2008 property taxes assessed on the parcel. The taxpayer filed with the Division a claim for refund dated March 9, 2010, restating the parking spaces should be exempted as inventory.
7. On March 26, 2010, the Division denied the taxpayer's claim for refund on the same grounds stated in its April 2, 2009 letter. By letter dated June 24, 2010, the taxpayer protested the denial.

Analysis:

S.C. Code Ann. § 12-37-210 (2000) provides that all real and personal property in this State shall be subject to taxation. Section 12-37-220(B)(30) provides an exemption from property tax for "[a]ll inventories." The subdivided parking spaces are not exempt from property tax under § 12-30-220(B)(30) as inventory for four reasons. First, the Legislature only intended for that section to exempt tangible personal property based on the plain meaning of the term inventory. Second, the legislative history of the statutes in Title 12 shows the Legislature considers tangible goods, not real property, as inventory. Third, federal tax law limits inventory to tangible personal property. Fourth, the Department's longstanding administrative policy is that real property is not treated as inventory.

I. The Legislature Only Intended For § 12-37-220(B)(30) To Exempt Tangible Personal Property Based On The Plain Meaning Of The Term Inventory.

Section 12-37-220(B)(30) provides an exemption from property tax for "[a]ll inventories." The plain language of the statute shows the Legislature intended for inventory to include only tangible personal property. In interpreting a taxing statute, the primary consideration is ascertaining the intent of the Legislature. Citizens and Southern Sys., Inc. v. S.C. Tax Comm'n, 280 S.C. 138, 311 S.E.2d 717 (1984). The statute as a whole must receive a reasonable, practical, and fair interpretation consistent with the purpose, design, and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption.

John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer, 278 S.E.2d 340 (1981).

Based on the plain meaning of the term inventory, the Legislature intended to limit the term to tangible personal property. "Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning." Lee v. Thermal Engineering Corp., 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002); see also State v. Landis, 362 S.C. 97, 606 S.E.2d 503 (Ct. App. 2004) ("When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning."). Black's defines inventory as "raw materials or goods in stock." Black's Law Dictionary 844 (8th ed. 2004). For purposes of bankruptcy law, it defines the term as "personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service; raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock." Id. Inventory has otherwise been defined for property tax purposes as "the group of personal property items whose value is exhibited by value in exchange, that is, ownership is solely for the purpose of sale rather than use." Glossary for Property Appraisal and Assessment 72 (International Association of Assessing Officers 1997). See also Homes by Ayres v. Comm'r of Internal Revenue, 795 F.2d 832, 836, n. 5 (9th Cir. 1986) ("The Tax Court has held that merchandise does not include real property. This conclusion is supported by accounting literature which defines merchandise as tangible personal property." Id. (citations omitted)). In each case, inventory is specifically limited to personal property and does not include real property.

II. The Legislative History Of The Statutes In Title 12 Shows The Legislature Considers Tangible Goods, Not Real Property, As Inventory.

Not only does the traditional plain meaning of inventory include only tangible goods, but nothing in the history of Title 12 shows the legislature intended to broaden that definition to include real property. In determining the Legislature's intent under § 12-37-220(B)(30), it is proper to trace the provision's history and the history of related statutes. Palmetto Lumber Co. v. Southern Ry., 154 S.C. 129, 151 S.E. 279 (1929). The 1976 version of the Code set a general, uniform assessment rate of six percent for taxation of "[a]ll inventories of business establishments." S.C. Code Ann. § 12-43-220(b) (1976). That provision is still in place today. Importantly, while § 12-37-220(B)(30) now overrides the six percent rate by exempting all inventories, the history of the subsection shows the Legislature only specifically considered tangible goods in allowing the inventory exemption.

In 1976, prior to the enactment of § 12-37-220(B)(30), the Code set forth rates for taxing "merchant's inventories" and rules for fixing "the value of the inventories."¹ S.C. Code Ann. §§ 12-37-1410 and 12-37-1420 (1976). Similarly, Article 9 of the 1976 version of

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the Code required manufacturers to make a return of "all manufactured articles which have been offered for sale at retail or which have been available for sale at retail." S.C. Code Ann. § 12-37-1320 (1976). The Legislature later made clear that § 12-37-1320 was describing a manufacturer's retail inventory by changing the wording to exempt from tax "all inventories of manufacturers, except manufactured articles which have been offered for sale at retail or which have been available for sale at retail." Act No. 472, 1980 S.C. Acts 1401 (codified at § 12-37-220(A)(6)). Act No. 540, 1986 S.C. Acts 4877 provided for abrogation of property tax on inventory: it exempted, "[e]ffective for the 1988 and subsequent taxable years, all inventories of business establishments." Act No. 540, 1986 S.C. Acts 4877 (codified at § 12-37-220(B)(30)). Act No. 361, 1992 S.C. Acts 2075 changed subsection (B)(30) to exempt "[a]ll inventories." Act No. 363, 1996 S.C. Acts 2226 repealed §§ 12-37-1410 and 12-37-1420 relating to merchants. Thus, the Legislature only specifically considered tangible goods in allowing the inventory exemption. In other words, not only does the traditional plain meaning of inventory include only tangible goods, but nothing in the history of Title 12 shows the legislature intended to broaden the traditional meaning to include real property.

Further supporting the exclusion of real property from inventory is the Legislature's longstanding taxation of real property held and subdivided for purposes of sale notwithstanding the inventory exemption. "Statutes pertaining to the same subject should be harmonized," Smith v. S.C. Highway Comm'n, 138 S.C. 374, 136 S.E. 487 (1927), and "[a] statute must be interpreted so as to avoid absurd results," State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Since 1979, the Legislature has specifically provided a tax rate for certain undeveloped parcels subdivided into lots for sale:

Notwithstanding the requirement that real property is required by law to be appraised at fair market value for ad valorem tax purposes, when undeveloped acreage is surveyed into subdivision lots and the conditional or final plat is recorded with the appropriate county official, the county assessor shall appraise each lot as an individual property and then discount his gross actual market value estimate of the developer's lot holdings

Act No. 145, 1979 S.C. Acts 252 (codified at S.C. Code Ann. § 12-43-224 (2000)). Thus, rather than classifying subdivided lots held for sale as inventory, the Legislature has addressed them separately and provided a discounted tax therefor. In 2000, the Legislature narrowed the discount to parcels subdivided into "at least ten building lots." S.C. Code Ann. § 12-43-225 (Supp. 2010). Accordingly, although the parking spaces at issue do not fall under the current subdivided lots provision, the statutes show that the Legislature never intended for inventory to subsume subdivided lots for sale. To conclude otherwise would lead to disharmony and absurd results by rendering sections 12-43-224 and 12-43-225 meaningless.

III. Federal Tax Law Limits Inventory To Tangible Personal Property.

Federal law also supports the conclusion that real property subdivided into parking spaces for sale is not exempt from property tax as inventory. While inventory is not specifically defined by the South Carolina Code, S.C. Rev. Rul. #91-7 advises looking to federal income tax law for guidance in defining inventory for property tax purposes:

. . . [T]here are several situations in which the income tax treatment of an item is dispositive of the property tax treatment. . . . For federal income tax purposes, inventory is defined as **merchandise** purchased for resale. . . .

Another federal income tax concept which is helpful in defining whether an item is considered inventory is treatment on sale.

S.C. Rev. Rul. #91-7 (emphasis added). Federal income tax law limits inventory to merchandise because tax law has always treated the sale of goods as fundamentally different from the sale of land. In Homes by Ayres, 795 F.2d at 836, the issue was whether inventory accounting could accurately reflect income from the construction and sale of tract housing developments. The Ninth Circuit ruled that a taxpayer could not use inventory accounting to report income from the sale of tract housing. Homes by Ayres at . The court discussed the tax system's treatment of profit from the sale of land, and it made the same distinction that S.C. Rev. Rul. #91-7 made between gains from holding capital and gains from ordinary income:

"It has consistently been held that the costs of improvements to subdivided real estate held for sale are capital expenditures, allocable to the basis of the taxpayer in the various unsold lots." Gain from the sale of property is defined as "the excess of the amount realized therefrom over the adjusted basis." Section 1012 states that the basis of property is its cost, with some exceptions not relevant in this case. When subdivided lots are sold, "the cost or other basis of the entire property shall be equitably apportioned among the several parts, and the gain realized or loss sustained on the part of the entire property sold is the difference between the selling price and the cost or other bases allocated to such part."

Id. at 835 (citations omitted). The court held that a taxpayer may only inventory property other than merchandise² for income tax purposes if Internal Revenue Code (IRC) § 471³ expressly permits it or if the Tax Commissioner specifically allows it. Id. at 836. The court concluded that IRC § 471 does not expressly allow a taxpayer to use inventory accounting for property other than merchandise, and that “[t]he Commissioner has consistently maintained that real property cannot be inventoried for tax purposes.” Id. at 835-36 (citations omitted).⁴

The taxpayer specifically argues that federal law allows treating the spaces as inventory for two reasons. First, the IRS accepted the taxpayer’s 2007 federal income tax partnership return characterizing the parking spaces as inventory. This argument fails because merely processing the return as submitted does not constitute the consent of the IRS Commissioner that inventory accounting was proper. The Commissioner must consent through a regulation or similar formal, written document, such as a revenue ruling. See Id. at 834. Indeed, federal guidelines regarding methods of accounting for income expressly prohibit including in inventory “[r]eal estate held for sale by a real

²Merchandise is “a movable object involved in trade or traffic” and “an article of trading or the class of objects in which trade is carried on by physical transfer” and “generally excludes real estate.” Black’s Law Dictionary 844 (8th ed. 2004).

³IRC § 471 provides the “General rule for inventories”:

(a) General rule—Whenever in the opinion of the Secretary the use of inventories is necessary in order clearly to determine the income of any taxpayer, inventories shall be taken by such taxpayer on such basis as the Secretary may prescribe as conforming as nearly as may be to the best accounting practice in the trade or business and as most clearly reflecting the income.

(b) Estimates of inventory shrinkage permitted—A method of determining inventories shall not be treated as failing to clearly reflect income solely because it utilizes estimates of inventory shrinkage that are confirmed by a physical count only after the last day of the taxable year if—

(1) the taxpayer normally does a physical count of inventories at each location on a regular and consistent basis, and

(2) the taxpayer makes proper adjustments to such inventories and to its estimating methods to the extent such estimates are greater than or less than the actual shrinkage.

⁴The Commissioner has still not consented to inventory accounting for real property. IRS Rev. Proc. #2009-39.

estate dealer in the ordinary course of business.” IRS Publication 538, Accounting Periods and Methods, at 17 (March 2008). Thus, a mere processed return without more does not constitute consent of the Commissioner or official IRS policy, *a fortiori* federal tax law, to which the Department could look for guidance.

Second, the taxpayer claims IRS § 1237 defines real property subdivided for resale as inventory. The taxpayer misreads the section; it simply discusses when subdivided property is held for sale in the ordinary course of business. That provision states:

Any lot or parcel which is part of a tract of real property in the hands of a taxpayer other than a C corporation shall not be deemed to be held primarily for sale to customers in the ordinary course of trade or business at the time of sale solely because of the taxpayer having subdivided such tract for purposes of sale or because of any activity incident to such subdivision or sale [if the following conditions are met.]

26 U.S.C.A. § 1237(a). Thus, the provision does not define real property subdivided for resale as inventory. In simplified terms, it states that a taxpayer does not hold a parcel for sale in the ordinary course of business simply because it is subdivided as long as he has held it for five years and does not otherwise sell or develop real estate in the ordinary course of business. The thrust of the statute is to make mere subdivision of a parcel insufficient evidence to show the taxpayer is selling the property as a business rather than holding it as an investment, a distinction of consequence for income tax rates. The accompanying Treasury Regulation specifically states the section “has no application in determining whether or not real property is held by a taxpayer primarily for sale in his business if any requirement under the section is not met.” Treas. Reg. § 1.1237-1(a)(4) (1960). Regardless, whether a parcel is held for sale in the ordinary course of business is an altogether different question from its status as inventory; indeed, as was implicit in Homes by Ayres, even land sold to produce ordinary income is not treatable as inventory for federal income tax purposes.

IV. The Department’s Longstanding Administrative Policy Is Not To Treat Real Property As Inventory.

Finally, real property subdivided into parking spaces for sale is not exempt from property tax as inventory because the Department’s longstanding administrative policy is not to treat real property as inventory. The administrative position of an agency is entitled to great weight and should not be overruled absent compelling reasons. Multi-Cinema Ltd. v. S.C. Tax Comm’n, 292 S.C. 411, 357 S.E.2d 6 (1987). Here, the Department has never considered inventory to include real property. See S.C. Rev. Rul. #91-7 (answering the question, “What is the definition of ‘inventory’ for property tax purposes?” with “Merchandise purchased for resale is ‘inventory’ for purposes of the business inventory tax exemption” (emphasis added)); 27 S.C. Code Ann. Regs.

117-1700.2 (Supp. 2010) (identifying inventory of merchants as personal property). Further, the taxpayer has not presented a compelling reason to alter this longstanding policy. Thus, real property cannot be exempt as inventory.

Conclusion:

For the foregoing reasons, real property subdivided into parking spaces for sale is not exempt from property tax as inventory.

July 18, 2011

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Field House Properties, LLC,	)	DOCKET NO. 11-ALJ-17-0430-CC
	)	
Petitioner,	)	
	)	
v.	)	RESPONDENT'S MOTION FOR
	)	SUMMARY JUDGMENT
South Carolina Department of Revenue,	)	
	)	
Respondent.	)	
	)	

TO: The Honorable Shirley C. Robinson, Presiding Judge

Pursuant to ALC Rule 68 and Rule 56(c), SCRCF, Respondent South Carolina Department of Revenue (Department) moves herein for an order of summary judgment on the grounds below in the case of Petitioner (taxpayer) against the Department.

FACTS

Based on the pleadings in this case, in particular the prehearing statements of the Department and the taxpayer, the following facts are not in dispute. In December of 2006, the taxpayer purchased an undeveloped parcel of real property near the University of South Carolina football stadium. The taxpayer paved the parcel before subdividing out approximately ninety nine parking spaces. The taxpayer then began selling the parking spaces. In October 2008, the Richland County Assessor issued the taxpayer Notices of Classification, Appraisal, and Assessment of property taxes for fifty five spaces not yet sold. The assessment valued each parking space at \$25,000 and assessed taxes totaling \$37,526 for the entire parcel.

ARGUMENT

The sole issue raised in the taxpayer's request for a contested case hearing and its prehearing statement is whether its subdivided parking spaces are exempt from property tax as inventory under S.C. Code Ann. § 12-37-220(B)(30) (Supp. 2010). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCPP. In this case, no genuine issue of material fact exists as to the subdivided parking spaces that the taxpayer claims are exempt. Further, the Department is entitled to judgment as a matter of law because subdivided real property is not exempt from tax as inventory under §12-37-220(B)(30). Accordingly, the Department asks this Court to grant its motion for summary judgment.

S.C. Code Ann. § 12-37-210 (2000) provides that all real and personal property in this State shall be subject to taxation. Section 12-37-220(B)(30) provides an exemption from property tax for "[a]ll inventories." The taxpayer's subdivided parking spaces are not exempt from property tax under § 12-37-220(B)(30) as inventory for four reasons. First, the Legislature only intended for that section to exempt tangible personal property based on the plain meaning of the term inventory. Second, the legislative history of the statutes in Title 12 shows the Legislature considers tangible goods, not real property, as inventory. Third, federal tax law limits inventory to tangible personal property. Fourth, the Department's longstanding administrative policy is that real property is not treated as inventory.

I. The Legislature Only Intended For § 12-37-220(B)(30) To Exempt Tangible Personal Property Based On The Plain Meaning Of The Term Inventory.

Section 12-37-220(B)(30) provides an exemption from property tax for “[a]ll inventories.” The plain language of the statute shows the Legislature intended for inventory to include only tangible personal property. In interpreting a taxing statute, the primary consideration is ascertaining the intent of the Legislature. Citizens and Southern Sys., Inc. v. S.C. Tax Comm’n, 280 S.C. 138, 311 S.E.2d 717 (1984). The statute as a whole must receive a reasonable, practical, and fair interpretation consistent with the purpose, design, and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption. John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer, 276 S.C. 314, 278 S.E.2d 340 (1981).

Based on the plain meaning of the term inventory, the Legislature intended to limit the term to tangible personal property. “Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.” Lee v. Thermal Engineering Corp., 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002); see also State v. Landis, 362 S.C. 97, 606 S.E.2d 503 (Ct. App. 2004) (“When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning.”). Black’s defines inventory as “raw materials or goods in stock.” Black’s Law Dictionary 844 (8th ed. 2004). For purposes of bankruptcy law, it defines the term as “personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service; raw materials, work in process, or materials

used or consumed in a business, including farm products such as crops or livestock.” Id. Inventory has otherwise been defined for property tax purposes as “the group of personal property items whose value is exhibited by value in exchange, that is, ownership is solely for the purpose of sale rather than use.” Glossary for Property Appraisal and Assessment 72 (International Association of Assessing Officers 1997). See also Homes by Ayres v. Comm’r of Internal Revenue, 795 F.2d 832, 836, n. 5 (9th Cir. 1986) (“The Tax Court has held that merchandise does not include real property. This conclusion is supported by accounting literature which defines merchandise as tangible personal property.” Id. (citations omitted)). In each case, inventory is specifically limited to personal property and does not include real property.

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sale notwithstanding the inventory exemption. "Statutes pertaining to the same subject should be harmonized," Smith v. S.C. Highway Comm'n, 138 S.C. 374, 136 S.E. 487 (1927), and "[a] statute must be interpreted so as to avoid absurd results," State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Since 1979, the Legislature has specifically provided a tax rate for certain undeveloped parcels subdivided into lots for sale:

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consistently maintained that real property cannot be inventoried for tax purposes.” *Id.* at 835-36 (citations omitted).⁴

The taxpayer specifically argues that federal law allows treating the spaces as inventory for two reasons. First, the IRS accepted the taxpayer’s 2007 federal income tax partnership return characterizing the parking spaces as inventory. This argument fails because merely processing the return as submitted does not constitute the consent of the IRS Commissioner that inventory accounting was proper. The Commissioner must consent through a regulation or similar formal, written document, such as a revenue ruling. *See Id.* at 834. Indeed, federal guidelines regarding methods of accounting for income expressly prohibit including in inventory “[r]eal estate held for sale by a real estate dealer in the ordinary course of business.” IRS Publication 538, Accounting Periods and Methods, at 17 (March 2008). Thus, a mere processed return without more does not constitute consent of the Commissioner or official IRS policy, *a fortiori* federal tax law, to which the Department could look for guidance.

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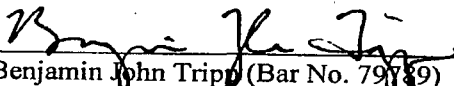
IV. The Department's Longstanding Administrative Policy Is Not To Treat Real Property As Inventory.

Finally, real property subdivided into parking spaces for sale is not exempt from property tax as inventory because the Department's longstanding administrative policy is not to treat real property as inventory. The administrative position of an agency is entitled to great weight and should not be overruled absent compelling reasons. Multi-Cinema Ltd. v. S.C. Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). Here, the Department has never considered inventory to include real property. See S.C. Rev. Rul.

#91-7 (answering the question, "What is the definition of 'inventory' for property tax purposes?" with "**Merchandise** purchased for resale is 'inventory' for purposes of the business inventory tax exemption" (emphasis added); 27 S.C. Code Ann. Regs. 117-1700.2 (Supp. 2010) (identifying inventory of merchants as personal property). Further, the taxpayer has not presented a compelling reason to alter this longstanding policy. Thus, real property cannot be exempt as inventory.

Conclusion

Because no genuine issue of material fact exists as to the taxpayer's subdivided parking spaces and because subdivided real property is not exempt from tax as inventory under §12-37-220(B)(30), the Department is entitled to judgment as a matter of law and asks this Court to grant its motion for summary judgment.


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Columbia, South Carolina
October 26, 2011

**) CROSS MOTION FOR SUMMARY
) JUDGMENT AND MEMORANDUM
) IN OPPOSITION TO RESPONDENT'S
) MOTION FOR SUMMARY JUDGMENT**

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3. By letter to the Assessor dated September 12, 2008, the Petitioner challenged the assessment, arguing that S.C. Code § 12-37-220(B)(30) exempted the subdivided parcel as “inventory.” On October 30, 2008, the Petitioner filed a formal Application for Review of Appraisal/Assessment with the Assessor.
4. On November 10, 2008, the Assessor notified the Petitioner of the Assessor’s decision not to adjust the assessment and of the Petitioner’s right to appeal the decision to the Richland County Board of Assessment Appeals. The Petitioner filed an appeal by letter dated December 10, 2008. However, the Petitioner, knowing that the Board lacked authority under S.C. Code § 12-60-2530(A) to rule on claims relating to property tax exemptions, also notified the Department of Revenue of its position by letter dated December 11, 2008.
5. On April 2, 2009, the Department’s Property Tax Division notified the Petitioner of its determination that the parcel was not exempt from property tax because the “all inventory” exemption under § 12-37-220(B)(30) will only be applied to personal property.
6. On or before December 4, 2009, the Petitioner paid to Richland County all 2008 property taxes assessed on the parcel. The Petitioner filed with the Division a claim for refund dated March 9, 2010, restating the parking spaces should be exempted as inventory.
7. On March 26, 2010, the Division denied the Petitioner’s claim for refund on the same grounds stated in its April 2, 2009 letter. By letter dated June 24, 2010, the Petitioner protested the denial.
8. On July 18, 2011, more than 16 months after seeking review, the Petitioner received notice from the Department of Revenue that it was denying Petitioner’s refund request.
9. Petitioner timely filed its request for a contested case with this Honorable Court.

STANDARD FOR DETERMINATION

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Hamiter v. Retirement Division of South Carolina, 326 S.C. 93, 96, 484 S.E.2d 586, 587 (1997); Café Assocs., Ltd. V. Gerngross, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991). In determining whether any triable issue of fact exists which will preclude summary judgment, the evidence, and all inferences that can be reasonably drawn, must be viewed in the light most favorable to the non-moving party. Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 33, 530 S.E.2d 369, 371 (2000).

ARGUMENT AND CITATION TO AUTHORITY

In this matter, the facts are undisputed and as such no genuine issue of material fact exists to preclude summary judgment. The sole issue before this Honorable Court is whether S.C. Code § 12-37-220(B)(30) provides a property taxation exemption for the Petitioner's subdivided parcels on these very specific facts. As set forth herein, the legislature made no distinction between real and personal property in S.C. Code § 12-37-220(B)(30). In addition, the income tax treatment of the sale is dispositive as to the tax treatment under S.C. Code § 12-37-220(B)(30). Based on the analysis herein, Petitioner is entitled to judgment as a matter of law and Petitioner asks this Honorable Court to grant its Motion for Summary Judgment and, as a result, deny Respondent's Motion for the same.

I. THE LEGISLATURE DREW NO DISTINCTION BETWEEN REAL AND PERSONAL PROPERTY IN S.C. CODE § 12-37-220(B).

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "All rules of statutory construction are subservient to the one that the legislative 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.” Broadhurst v. City of Myrtle Beach Election Comm’n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). While interpreting statutes, Courts should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute’s operation. Sloan v. S.C. Bd. of Physical Therapy Exam’rs, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006).

S.C. Code § 12-37-220(B) provides “[i]n addition to the exemptions provided in subsection (A), the following classes of property are exempt from ad valorem taxation subject to the provisions of Section 12-4-720: ... (30) All inventories.” This section provides an exemption to prevent those who pay ordinary income rates on sales from also paying property taxes on that property prior to the sale. This subsection makes no distinction between real property and personal property. In fact, in a number of the other subsections in S.C. Code § 12-37-220(B) the legislation makes such a distinction by its very terms. For example, S.C. Code § 12-37-220(B)(17) and (25) apply only to personal property. S.C. Code § 12-37-220(B)(17) provides an exemption for “[p]ersonal property in transit with “no situs” status as defined in Article 7 of Chapter 37 of Title 12 and subject to the record keeping requirements and penalties prescribed in that article shall not be subject to ad valorem taxation” and § 12-37-220(B)(25) provides an exemption for “[a]ll personal property loaned or leased on a nonprofit basis to a state agency, county, municipality, or other political subdivision. S.C. Code § 12-37-220(B)(17) and (25) (emphasis added). Similarly the legislature has also limited some exemptions to real property. For example, S.C. Code § 12-37-220(B)(18)(“Real property leased on a nonprofit basis, to a state agency, county, municipality or other political subdivision so long as it is used for a general public purpose; provided, however, this exemption shall not apply to property used for office space or warehousing”) and (31)(“All real property of churches which extends beyond the

buildings and premises actually occupied by the churches ...”). S.C. Code § 12-37-220(B)(18) and (31) (emphasis added). As these subsections make clear, the legislature did in fact draw a destination when appropriate in drafting this statute but chose not to do so in the case of S.C. Code § 12-37-220(B)(30). As a result, the fact that the lots in this matter are real property does not preclude the exclusion from being applied to the Petitioner’s real property inventory as the plain and ordinary meaning of the subsection does not so limited the exclusion.

II. INCOME TAX TREATMENT IS DISPOSITIVE AS TO THIS EXEMPTION.

The South Carolina Department of Revenue issued Ruling # 91-7 to define “inventory,” and determined “... there are several situations in which the income tax treatment of an item is dispositive of the property tax treatment...” SCDOR applied the following concepts to determine “inventory:”

For federal income tax purposes, inventory is defined as merchandise purchased for resale. The purpose for which merchandise was bought governs in determining whether it is inventory ... Another federal income tax concept which is helpful in defining whether an item is considered inventory is its treatment on sale. When inventory is sold, the resulting income is treated as ordinary income. In contrast, when trade or business assets held for more than one year are sold, capital gain may result after recapture for depreciation.

As a result of this ruling, income tax principles are used to determine whether property is defined as inventory for purposes of the exemption provided for in S.C. Code § 12-37-220(B)(30).

Internal Revenue Code § 1237 provides tax treatment for subdivided lots. Applying this section to Field House Properties, LLC results in the Petitioner holding the lots at issue in its ordinary course of business resulting in ordinary income tax treatment upon the sale of the Petitioner inventory lots. Petitioner filed a 2007 and 2008 Federal Partnership Tax Return defining its principal business activity as “Development and Sales.” See Exhibit 1, 2007 Income

Tax Return and See Exhibit 2, 2008 Income Tax Return. In addition, these returns show that cost of goods sold is calculated by taking the Petitioner's "inventory at the beginning of the year", making adjustments and subtracting "inventory at the end of the year". See Exhibit 1, 2007 Income Tax Return and See Exhibit 2, 2008 Income Tax Return. The return itself classifies the property as inventory. See Exhibit 1, 2007 Income Tax Return and See Exhibit 2, 2008 Income Tax Return. As a result, for income taxes purposes, the IRS and the South Carolina Department of Revenue categorized these lots as inventory and, when they are sold, the resulting income was classified as ordinary income. As the Petitioner pays ordinary income on the proceeds received from the sale, the lots are inventory pursuant to Ruling # 91-7 and exempt from property taxation, pursuant to South Carolina Code § 12-37-220(B)(30).

CONCLUSION

For the foregoing reasons, Petitioner asks this Honorable Court to grant its Motion for Summary Judgment and to deny Respondent's request for the same.

RESPECTFULLY SUBMITTED this 28rd day of November, 2011,



STROM LAW FIRM, LLC

J. Preston Strom, Jr.

John R. Alphin

2110 Beltline Blvd., Suite A

Columbia, South Carolina 29204

(803) 252-4800

Form 1065
Department of the Treasury
Internal Revenue Service

U.S. Return of Partnership Income

For calendar year 2007, or tax year beginning _____ and ending _____

OMB No. 1545-0099

2007

A Principal business activity
DEVELOPMENT AND SALES

B Principal product or service
PARKING FACILITY

C Business code number
237210

Name of partnership

FIELD HOUSE PROPERTIES, LLC

Number, street, and room or suite no. If a P.O. box, see the instructions.

1600 GERVAIS STREET

City or town, state, and ZIP code

COLUMBIA, SC 29201

D Employer identification number

20-8059372

E Date business started

12/18/2006

F Total assets

\$ 1,012,270.

G Check applicable boxes: (1) ☒ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return
H Check accounting method: (1) ☐ Cash (2) ☒ Accrual (3) ☐ Other (specify) **I** Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year **4**
J Check if Schedule M-3 attached ☐

Caution: Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income	1 a Gross receipts or sales	1a	986,000.	1c	986,000.
	b Less returns and allowances	1b			
	2 Cost of goods sold (Schedule A, line 8)	2		645,298.	
	3 Gross profit. Subtract line 2 from line 1c	3		340,702.	
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach schedule)	4			
	5 Net farm profit (loss) (attach Schedule F (Form 1040))	5			
	6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)	6			
	7 Other income (loss) (attach schedule)	7			
8 Total income (loss). Combine lines 3 through 7	8		340,702.		
Deductions (see instructions for limitations)	9 Salaries and wages (other than to partners) (less employment credits)	9			
	10 Guaranteed payments to partners	10		5,400.	
	11 Repairs and maintenance	11		100.	
	12 Bad debts	12			
	13 Rent	13			
	14 Taxes and licenses	14			
	15 Interest	15		16,756.	
	16 a Depreciation (if required, attach Form 4562)	16a			
	b Less depreciation reported on Schedule A and elsewhere on return	16b			
	17 Depletion (Do not deduct oil and gas depletion.)	17			
	18 Retirement plans, etc.	18			
	19 Employee benefit programs	19			
	20 Other deductions (attach schedule)	20	SEE STATEMENT 1	23,941.	
	21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20	21		46,197.	
22 Ordinary business income (loss). Subtract line 21 from line 8	22		294,505.		

Sign Here

Signature of general partner or limited liability company member-manager

Date

May the IRS discuss this return with the preparer shown below (see instr. 7)?

☒ Yes ☐ No

Paid

Preparer's signature

Date

Check if self-employed

Preparer's SSN or PTIN

Preparer's Use Only.

Firm's name (or yours if self-employed), address, and ZIP code

MCGREGOR AND COMPANY, LLP
POST OFFICE BOX 135
COLUMBIA, SOUTH CAROLINA 29202

EIN

57-0292726

Phone no.

(803) 787-0003

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form 1065 (2007)

711001 JWA
12-27-07

Schedule A Cost of Goods Sold (see the instructions)

1	Inventory at beginning of year	1	
2	Purchases less cost of items withdrawn for personal use	2	
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	SEE STATEMENT 2
6	Total. Add lines 1 through 5	6	1,603,652.
7	Inventory at end of year	7	1,603,652.
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	958,354.
			645,298.

9 a Check all methods used for valuing closing inventory:

- (i) ☒ Cost as described in Regulations section 1.471-3
(ii) ☐ Lower of cost or market as described in Regulations section 1.471-4
(iii) ☐ Other (specify method used and attach explanation) ▶

- b Check this box if there was a writedown of "subnormal" goods as described in Regulations section 1.471-2(c) ▶ ☐
c Check this box if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐
d Do the rules of section 263A (for property produced or acquired for resale) apply to the partnership? ☐ Yes ☒ No
e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☒ No
If "Yes," attach explanation.

Schedule B Other Information

	Yes	No
1 What type of entity is filing this return? Check the applicable box: a ☐ Domestic general partnership b ☐ Domestic limited partnership c ☒ Domestic limited liability company d ☐ Domestic limited liability partnership e ☐ Foreign partnership f ☐ Other ▶		
2 Are any partners in this partnership also partnerships?		X
3 During the partnership's tax year, did the partnership own any interest in another partnership or in any foreign entity that was disregarded as an entity separate from its owner under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," see instructions for required attachment		X
4 Did the partnership file Form 8893, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details		X
5 Does this partnership meet all three of the following requirements? a The partnership's total receipts for the tax year were less than \$250,000; b The partnership's total assets at the end of the tax year were less than \$600,000; and c Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; Item F on page 1 of Form 1065; or Item L on Schedule K-1.	X	
6 Does this partnership have any foreign partners? If "Yes," the partnership may have to file Forms 8804, 8805 and 8813. See the instructions		X
7 Is this partnership a publicly traded partnership as defined in section 469(k)(2)?		X
8 Has this partnership filed, or is it required to file, a return under section 6111 to provide information on any reportable transaction?		X
9 At any time during calendar year 2007, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the instructions for exceptions and filing requirements for Form TD F 90-22.1. If "Yes," enter the name of the foreign country. ▶		X
10 During the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3520. See the instructions		X
11 Was there a distribution of property or a transfer (for example, by sale or death) of a partnership interest during the tax year? If "Yes," you may elect to adjust the basis of the partnership's assets under section 754 by attaching the statement described under Elections Made By the Partnership in the Instructions		X
12 Enter the number of Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return ▶		

Designation of Tax Matters Partner (see the instructions)

Enter below the general partner designated as the tax matters partner (TMP) for the tax year of this return:

Name of designated TMP ▶ [REDACTED] Identifying number of TMP ▶ [REDACTED]
Address of designated TMP ▶ [REDACTED]

JWA
711011
12-27-07

Form 1065 (2007)

EXHIBIT

2

1065
Form
Department of the Treasury
Internal Revenue Service

U.S. Return of Partnership Income

For calendar year 2008, or tax year beginning _____, ending _____

OMB No. 1545-0049

2008

A Principal business activity DEVELOPMENT AND SALES	Use the IRS label. Otherwise, print or type.	Name of partnership FIELD HOUSE PROPERTIES, LLC	D Employer identification number 20-8059372
B Principal product or service PARKING FACILITY		Number, street, and room or suite no. If a P.O. box, see the instructions. 1600 GERVAIS STREET	E Date business started 12/18/2006
C Business code number 237210		City or town, state, and ZIP code COLUMBIA, SC 29201	F Total assets \$ 900,416.

G Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return (6) ☐ Technical termination - also check (1) or (2)

H Check accounting method: (1) ☐ Cash (2) ☒ Accrual (3) ☐ Other (specify) _____

I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year _____ **4**

J Check if Schedule M-3 attached ☐

Caution. Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income	1 a Gross receipts or sales	1a	105,500.	1c	105,500.
	b Less returns and allowances	1b			
	2 Cost of goods sold (Schedule A, line 8)			2	66,201.
	3 Gross profit. Subtract line 2 from line 1c			3	39,299.
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)			4	
	5 Net farm profit (loss) (attach Schedule F (Form 1040))			5	
	6 Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			6	
	7 Other income (loss) (attach statement)			7	
	8 Total income (loss). Combine lines 3 through 7			8	39,299.
Deductions (see the instructions for limitations)	9 Salaries and wages (other than to partners) (less employment credits)			9	
	10 Guaranteed payments to partners			10	5,400.
	11 Repairs and maintenance			11	3,115.
	12 Bad debts			12	
	13 Rent			13	
	14 Taxes and licenses		SEE STATEMENT 1	14	1,432.
	15 Interest			15	44,609.
	16 a Depreciation (if required, attach Form 4562)	16a			
	b Less depreciation reported on Schedule A and elsewhere on return	16b		16c	
	17 Depletion (Do not deduct oil and gas depletion.)			17	
	18 Retirement plans, etc.			18	
	19 Employee benefit programs			19	
	20 Other deductions (attach statement)		SEE STATEMENT 2	20	36,208.
	21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20			21	90,764.
	22 Ordinary business income (loss). Subtract line 21 from line 8			22	<51,465.>

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member manager) is based on all information of which preparer has any knowledge.

Signature of general partner or limited liability company member manager _____ **Date** _____

May the IRS discuss this return with the preparer shown below (see Instr. 7) ☒ Yes ☐ No

Paid Preparer's Use Only

Preparer's signature _____ **Date** **3/30/09** **Check if self-employed** ☐ **Preparer's SSN or PTIN** **P00799824**

Firm's name (or yours if self-employed), address, and ZIP code **MCGREGOR AND COMPANY, LLP** **EIN** **57-0292726**

POST OFFICE BOX 135 **Phone no.** **(803) 787-0003**

COLUMBIA, SOUTH CAROLINA 29202

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form 1065 (2008)

Schedule A Cost of Goods Sold (see the instructions)

1	Inventory at beginning of year	1	958,354.
2	Purchases less cost of items withdrawn for personal use	2	
3	Cost of labor	3	
4	Additional section 263A costs (attach statement)	4	
5	Other costs (attach statement)	5	SEE STATEMENT 3
6	Total. Add lines 1 through 5	6	2,311.
7	Inventory at end of year	7	960,665.
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	894,464.
			66,201.

9 a Check all methods used for valuing closing inventory:

- (i) ☒ Cost as described in Regulations section 1.471-3
 (ii) ☐ Lower of cost or market as described in Regulations section 1.471-4
 (iii) ☐ Other (specify method used and attach explanation) ▶

b Check this box if there was a writedown of "subnormal" goods as described in Regulations section 1.471-2(c) ☐c Check this box if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ☐d Do the rules of section 263A (for property produced or acquired for resale) apply to the partnership? ☐ Yes ☒ Noe Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☒ No

If "Yes," attach explanation.

Schedule B Other Information

1 What type of entity is filing this return? Check the applicable box:

- a ☐ Domestic general partnership b ☐ Domestic limited partnership
 c ☒ Domestic limited liability company d ☐ Domestic limited liability partnership
 e ☐ Foreign partnership f ☐ Other ▶

2 At any time during the tax year, was any partner in the partnership a disregarded entity, a partnership (including an entity treated as a partnership), a trust, an S corporation, an estate (other than an estate of a deceased partner), or a nominee or similar person? ☒

3 At the end of the tax year:

a Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), or trust own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below ☒

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum Percentage Owned in Profit, Loss, or Capital

b Did any individual or estate own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv) below ☒

(i) Name of Individual or Estate	(ii) Social Security Number or Employer Identification Number (if any)	(iii) Country of Citizenship (see instructions)	(iv) Maximum Percentage Owned in Profit, Loss, or Capital

4 At the end of the tax year, did the partnership:

a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv) below ☒

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

Form 1065 (2008)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley Robinson, Administrative Law Judge

Case No.: 11-ALJ-17-0430-CC

Field House Properties,

Appellant,

v.

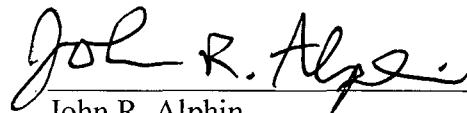
South Carolina Department of Revenue

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 6, 2012



John R. Alphin,
South Carolina Bar Number 72583
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Columbia, South Carolina 29204
Telephone No.: (803) 252-4800
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley Robinson, Administrative Law Judge

Case No.: 11-ALJ-17-0430-CC

Field House Properties,

Appellant,

v.

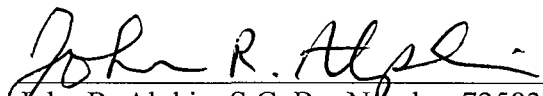
South Carolina Department of Revenue

Respondent.

PROOF OF SERVICE

Undersigned counsel hereby certifies that on September 17, 2012, he has served the Record on Appeal via first-class U.S. mail, postage paid, on the following:

Benjamin J. Tripp
State of South Carolina
Department of Revenue
Office of General Counsel for Litigation
Post Office Box 12265
Columbia, South Carolina 29211
(803) 898-5773
Attorney for Respondent



John R. Alphin, S.C. Bar Number 72583

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