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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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

Fairfield Waverly, LLC. .... Respondent,

v.

Dorchester County Assessor.. Appellant.

GS Windsor Club, LLC, ... Respondent,

v.

Dorchester County Assessor.. Appellant.

RESPONDENTS' PETITION FOR REHEARING

INTRODUCTION

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Respondents seek rehearing solely with respect to the final two paragraphs of the Court's opinion in the above-captioned case filed on August 26, 2020. *See Fairfield Waverly, LLC v. Dorchester Cnty. Assessor*, Op. No. 5769 (August 26, 2020) (Shearouse Adv. Sh. No. 33 at 10) (hereinafter, the "Order").

Respondents wholeheartedly concur in the Order except for the final two paragraphs. The final two paragraphs state:

> In their brief and at oral argument, the Taxpayers contended this interpretation of the statute would allow property owners to claim the ATI Exemption several years, or even decades, after the assessable transfer of interest occurs. We disagree.
>
> Section 12-43-217(A) mandates that the county or State reassess property every five years and explains "the county or State shall implement the program and assess all property on the newly appraised values." Allowing the ATI Exemption to override an appraised value set in the five-year reassessment scheme would defeat the legislature's intent of providing counties with a uniform mechanism of reappraising properties to determine their fair market values and assessing taxes accordingly. See *S.C. State Ports Auth.*, 368 S.C. at 398, 629 S.E.2d at 629 ("In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect."); *Duke Energy Corp.*, 415 S.C. at 355, 782 S.E.2d at 592 ("[T]he [c]ourt should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose.")

These paragraphs appear to conclude that if a property owner files its first ATI Exemption application after the first countywide reassessment during which it owned the property, then it is ineligible for the exemption because the ATI Exemption cannot "override an appraised value set in the five-year reassessment scheme...." As explained below, these paragraphs will add considerable confusion for both taxpayers and assessors. For example, one interpretation of these paragraphs is that if a taxpayer purchases property in the year prior to a countywide reassessment, then it can *never* qualify for the ATI Exemption because the exemption would first take effect in the year all other properties are being reassessed. That conclusion appears inequitable and inconsistent with the Court's Order. In sum, the final two paragraphs can be interpreted to severely limit the applicability of the ATI Exemption according solely to the timing of a purchase within a county's reassessment cycle. Respondents respectfully request that these paragraphs either (1) be

removed in full or (2) clarified to eliminate considerable confusion for both taxpayers and assessors.

BRIEF FACTUAL SUMMARY

This consolidated matter came before the South Carolina Administrative Law Court (the "ALC") pursuant to S.C. Code Ann. § 12-60-2540(A) (2011) for a contested case hearing requested by the two Respondents. Respondents purchased the respective properties at issue at the end of 2012. Neither Respondent applied for the ATI Exemption available under § 12-37-3135 for the 2013 Tax Year. As a result, Dorchester County appraised each property for the 2013 Tax Year based on the assessable transfer of interest for each property, both of which occurred at the end of 2012.

However, both Respondents timely applied for the ATI Exemption for the 2014 tax Year. The County denied both applications, and the Respondents timely protested the County's denials. The Dorchester County Board of Assessment Appeals upheld the County's determinations, but the ALC ruled in favor of the Respondents, finding they were eligible for the ATI Exemption for the 2014 Tax Year on their respective properties. By Order dated August 26, 2020, this Court affirmed the ALC's ruling.

ARGUMENT

I. THE LAST LEGISLATIVE EXPRESSION RULE APPLIES IN THIS CASE.

This Court correctly relied on the language of the ATI Exemption statute in finding that it "implicitly, if not directly," approved exemptions claimed after the taxpayer's first year of eligibility. However, the Court's reversion to legislative intent from the quadrennial reassessment regime is unfounded and violative of the last legislative expression rule. "Under the 'last legislative expression' rule, where conflicting provisions exist, the last in point of time or order of arrangement, prevails." *Ramsey v. County of McCormick*, 306 S.C. 393, 397, 412 S.E.2d 408, 410

(1991). "In accordance with the principle that the last expression of the legislative will is the law, where conflicting provisions are found in the same statute, or in different statutes, the last in point of time or order of arrangement prevails." *Feldman v. S.C. Tax Comm'n*, 203 S.C. 49, 51, 26 S.E.2d 22, 24 (1943). "[L]ater legislation supersedes earlier laws addressing the identical issue." *Whiteside v. Cherokee Sch. Dist. No. One*, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993).

S.C. Code Ann. 12-43-217(A) was passed in 1995 to require countywide reassessment of property every five years. According to this Court, this reassessment procedure should take precedence over the ATI Exemption statute because to interpret otherwise "would defeat the legislature's intent of providing counties with a uniform mechanism of reappraising properties to determine their fair market values and assessing taxes accordingly."

However, the ATI Exemption statute was passed in 2011 and in response the context of a sweeping change in statewide property tax assessment, which this Court characterized as "point of sale". This Court correctly identified the intent of the ATI Exemption in its decision, holding:

> As noted above, subsection (C) explains that the ATI Exemption does not apply unless the county has notice "before January thirty-first for the tax year for which the owner first claims eligibility for the exemption." § 12-37-3135(C). That language *implicitly, if not directly, acknowledges an owner might not claim the exemption immediately.* It plainly is not an affirmative requirement that a property owner claim the ATI Exemption during the first year of eligibility.

(emphasis added).

The ATI Exemption was a response to two drastic changes to South Carolina's property taxation regime found in Act 388 and the S.C. Code Ann. § 12-37-3140(B) put a 15% cap on any increase in fair market value of real property attributable solely to the mandated five-year reassessment. While this cap provided welcomed relief for property owners across South Carolina, the Act also created another reassessment trigger: the "Assessable Transfer of Interest" ("ATI"). S.C. Code Ann. § 12-37-3150 mandated counties to reassess property values for purposes of the

property taxes upon a variety of transfers of interest, including sales.

These two changes created situations where property owners who held their property through a number of reassessment cycles could be taxed at a substantially lower value, when compared to a competitor who purchased property more recently. Suppose you have two very similar multi-family housing complexes across the street from each other, both with a value in 2016 of $10,000,000. Suppose Complex A remained in the same ownership through 2020. Its value for tax purposes would never exceed $11,500,000 ($10,000,000 x 15%) for all five years. Suppose Complex B was sold for $14,000,000 in 2017. It would be taxed at $14,000,000 through 2020, and if there was a reassessment in the intervening years, it value could possibly rise another 15%, to $16,100,000. So in our example, you have identical, competing multi-family complexes, one taxed at a maximum of $11,500,000 and the other at a maximum of $16,100,000. (The example assumes rising property values.) Assuming the properties are commercial in nature (6% assessment ratio) and in a tax district with a millage rate of 350 mills, the difference in taxes is almost $100,000 per year.

Obviously this creates a horrible competitive disadvantage. Thus, the ATI Exemption is an attempt to normalize the tax values of similarly situated properties in an effort to give new purchasers a more level playing ground.

The Court also places too much emphasis on a county's "uniform mechanism of reappraising properties." Clearly, there are exceptions and limitations to this "uniform mechanism." For example, counties are prohibited from increasing the taxable value of property by more than 15% during a reassessment, even if property values have skyrocketed in a particular county since the prior countywide reassessment. Additionally, as described above, South Carolina law now provides for reassessment upon sale or transfer of a property (i.e., "point of sale"), which

is a reassessment outside the countywide reassessment program. In fact, given the disparities in valuation described above and its role of "leveling the playing fields" when it comes to valuation of similar properties, the ATI Exemption arguably creates more uniformity in reappraising properties than the countywide reassessment program.

If a countywide reassessment essentially cancels any opportunity for a property owner to file an ATI Exemption, then that limitation could essentially swallow the Court's ruling that ATI Exemption applications filed after the first year of eligibility are valid. Therefore, reliance on the legislative intent gleaned from the older quadrennial reassessment statute will substantially interfere and conflict with the intent of the later-in-time ATI Exemption statute. Consider the following examples:

- Taxpayer A purchases property in 2019 in a county with a 2021 reassessment. Taxpayer A fails to file his ATI Exemption by January 30, 2020, so is ineligible for the ATI Exemption for the 2020 tax year. Taxpayer A timely files its application for the 2021 Tax Year. The Court's ruling appears to conclude Taxpayer A will not be eligible for the ATI Exemption at all, since the first year he would receive the ATI Exemption is also a reassessment year.

- Taxpayer B purchases property in 2020 in a county with a 2021 reassessment. Taxpayer B fails to file his ATI Exemption by January 30, 2021, so is ineligible for the ATI Exemption for the 2021 tax year. The Court's ruling appears to conclude Taxpayer B will never be eligible for the ATI Exemption, since the first year he would receive the ATI Exemption is after a prior reassessment year. Suppose the ATI Exemption is filed on March 1, 2021. Is the ATI Exemption forever invalid even though it is only one month late?

- Taxpayer C purchases property in 2020 in a county with a 2021 reassessment. Taxpayer C timely files his ATI Exemption by January 30, 2021, but his first year of eligibility coincides with the 2021 reassessment. The Order seems to find that granting the ATI Exemption for Taxpayer C would violate the county's interest in a uniform mechanism for revaluing property. If this is the case, then the Order essentially denies the ATI Exemption to any taxpayer who purchases property in the year prior to the reassessment.

- Taxpayer D purchases property in 2019 but does not apply for the ATI Exemption until after January 2020. The county was scheduled to implement its reassessment in 2020 but postpones implementation of reassessment until 2021 due to the pandemic, as allowed by § 12-43-217(B). While reassessment will be implemented

in 2021, it will be based on the values of property as of December 31, 2019.

Finally, as stated in the briefs and oral argument, filing an ATI Exemption several years or even decades later helps the county's budget. The Act specifically prohibits refunds and the taxpayer would have overpaid—not underpaid—property taxes for the several years or decades until it filed for the ATI Exemption. Due to the mandatory reassessment upon sale or transfer of the property, the property owner cannot "monetize" the ATI Exemption by transferring the property and including the property tax reduction as part of the purchase price. Therefore, the legislative intent of creating a competitive marketplace for new property owners and normalizing property tax values for owners far outweighs the administrative burden of tracking "current fair market values" as defined in the ATI Exemption statute.

II. THE ATI EXEMPTION STATUTE SHOULD BE CONSIDERED AN "EXCEPTION TO OR A QUALIFIER OF" THE QUADRENNIAL REASSESSMENT STATUTE.

South Carolina case law is clear that "[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." *Id.* (citing *Wilder v. South Carolina Hwy. Dep't*, 228 S.C. 448, 90 S.E.2d 635 (1955)); *see also Spectre, LLC v. S.C. Dep't of Health and Envtl. Control*, 386 S.C. 357, 688 S.E.2d 844 (2010).

In this case, § 12-43-217 provides the general rule that properties are to be reassessed every five years and, as noted by this Court, demonstrates a general legislative intent of "providing counties with a uniform mechanism of reappraising properties." The ATI Exemption statute, which was passed later in time, is a variation of the reassessment regime (just like the "point of sale" reassessment after an assessable transfer of interest) that provides a separate mechanism for reappraising certain qualifying properties. As noted in the Order, this Court must consider how

the statutes operate with each other when striving to arrive at any one statute's proper meaning. See *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) ("In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect."); *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) ("[T]he [c]ourt should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose."). Characterizing the earlier-in-time quadrennial reassessment statute as an absolute bar to the ATI Exemption statute fails to construe these statutes in concert, allowing each to have effect.

Further, "[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (citing *TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998)). As noted above, the Court's current interpretation of the ATI Exemption statute severely limits the applicability of the exemption in a way that appears to frustrate its broader legislative intent.

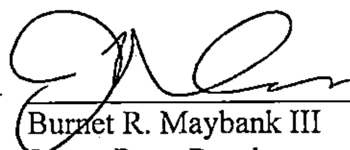
CONCLUSION

The Order has created significant confusion for both practitioners and assessors. For example, one recent nationally-circulated article concluded: "The Court, however, suggested that the filing deadline is not open ended. By statute, South Caroline counties generally implement countrywide reassessment every five years. The *opinion seems to suggest* that the taxpayer must seek the 25% exemption prior to the next countywide reassessment...." *Major South Carolina Appellate Decision on Property Tax Exemption,* National Law Review (August 26, 2020), *available at* https://www.natlawreview.com/article/major-south-carolina-appellate-decision-property-tax-exemption (emphasis added). Another law firm posting states: "The court disagreed

with the taxpayers' argument that the deadline is completely open-ended. The court's *opinion seems to suggest* that the taxpayer must, at minimum, seek the 25% ATI exemption prior to the next countrywide reassessment." *S.C. Court of Appeal Issues Taxpayer-Friendly that Could Provide Relief to Property Owners* (August 27, 2020), available at https://www.parkerpoe.com/news/ 2020/08/sc-court-of-appeals-issues-taxpayer-friendly-opinion (emphasis added).

For all of the above reasons, Respondents request that this Court either (1) amend its Order by removing the final two paragraphs or (2) revise the Order to conclude that a countywide reassessment has no impact on a property owner's eligibility for the ATI Exemption.

Respectfully submitted this 10th day of September, 2020.



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PROOF OF SERVICE

This is to certify that the foregoing Respondents' Petition for Rehearing was sent via US Mail addressed as follows this 10th day of September, 2020:

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Member

September 10, 2020

<u>VIA ELECTRONIC AND US MAIL</u>
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
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Re: Fairfield Waverly, LLC v. Dorchester County Assessor
Case No. 14-ALJ-17-00601-CC
Case No. 14-ALJ-17-00602-CC
Appellate Case No. 2017-000569

Dear Ms. Kitchings:

Charleston
Charlotte
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Greenville
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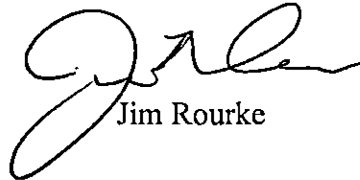
Enclosed for filing please find the original and one copy of *Respondents' Petition for Rehearing*, along with a $50.00 filing fee. Please file the original and return a file-stamped copy to our office in the enclosed postage paid envelope. Also enclosed is a proof of service, showing that opposing counsel have been served with this petition.

Thank you for your consideration in this matter.

Very truly yours,



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Enclosures

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