

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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JUN 28 2019

SC Court of Appeals

Case Nos. 14-ALJ-17-0601-CC,
14-ALJ-17-0602-CC
Appellate Case No: 2017-000569

Fairfield Waverly, LLC,.....Respondent,

v.

Dorchester County Assessor,.....Appellant.

and

GS Windsor Club, LLC,.....Respondent,

v.

Dorchester County Assessor,.....Appellant.

REPLY TO RESPONDENTS' RESPONSE TO BRIEF OF AMICUS CURIAE

South Carolina Department of Revenue

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STATEMENT OF ISSUES ON APPEAL

Did the Administrative Law Court err in ruling that the Respondents are entitled to the Assessable Transfer of Interest (“ATI”) exemption under S.C. Code Ann. § 12-37-3135 (Supp. 2018) where the Respondents failed to apply for the exemption before January 31st of the year following the assessable transfer of interest?

STATEMENT OF THE CASE

Pursuant to Rules 213 and 208(b)(6), SCACR, the Department adopts the Statement of the Case, Statement of Facts and Standard of Review of Appellant, Dorchester County Assessor (Dorchester County). However, by way of brief background, the Respondents purchased real property eligible for the ATI exemption in 2012. The Respondents did not file an application for the ATI exemption with the Appellant until January 16, 2014. The Appellant denied the ATI exemption, the Respondents protested the denial, the Dorchester County Board of Assessment Appeals (Board) upheld the denial, and the Respondents appealed the Board’s decision. The South Carolina Administrative Law Court (ALC) overruled the Board’s decision and granted the ATI exemption prospective to the Respondents’ application.

ARGUMENT

I. THE ADMINISTRATIVE LAW COURT ERRED IN RULING THAT RESPONDENTS ARE ENTITLED TO THE ASSESSABLE TRANSFER OF INTEREST EXEMPTION UNDER § 12-37-3135 WHERE RESPONDENTS FAILED TO APPLY FOR THE EXEMPTION BEFORE JANUARY 31ST OF THE YEAR FOLLOWING THE ASSESSABLE TRANSFER OF INTEREST.

A. The Respondents' Response confuses the Department's position.

In its reply to the Department's Amicus Curiae Brief, the Respondents provide the same example of a late year ATI that they used in the ALC and in their Brief. However, all the parties and even the ALC agree that the taxpayer has until January 31st of the year following the ATI to timely apply for the ATI exemption. The disagreement lies in the effect of failing to meet that January 31st deadline. If the taxpayer fails to apply by the January 31st deadline, the current fair market value changes to the ATI value, which renders the exemption application moot. See the example on pages 11-12 of the Department's Amicus Brief.

The Respondents go on to cite five statutes to support their position that a taxpayer may receive an ATI exemption despite applying late: S.C. Code Ann. §§ 12-43-220(d)(3) (Supp. 2018) (agricultural classification), 12-43-220(c) (Supp. 2018) (assessment ratio for primary residence), 12-37-250(A)(4) (2014) (homestead exemption), 12-43-224 (Supp. 2018) (discount for valuation of subdivided acreage), and 12-43-230 (Supp. 2018) (special valuation for homeowners' association). A taxpayer receives these exemptions, special valuations, or assessment ratios because the taxpayer qualifies for the exemptions, special valuations, or assessment ratios at the time of application, based on the taxpayer's ownership of the property on December 31st of the prior year.¹ For example, a

¹Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, or on the real property that, as of December thirty-first of the year preceding the tax year, he has care of as guardian, executor, or

taxpayer may not apply for the assessment ratio as a primary residence for 2014 although the property would have qualified at that time. However, the taxpayer can still receive the primary residence assessment ratio for 2015 if the property is the taxpayer's primary residence for 2015. Similarly, a taxpayer may receive the agricultural classification prospectively, even if the taxpayer failed to timely apply for earlier tax years when it would have qualified because the taxpayer qualifies for the agricultural classification for the year it timely applies. For a taxpayer to qualify for an ATI exemption, an ATI must occur in the year of the exemption application (or the prior year if before January 31) and the mathematical calculations in S.C. Code Ann. § 12-37-3135(B)(2) (Supp. 2018) must allow an exemption amount— i.e. the exemption value cannot be less than the current fair market value. If an ATI does not occur, the taxpayer cannot qualify for the ATI exemption. This would be analogous to a taxpayer applying for a primary residence assessment ratio for 2016 when the property was the taxpayer's primary residence in 2015, although the property is no longer the taxpayer's primary residence in 2016. The taxpayer would not qualify for the primary residence assessment ratio for 2016.

The Department's interpretation follows a plain reading of the statute and avoids the absurd result of the Respondents' proposed indefinite time period to apply for an ATI exemption. The Legislature could not have intended to impose such uncertainty on the counties. Interestingly, the Respondents minimize the effect of a taxpayer surprising the county with a late ATI exemption application in their Response despite providing examples in their Brief of the large disparity between a taxpayer with the ATI exemption and one without.

Finally, in response to the Respondents' presumption about the number of property transfers at the end of the year driving the additional time to apply for an ATI exemption, when the ATI occurs


committee or may have the care of as guardian, executor, trustee, or committee." S.C. Code Ann. § 12-37-610 (Supp. 2018).

during the tax year does not matter. Specifically, S.C. Code Ann. § 12-37-3140(A)(1)(b) (Supp. 2018) states that the fair market value of real property is its fair market value on the later of "... December thirty-first of the year in which an assessable transfer of interest has occurred." Therefore, whether that property transferred on January 2nd or December 31st, the fair market value date is still December 31st of the year when the ATI occurred. The taxpayer would then have, at least, a full month to apply for the ATI exemption, if applicable.

CONCLUSION

For the reasons cited herein, this Court should reverse the decision of the ALC and find that the ALC erred in ruling that the Respondents would be entitled to the ATI exemption allowed by § 12-37-3135 after the initial year of eligibility.

Respectfully Submitted,


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CERTIFICATE OF COUNSEL

The undersigned certifies that this South Carolina Department of Revenue's Reply to Respondents' Response to Brief of *Amicus Curiae* – South Carolina Department of Revenue - complies with Rule 211(b), SCACR.



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