

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

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SC Court of Appeals

Field House Properties,

Appellant,

v.

South Carolina Department of Revenue

Respondent.

APPELLANT'S FINAL REPLY BRIEF

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The parties' filings in the ALC and their initial briefs in this Honorable Court make clear that the facts of this case are not in dispute. This issue before the Court is not whether summary judgment was appropriate, but whether the ALC committed a reversible error of law in upholding the Department of Revenue's determination that S.C. Code § 12-37-220(B)(30) does not include real property held as inventory as exempt. The Legislature substantially changed the language of the inventory exemption when it enacted S.C. Code § 12-37-220(B)(30) in 1992. The Department of Revenue's limited view of the inventory exemption is based on prior versions of the inventory exemption. The Department's determination, based on its limited and outdated view, does not account for expansion of the exclusion that took place in 1992. As a result, the Department of Revenue's determination that was upheld by the ALC should be reversed.

I. Changes to S.C. Code § 12-37-220(B)(30) that Occurred in 1992 Expanded the Original Inventory Exemption to Include the Real Property Inventory in this Case.

All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. Ray Bell Constr. Co. v. Sch. Dist. of Greenville County, 331 S.C. 19, 501 S.E.2d 725 (1998). "The cardinal rule of statutory interpretation is to ascertain the intent of the legislature." State v. Scot, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002). The determination of legislative intent is a matter of law. Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995).

The Department of Revenue argues the legislative history shows the inventory exemption is limited to personal property because of the language that was originally used in the statute. Brief of Respondent at 7 -10. However, in reviewing the changes by the legislature, the opposite is true. The exemption has gotten broader over time by eliminating qualifying and limiting language in the exemption.

In 1976, the first inventory exemption was enacted. The original exemption excluded all "merchant's inventories." This exclusion of inventory was limited by the term "merchant". Webster's dictionary defines a "merchant" "as a buyer and seller of commodities for profit" or "the operator of a retail business." As a result, the original exemption was limited to personal property by virtue of the limiting term "merchant".

In 1986, the legislature changed the inventory exemption to exclude "all inventories of business establishments". Once again the legislature chose to limit the exclusion by applying the exemption only to "business establishments". This change with its limitation to "business establishments" again was limited to a certain group.

The legislature enacted the current version of S.C. Code § 12-37-220(B)(30) in 1992. The language of the current version was greatly expanded by removing all qualifying and limiting terms. S.C. Code § 12-37-220(B)(30) now excludes "all inventories". It is the absent of any limiting or qualifying terms that is important to this case.

The Supreme Court has held "[a] subsequent statutory amendment may be interpreted as clarifying original legislative intent." Cotty v. Yartzeff, 309 S.C. 259, 422 S.E.2d 100 (1992). The removal over time of limited and qualifying terms shows the legislative intent for the inventory exemption to be as broad as possible. In addition, as shown below, the legislature does limit exemptions to real and/or personal property in the appropriate circumstance but chose not to for this subsection.

The current version of 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 is no longer limited to real property or personal property by its terms. The legislature has in fact so limited other portions of this very exemption. 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 limit exemptions found in other portions of this section when appropriate 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. It is against this legislative history and the current statutory construction that the real property inventory in this case is exempt making the determination of the South Carolina Department of Revenue incorrect resulting in the ALC being reversed.

I. Deference is Inappropriate in this Case as the Department's Pronouncement in Rev. Rul. 91-7 is Outdated.

Although Revenue Rulings are not binding or controlling, the courts give deference to the opinion of a state agency charged with the duty and responsibility of enforcing a state statute. The South Carolina Department of Revenue is given general oversight responsibility in regard to property tax and tax exemptions. South Carolina has long recognized the rule that an opinion or construction of a statute by an agency that is in charge of enforcing the statute should be given great deference. "[T]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Brown v. South Carolina Dep't of Health & Env'tl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (quoting Dunton v. South Carolina Bd. of Examiners in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)).

The Department of Revenue argues deference should be afforded to S.C. Rev. Rul. 91-7 and that this Rev. Rul. controls the disposition in this case. Brief of Respondent at 14. However, the revenue ruling put forth by the Department was adopted on April 18, 1991. The current version of S.C. Code § 12-37-220(B)(30) was adopted in 1992. The revenue ruling put forth by the Department was enacted prior to the current version of S.C. Code § 12-37-220(B)(30). The version of S.C. Code § 12-37-220(B)(30) in place at the time of the revenue ruling exempted only "all inventories of business establishments."

As set forth above, the legislature greatly expanded S.C. Code § 12-37-220(B)(30) in 1992 by removing all qualifying and limiting terms "of business establishment." The age of the pronouncement by the Department of Revenue set forth in Rev. Rul. 91-7 and the changes by the legislature to S.C. Code § 12-37-220(B)(30) that have occurred since this revenue ruling was

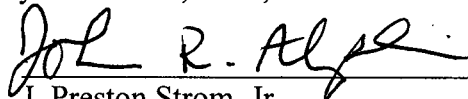
adopted provide this court with compelling reasons not to adopt the position advanced by the Department of Revenue and adopted by the ALC.

Contrary to the construction given to Rev. Rul. 91-7 by the Department of Revenue, Rev. Rul. 91-7 supports Appellant's position. Rev. Rul. 91-7 states as follows:

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.

This language supports Appellant's position that the underlying legislative policy behind the language change of the exemption is to prevent the taxation of property that when it is sold results in ordinary income tax treatment to the taxpayer. This is the exact tax treatment incurred by the Appellant in this case. As the Appellant's tax returns show, sales of real property by Field House Properties results in ordinary income tax treatment. This reason for this treatment is under federal tax law the business is defined as a dealer in real estate. It is this classification that requires Field House Properties to pay ordinary income taxes on all real property sales. The tax treatment of the sales by Field House Properties further supports its position that the lots in this very limited case are exempted from ad valorem taxation pursuant to S.C. Code § 12-37-220(B)(30).

RESPECTFULLY SUBMITTED this 8th day of October, 2012,



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October 8, 2012

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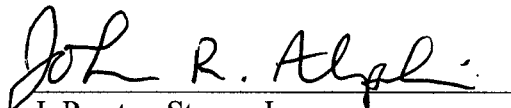
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CERTIFICATION OF ATTORNEY

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



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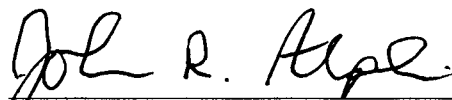
South Carolina Department of Revenue

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PROOF OF SERVICE

Undersigned counsel hereby certifies that on October 8, 2012, he has served the Appellant's Final Reply Brief via first-class mail, postage paid, on the following:

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