THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden, Administrative Law Judge

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Case No: 12-ALJ-17-0126-CC

Mitul Enterprises, L.P.....Appellant,

vs.

Beaufort County Assessor.....Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Was the Administrative Law Court correct in its determination that the Beaufort County Assessor was authorized to impose taxes against a newly-constructed improvement that previously escaped taxation as a result of its omission from the tax rolls?

STATEMENT OF THE CASE

This is an appeal from the Order of the Honorable Deborah Brooks Durden, of the Administrative Law Court, relating to the recovery of 2009 taxes owed on a newly-constructed Holiday Inn hotel in Beaufort, South Carolina. (R.pp. 2-8). In 2010, after determining that a new Holiday Inn hotel structure had not been included on the tax rolls for tax year 2009, even though the hotel had been included as part of the assessment of the property for that year, the Respondent Beaufort County Assessor ("Assessor") sent a revised tax bill to the taxpayer, Mitul Enterprises ("Taxpayer") (R.pp. 46-47). The Taxpayer challenged this revised bill, and following disposition by the Beaufort County Tax Equalization Board ("TEB"), sought review by the Administrative Law Court. (R.pp. 75-77, 81). A contested case hearing was conducted before the ALC on November 15, 2012. The Honorable Deborah Brooks Durden, Administrative Law Judge, in a Final Order and Decision filed December 14, 2012, determined that the Assessor was authorized to recover the additional taxes for the year 2009. (R.pp. 2-8). The ALC further found that the taxes assessed against the subject parcel by the Assessor and affirmed by the Board were correct, and therefore, the Taxpayer was liable for an additional $105,282.48 in taxes. (R.pp. 2-8). By its

Notice of Intent to Appeal dated January 14, 2013, the Taxpayer sought review of the ALC decision. (R.p. 9).

STATEMENT OF THE FACTS

In 2007, the Taxpayer began construction of a new Holiday Inn facility in Beaufort, South Carolina. (R.p. 24). Construction was not completed until 2008, and therefore the Holiday Inn structure was to be taxed for the first time in the 2009 tax year. (R.p. 22).

Prior to construction of the new Holiday Inn, the property had been improved with other structures, and for tax year 2008, the subject property, with those pre-existing improvements, was valued, for tax purposes, at $930,300.00. (R.p. 80). This valuation resulted in 2008 taxes of $13,220.75. (R.p. 80).

Following construction of the Holiday Inn, the Assessor initially determined that the subject property, with all improvements thereon, held a fair market value of $11,775,674.00 for the 2009 tax year, and advised the Taxpayer of the increase of the assessed and appraised valuations in an assessment notice dated October 15, 2009. (R.pp. 40, 42). The Taxpayer, by written request dated November 23, 2009, challenged the $11,775,674.00 value of the subject property, and set forth its own estimate of $9,000,000.00. (R.p. 43).

Upon reconsideration, the Assessor agreed with the Taxpayer's proposed valuation and reduced the market value of the subject property, with all improvements thereon, to $9,000,000.00, and by way of an April 7, 2010, notice of action, provided the Taxpayer with the revised value for the 2009 tax year. (R.p. 44).

However, although the Holiday Inn had been valued by the Assessor, the value of the new construction was omitted from the tax rolls, which continued to reflect only the value of the pre-existing improvements. (R.pp. 24,84). Consequently, the initial 2009 tax bill reflected only the tax due on the capped value of the real estate and pre-existing structures, as limited pursuant to S.C. Code Ann. §§12-37-3110, *et seq.* (Supp. 2012) (R.pp. 23, 84). The capped amount for the pre-existing property totaled $1,069,868.00, resulting in an initial 2009 tax bill of only $14,290.10. (R.p. 45). However, the capped value and corresponding tax bill completely excluded any tax on the newly constructed Holiday Inn. (R.pp. 29, 84). The Holiday Inn, together with a restaurant located on the property (whose value was capped), was valued at $7,565,000.00. (R.pp. 30, 85). The Holiday Inn value, which was not subject to the cap and which was to be valued at full market value, comprised $7,401,154.00 of that figure. (R.pp. 46-47, 55).

This omission of the Holiday Inn from the tax rolls was a result of an error in the software used to create the tax rolls, which failed to incorporate those structures for which building permits and certificates of occupancy were issued in different years. (R.pp. 24-26). Instead, and unbeknownst at the time to the Assessor, the software only accounted for those structures that were permitted and completed within the same calendar year. (R.pp. 24-26). Therefore, despite the Holiday Inn having been valued, the tax rolls only reflected the value of the previously existing structures and real property. (R.pp.24-26). The Holiday Inn was not included on the tax rolls for tax year 2009. (R.pp.24-p.26, 84).

Upon discovery of the omission, the Assessor, through the Beaufort County Treasurer, issued a corrected 2009 tax bill, reflecting an additional tax of $105,282.48, the taxable value of the new Holiday Inn facility which had been omitted. (R.pp. 47, 85).

The Taxpayer objected to payment of the tax levied on the Holiday Inn, contending that the same constituted an unwarranted reassessment. (R.pp. 75, 77). Hearings before the Tax Equalization Board and the Administrative Law Court followed, in which the Board and the ALC agreed with the Assessor's decision. (R.pp. 2-8, 81). This appeal followed.

STANDARD OF REVIEW

In an appeal from an Administrative Law Court decision, the Administrative Procedures Act provides the appropriate review. S.C. Code Ann. §1-23-610(B) (Supp. 2008). Accordingly, the decision of the Administrative Law Court may only be overturned if it is determined that the decision: a) violates constitutional or statutory provision; b) exceeds the statutory authority of the agency; c) is made upon unlawful procedure; d) is affected by other error of law; e) is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or f) is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

ARGUMENT

I. The Taxpayer failed to preserve issues two, five, and six for appellate review, as they were not ruled on by the ALC.

The Taxpayer raises several issues on appeal that were not preserved for appellate review. As explained by our Supreme Court in Herron v. Century BMW:

> Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review. At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. It is axiomatic that an issue cannot be raised for the first time on appeal. Imposing such a requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.

Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (internal citations and quotation marks omitted).

The Taxpayer did not seek to have the ALC alter or amend its Final Order and Decision. Therefore, only matters addressed within that Order may be reviewed by this Court. Three of the six issues presented by the Taxpayer on appeal were not addressed in the Final Order and Decision filed by the ALC. A review of the ALC Order reveals Taxpayer's issues 2, 5, and 6 were not addressed, and therefore are not preserved for appeal. Consequently, those issues should not be considered by this Court.

However, even assuming those matters were preserved for review, the ALC correctly decided this matter, for the reasons discussed herein.

II. The South Carolina Constitution and South Carolina Code of Laws provide for the collection of taxes on property that initially escapes taxation.

The ALC was correct in determining that the Assessor rightfully collected taxes on omitted property. Its decision is based upon, and complies with, the clear mandates established by the South Carolina Constitution and the South Carolina Code of Laws. Accordingly, the ALC's decision should be affirmed.

The primary dispute relates to the application of S.C. Code Ann. §12-39-220. The cardinal rule of statutory construction is to ascertain and give effect to

the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). All rules of statutory construction are subservient to the one that legislative intent must prevail if that intent can be reasonably discovered in the language used, which language must be construed in light of the intended purpose of the statute. McMillen Feed Mills, Inc. of S.C. v. Mayer, 265 S.C. 500, 510-11, 220 S.E.2d 221, 226 (1975). "A statute must be construed in light of its intended purpose, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute." Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 74, 321 S.E.2d 258, 262 (1984). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of particular words." Floyd v. Nationwide Mutual Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2006). Courts will reject the ordinary meaning of words used in a statute and apply the rule of construction according to the spirit of the law when to accept the ordinary meaning of such words would lead to an absurd result. South Carolina Bd. of Dental Examiners v. Breeland, 208 S.C. 469, 480, 38 S.E.2d 644, 650 (1946). Likewise, courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

The South Carolina Constitution, at Article X, §1, clearly authorizes both the legislature and its political subdivisions to impose taxes upon all real and

personal property. Pursuant to such constitutional authorization, the General Assembly, in S.C. Code Ann. §12-37-210, requires that "...all real and personal property in this State...shall be subject to taxation." In further of its mandate that all property be subject to taxation, the General Assembly additionally provides for the recovery of taxes on property that may initially escape taxation. South Carolina Code Ann. §12-39-220 states, in relevant part:

> If the County Auditor shall at any time discover that any real estate or new structure, duly returned and appraised for taxation, has been omitted from the duplicate, he shall immediately charge it on the duplicate of the taxes of the current year, and the simple taxes of each preceding year it may have escaped taxation.

The referenced provisions of §12-37-210 and §12-39-220 clearly set forth not only the legislative preference, but also the legislative mandate, that all real property be subject to taxation. Additional code provisions assure that the mandate is appropriately implemented. South Carolina Code Ann. §12-37-90 explicitly imposes various duties upon county assessors, including:

a. Searching and discovering all real property not previously listed for taxation by the Auditor, and listing such property for taxation;

b. Reappraisal and reassessment of real property when conditions change determination of assessments and reassessments of property in a matter that the ratio of assessed value to fair market value is uniform; and

c. Being the sole person responsible for the valuation of real property.

Additionally, all property is required to be valued, for tax purposes, at fair market value. S.C. Code Ann. §12-37-930 (Supp. 2012).

The Assessor's actions, in aid of recovery of taxes against property that initially escaped taxation, were in accordance with the mandates of §12-39-220. Moreover, the Assessor's actions were undertaken pursuant to both the mandate imposed by and the authority provided under §12-37-90. By contrast, any failure of the Assessor to act to assure appropriate taxation of the real property would be a violation of the statutory mandates and a dereliction of the Assessor's duties imposed by §12-37-90, specifically including to assure that all real property is properly listed for taxation.

Moreover, the ALC properly considered the present day functions of the Assessor's position. The job duties addressed in conjunction with §12-39-220 are now performed by the Assessor, not the Auditor. Accordingly, it stands to reason that even if the General Assembly intended to specify the officer responsible for collecting taxes on omitted property, the Assessor would now fill that role. Further, the Assessor's duties delineated in §12-37-90 relate to the recovery of taxes on omitted property: the Assessor is required to discover property that was not previously taxed, as well as reappraise and reassess property when conditions change, among other obligations. Finally, the process by which the omitted structures were charged upon the duplicate, and the unpaid taxes collected, were, by clear and necessary implication, ultimately consented to and ratified by the Auditor, in conjunction with her delivery of the tax rolls to the County Treasurer for the collection of taxes, pursuant to the requirements of S.C. Code Ann. §12-39-150 (Supp. 2012).

III. The Administrative Law Court correctly determined that the Taxpayer is not entitled to receive the benefit of the doubt in this instance because there is no question that the Taxpayer is required to pay taxes on the Holiday Inn for tax year 2009.

The Taxpayer contends the Administrative Law Court wrongfully determined that it is not entitled to receive the benefit of doubt in this dispute. However, there is no question that the Holiday Inn should be subject to taxation for the 2009 tax year. Moreover, the Taxpayer's cited authorities do not support its position that the ALC incorrectly limited the instances in which tax statutes are construed in favor of the Taxpayer.

The ALC properly determined that because it was obvious the Taxpayer owed taxes on the Holiday Inn for the 2009 tax year, the Taxpayer was not entitled to receive any benefit of the doubt in this dispute. In so doing, the ALC correctly looked to the *intent* of the statutes, as required by the basic and oft-recited rules of statutory construction (including hereinabove). As discussed above, this evaluation comports with this State's declared intention to tax all property located within the state.

By contrast, the Taxpayer takes issue with the determination by the ALC that taxpayers receive the benefit of the doubt in tax disputes only when the dispute centers on whether a taxpayer is subject to a tax or the amount of a tax. In support of this position, the Taxpayer cites several opinions which purportedly relate to the "enforcement" of tax statutes—language that the Taxpayer suggests encompasses **all** tax statutes. However, those authorities establish that a statute is strictly construed in favor of a taxpayer when the matter at issue relates to whether conduct by a taxpayer is encompassed by a tax-imposing statute, not in

all instances in which a taxpayer disputes a tax. The Taxpayer's argument that a taxpayer should be given the benefit of the doubt in all tax statutes would require that a taxpayer be relieved of a tax obligation merely by taking issue with the government's ability to levy, collect, or otherwise recover taxes. Such an application would lead to the absurd result of any taxpayer avoiding payment of taxes merely by challenging a particular tax.

Moreover, taxpayers do not always receive the benefit of the doubt in tax disputes. *See* York County Fair Assoc. v. S.C. Tax Comm'n, 249 S.C. 337, 154 S.E.2d 361 (1967) ("Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption, he must clearly bring himself within the constitutional or statutory language upon which he relies"). Accordingly, the Taxpayer's argument on this issue must be rejected, as there is neither support for the contention that the Taxpayer is entitled to such a broad benefit, nor that the Taxpayer is entitled to have a statute strictly construed in his favor when there is no question that the tax is owed.

The Taxpayer's reliance on Long Cove Homeowners' Ass'n v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E.2d 857 (1997) in support of its position is also misplaced. The Long Cove opinion primarily addressed Beaufort County's contention that separately parceled common properties were subject to separate taxation. Id. In furtherance of achieving that objective, those parcels, which were previously assigned a value of $0.00 on the tax rolls, were revalued by the assessor in a non-countywide reassessment year, without any

change to the parcels that would trigger a reassessment. Long Cove at 140, 488 S.E.2d at 860. Accordingly, Long Cove does not relate to collection of taxes on omitted property.

Additionally, the Long Cove facts differ radically from those in the instant appeal, where the specific property to be taxed here was never before placed on the tax rolls, and was to be taxed for the first time in 2009. Moreover, the Assessor is authorized to reappraise and reassess the Holiday Inn property in a non-countywide reassessment year, pursuant to S.C. Code Ann. §12-37-90 and §12-60-2510(A)(1) (Supp. 2012). Accordingly, Long Cove offers no support to the Taxpayer's argument that the Assessor's actions were not valid.

Additionally, the ALC properly considered Columbia Developers vs. Elliott, 269 S.C. 486, 238 S.E.2d 169 (1977). The facts presented in Elliott more closely mirror the circumstances here, where additions to an existing building, in the form of five additional stories, triggered a change in valuation. Id. at 488, 238 S.E.2d at 170. As was the case here, that additional value was not initially brought on the tax rolls, and recovery of taxes for 1972 and 1973 was subsequently pursued. Elliott at 489, 238 S.E.2d at 170. The Elliott court discharged the appeal through the appellant's failure to exhaust administrative remedies, and was not forced to address the issue of recovering taxes on omitted property. Elliott at 490, 238 S.E.2d at 171. Nonetheless, the Court chose to do so, and recognized that property, although valued but omitted from the tax rolls, was subject to the provisions of §12-39-220. Elliott at 491, 238 S.E.2d at 171. Although dicta, the court's commentary on the ability to collect omitted taxes provides a further

demonstration of the legislative prerogative to equally and uniformly tax all property within the state.

CONCLUSION

Based upon the foregoing, the ALC decision must be affirmed. There is no statutory support authorizing the Taxpayer to escape taxation for the 2009 tax year on a newly-constructed building valued at over $7,000,000 for tax purposes. Conversely, it is the clear preference of the General Assembly to impose taxes on all property in South Carolina, even if a property is initially omitted from the tax rolls. It is this Court's obligation to enforce that preference and affirm the ruling of the ALC.

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Final Brief of Respondent complies with Rule 211(b).

By: _____
William T. Young III