

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

RECEIVED

OCT 08 2012

SC Court of Appeals

Field House Properties,

Appellant,

v.

South Carolina Department of Revenue

Respondent.

APPELLANT'S FINAL BRIEF

J. Preston Strom, Jr.
John R. Alphin
Strom Law Firm, LLC
2110 Beltline Blvd., Suite A
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.

APPELLANT'S FINAL BRIEF

J. Preston Strom, Jr.
John R. Alphin
Strom Law Firm, LLC
2110 Beltline Blvd., Suite A
Columbia, South Carolina 29204
Telephone No.: (803) 252-4800
Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities.....ii

Statement of Issues on Appeal.....1

Statement of the Case.....1

Arguments.....2

 I. STANDARD OF REVIEW.....2

 II. THE LEGISLATURE DREW NO DISTINCTION BETWEEN
 REAL AND PERSONAL PROPERTY IN S.C. CODE § 12-37-220(B).....3

 III. INCOME TAX TREATMENT IS DISPOSITIVE AS TO THIS EXEMPTION.....4

Conclusion.....5

TABLE OF AUTHORITIES

South Carolina Supreme Court Cases

Broadhurst v. City of Myrtle Beach Election Comm’n, 342 S.C. 373, 537 S.E.2d 543 (2000).....3

Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000).....3

Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004).....2

Pittman v. Grand Strand Entm’t, Inc., 363 S.C. 531, 611 S.E.2d 922 (2005).....2

Sloan v. S.C. Bd. of Physical Therapy Exam’rs, 370 S.C. 452, 636 S.E.2d 598 (2006).....3

South Carolina Court of Appeals Cases

B & B Liquors, Inc. v. O’Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct.App.2004).....2

Miller v. Blumenthal Mills, Inc. 365 S.C. 204, 616 S.E.2d 722, (Ct. App. 2005).....2

Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct.App.2005).....2

Internal Revenue Code

IRC § 1237.....4,5

South Carolina Code Annotated

S.C. Code § 12-37-220(B)(17)-(18).....3,4

S.C. Code § 12-37-220(B)(25)4

S.C. Code Ann. § 12-37-220(B)(30)-(31)1, 2, 3, 4, 5

S.C. Code Ann. § 12-60-2530(A)1

South Carolina Revenue Ruling

SCDOR Revenue Ruling # 91-7.....4,5

STATEMENT OF ISSUES ON APPEAL

- I. WHETHER S.C. CODE § 12-37-220(B)(30) PROVIDES A PROPERTY TAXATION EXEMPTION FOR THE APPELLANT'S SUBDIVIDED PARCELS BASED UPON THE FACTS SET FORTH HEREIN.

STATEMENT OF THE CASE

In December of 2006, Appellant purchased an undeveloped parcel of real property near the University of South Carolina football stadium. (R. p. 1). The Appellant paved the parcel before subdividing out approximately 99 parking spaces. (R. p. 1). The Appellant then began selling the parking spaces. (R. p. 1). In October 2008, the Richland County Assessor issued the Appellant Notices of Classification, Appraisal, and Assessment of property taxes for 55 spaces not yet sold. (R. p. 1). The assessment valued each parking space at \$25,000 and assessed taxes totaling \$37,526 for the entire parcel. (R. p. 1). By letter to the Assessor dated September 12, 2008, the Appellant challenged the assessment, arguing that S.C. Code § 12-37-220(B)(30) exempted the subdivided parcel as "inventory." (R. p. 1).

On October 30, 2008, the Appellant filed a formal Application for Review of Appraisal/Assessment with the Assessor. (R. p. 1). On November 10, 2008, the Assessor notified the Appellant of the Assessor's decision not to adjust the assessment and of the Appellant's right to appeal the decision to the Richland County Board of Assessment Appeals. (R. p. 2). The Appellant filed an appeal by letter dated December 11, 2008. (R. p. 2). Knowing that the Board lacked authority under S.C. Code § 12-60-2530(A) to rule on claims relating to property tax exemptions, the Appellant also notified the Department of Revenue of its position by letter dated December 11, 2008. On April 2, 2009, the Department's Property Tax Division notified the Appellant of its determination that the parcel was not exempt from property tax because the "all inventory" exemption under § 12-37-220(B)(30) only applies to personal property. (R. p. 2).

On or before December 4, 2009, the Appellant paid to Richland County all 2008 property taxes assessed on the parcel. (R. p. 2). The Appellant filed with the Division a claim for refund dated March 9, 2010, restating the parking spaces should be exempted as inventory. (R. p. 2). On March 26, 2010, the Division denied the Appellant's claim for refund on the same grounds stated in its April 2, 2009 letter. (R. p. 2). By letter dated June 24, 2010, the Appellant protested the denial. (R. p. 2). On July 18, 2011, more than 16 months after seeking review, the Appellant received notice from the Department of Revenue that it was denying Appellant's refund request. (R. p. 2). Appellant timely filed its request for a contested case with the Administrative Law Court. (R. p. 2). The ALC granted summary judgment for the South Carolina Department of Revenue and the Petitioner timely appealed the ruling to this Honorable Court. (R. p. 1-9).

ARGUMENT

I. STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court under Rule 56(c), SCRPC: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Miller v. Blumenthal Mills, Inc. 365 S.C. 204, 219, 616 S.E.2d 722, 729 (S.C.App. 2005); Pittman v. Grand Strand Entm't, Inc. 363 S.C. 531, 611 S.E.2d 922 (2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct.App.2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn there from must be viewed in the light most favorable to the nonmoving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004); Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct.App.2005). Based upon the analysis herein,

Appellant was entitled to judgment as a matter of law and Appellant asks this Court to reverse the ALC's finding in favor of the Department of Revenue.

II. 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;" § 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 distinction, when appropriate, in drafting this statute but chose not to do so in the case of S.C. Code § 12-37-220(B)(30). The fact that the lots in this matter are real property does not preclude the exclusion from being applied to the Appellant's real property inventory as the plain and ordinary meaning of the subsection does not so limited the exclusion. As a result, the determination by the ALC should be reversed.

III. 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.

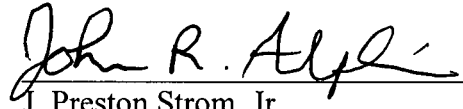
As a result of this ruling, income tax principles are used to determine whether property is defined as inventory for purposes of the exemption provided for in S.C. Code § 12-37-220(B)(30).

Internal Revenue Code § 1237 provides tax treatment for subdivided lots. Applying this section to Field House Properties, LLC results in the Appellant holding the lots at issue in its ordinary course of business resulting in ordinary income tax treatment upon the sale of the Appellant inventory lots. Appellant filed a 2007 and 2008 Federal Partnership Tax Return defining its principal business activity as "Development and Sales." (R. pp. 38-41). In addition, these returns show that cost of goods sold is calculated by taking the Appellant's "inventory at the beginning of the year", making adjustments and subtracting "inventory at the end of the year." (R. pp. 38-41). The return itself classifies the property as inventory. (R. pp. 38-41). 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. The Department of Revenue produced no evidence to the contrary. As the Appellant 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). Therefore, the ruling of the ALC should be reversed.

CONCLUSION

For the foregoing reasons, Appellant asks this Honorable Court to reverse the determination by the ALC and enter judgment in favor of Field House Properties.

RESPECTFULLY SUBMITTED this 8th day of October, 2012,

A handwritten signature in black ink, reading "John R. Alphin". The signature is written in a cursive style and is positioned above a horizontal line.

J. Preston Strom, Jr.

John R. Alphin

Strom Law Firm, LLC

2110 Beltline Blvd., Suite A

Columbia, South Carolina 29204

Telephone No.: (803) 252-4800

Attorneys for Appellant

October 8, 2012

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,

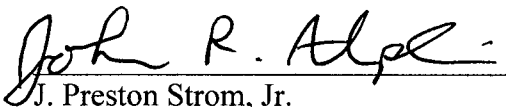
v.

South Carolina Department of Revenue

Respondent.

CERTIFICATION OF ATTORNEY

Undersigned counsel hereby certifies that the Appellant's Final Brief complies with Rule 211(b), SCACR.



J. Preston Strom, Jr.

John R. Alphin
Strom Law Firm, LLC
2110 Beltline Blvd., Suite A
Columbia, South Carolina 29204
Telephone No.: (803) 252-4800
Fax No. (803) 252-4801
Attorneys for Appellant
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,

v.

South Carolina Department of Revenue

Respondent.

RECEIVED

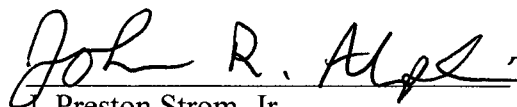
OCT 08 2012

SC Court of Appeals
Appellant,

PROOF OF SERVICE

Undersigned counsel hereby certifies that on October 8, 2012, he has served the Appellant's Final Brief via first-class 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



J. Preston Strom, Jr.
John R. Alphin
Strom Law Firm, LLC
2110 Beltline Blvd., Suite A
Columbia, South Carolina 29204
Telephone No.: (803) 252-4800
Fax No. (803) 252-4801
Attorneys for Appellant
Telephone No.: (803) 252-4800
Attorneys for Appellant