

THE STATE OF SOUTH CAROLINA

In the Supreme Court

Appeal from the Administrative Law Court

The Honorable S. Phillip Lenski

Case No. 2014-ALJ-17-0602-CC; 2014-ALJ-17-0601-CC

Fairfield Waverly, LLC,

v.

Dorchester County Assessor,

GS Windsor Club, LLC,

v.

Dorchester County Assessor,

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Jan 22 2021

S.C. SUPREME COURT

Respondent,

Petitioner.

Respondent,

Petitioner.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petitions for Rehearing of both the Petitioner and the Respondents were made and finally ruled upon by the Court of Appeals on December 23, 2020.

QUESTIONS PRESENTED

1. Did the Legislature intend that the partial *ad valorem* property tax exemption afforded by S.C. Code Ann. § 12-37-3135 shall apply prospectively to taxpayers who fail to apply for the exemption before January 31 of the property tax year immediately following an assessable transfer of interest?

STATEMENT OF THE CASE

This matter arose from contested case hearings requested by Fairfield Waverly, LLC (individually “Fairfield”) and GS Windsor Club, LLC (individually “Windsor”) and tried in the South Carolina Administrative Law Court (“ALC”) pursuant to S.C. Code Ann. § 12-60-2540(A) (2011). The contested cases before the ALC followed the Dorchester County Board of Assessment Appeals’ decisions denying both Fairfield and Windsor (collectively “Respondents”) the property tax exemption provided under S.C. Code Ann. § 12-37-3135. (App. pp. 0148-0149). At the ALC, the cases were consolidated and heard together by agreement and upon stipulated facts as to both Respondents. (App. pp. 0150-0152). The matters were tried May 20, 2015 before the Honorable S. Phillip Lenski who, by Order entered February 1, 2017, entered judgment in favor of Respondents. (App. pp. 0134-0136). Dorchester County Assessor (“Assessor”) appealed to the South Carolina Court of Appeals.

Assessor and the Respondents briefed their respective arguments to the South

Carolina Court of Appeals, with both the South Carolina Department of Revenue and the South Carolina Realtor’s Commission receiving leave and filing briefs as *Amicus Curiae*. The case was heard at oral argument before the Court of Appeals on February 11, 2020, which affirmed the ALC by Opinion filed August 26, 2020. Both the Assessor and the Respondents timely filed Petitions for Rehearing, together with a Return by the Assessor at the request of the Court of Appeals.

The Court of Appeals denied rehearing as to both Petitions, but withdrew, substituted, and refiled its Opinion on December 23, 2020. *Fairfield Waverly, LLC v. Dorchester Cnty Assessor*, Op. No. 5769 (S.C. Ct. App. filed Dec. 23, 2020) and *G.S. Windsor Club, LLC v. Dorchester Cnty. Assessor*, Op. No. 5769 (S.C. Ct. App. filed Dec. 23, 2020). App. pp. 001-009. Petitioner, Dorchester County Assessor, petitions for a Writ of Certiorari to review the decision of the Court of Appeals.

ARGUMENT

1. **For purposes of *ad valorem* property taxation, "Current market value" is a dynamic term that changes with the passage of time, consistent with the plain meaning of its statutory definitions imposed upon taxing authorities; and as a tax exemption statute, the same must be strictly construed.**

The Respondents purchased real property in November and December of 2012, each of which were eligible for the *ad valorem* property tax exemption afforded by S.C. Code Ann. § 12-37-3135. The conveyances by deed to the Respondents constituted transfers of ownership referred to as an “assessable transfer of interest,” and were thus occurrences triggering statutorily mandated reappraisals by the Assessor for purposes of property taxation. S.C. Code Ann. § 12-37-3150. The term “assessable transfer of interest” is routinely abbreviated as “ATI” throughout applicable statutes and the proceedings before this Court.

The statute before the Court for which Petitioner seeks review of judicial interpretations of legislative intent, provides that property owners may seek an exemption equal to twenty-five percent of the “ATI fair market value” as defined therein if certain other criteria are met. S.C. Code Ann. § 12-37-3135. ATI fair market value is defined by the statute as “the fair market value of a parcel of real property and any improvements thereon as determined by appraisal at the time the parcel last underwent an assessable transfer of interest.” *Id.* However, no exemption value calculated pursuant to the statute may be less than current fair market value of the parcel. *Id.* If the ATI fair market value of the parcel is less than the current fair market value, the exemption otherwise allowed does not apply and the ATI fair market value applies as dictated by Section 12-37-3140(A)(1)(b). *Id.*

The statute enabling the exemption defines “current fair market value” as the fair market value of a parcel of real property as reflected on the books of the property tax assessor *for the current property tax year.* *Id.* (Emphasis added). The exemption statute further dictates in Subsection (C) that “The exemption allowed in this section does not apply unless the owner of the property, or the owner's agent, notifies the county assessor that the property will be subject to the six percent assessment ratio provided pursuant to Section 12-43-220(e) before January thirty-first for the tax year for which the owner *first claims eligibility for the exemption.*” (Emphasis added). Subsection (B)(1) of the statute provides that “The exemption allowed by this section applies at the time the ATI fair market value *first applies.*” (Emphasis added).

In affirming the ALC, the Court of Appeals interprets the legislative intent of the exemption statute in a manner that, respectfully: (i) misapprehends the operative

application of plain, unambiguous, and mandated statutory definitions governing the overall statutory scheme for the calculation and assessment of *ad valorem* property taxes, which (ii) effectively expands a statutory deadline otherwise imposed upon taxpayers seeking to avail themselves of an opportunity to claim the tax exemption. In the case before the Court, the Assessor maintains that the correct application and interpretation of the exemption statute—reviewed in conjunction with the overall statutory scheme which it compliments—dictates that the Respondents, having purchased otherwise qualifying property in 2012, had to notice the Assessor before January 31, 2013, that Respondents claimed eligibility for the ATI exemption. Respondents did not file their applications/notice for the ATI exemption with the Assessor until January 16, 2014.

This case amounts to a matter of timing for a taxpayer to fall within the confines of a tax exemption statute, and the practical, operative effect of such timing upon statutory definitions throughout the overall body of law governing the manner, operation, and method for assessment of property taxes by the tax assessors of this State.

A. Apples and Oranges: The exemption under § 12-37-3135 is available only if the statutorily defined exemption value is less than the statutorily defined “current fair market value”.

In its Opinion, the Court of Appeals states:

First, we find section 12-37-3135's language envisions a taxpayer might not claim the ATI Exemption immediately. 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.

This finding is partially correct inasmuch a taxpayer may not necessarily elect to claim the exemption immediately upon their purchase. However, it concludes with a

misapprehension of the Legislature's intent when viewed in light of the actual method of the property tax billing process as directed by law, and thus expands the prospective application and availability of the actual exemption statute when the overall statutory scheme otherwise necessitates a strict deadline for the ATI exemption.

Real property taxes billed for a property tax year are based on the value of the property and ownership status as of the preceding December 31st. *See* S.C. Code Ann. § 12-37-610 (2014). In this case, the Respondents purchased and first owned the property in 2012. Therefore, the Respondents' were first billed and able to claim eligibility for the exemption for tax year 2013. However, having purchased in 2012—a tax year for which the Respondents were not eligible for the exemption and not responsible for the payment of property taxes for that property tax year—the Respondents could, nonetheless, *prospectively* notice the Assessor during tax year 2012 that they claimed eligibility for the exemption should the same be available in 2013 (i.e. the tax year for which they first claimed eligibility had they actually filed).

The Court of Appeals' analysis of Subsection (C) that it “plainly” is not an affirmative requirement that the taxpayer claim the exemption before January 31 of the first year of eligibility may be correct if read in total isolation to the statute itself and the remaining body of laws within which it operates, but it cannot be read in such isolation. *S.C. State Ports Auth. v. Jasper Cnty.*, 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."). While further analysis and authority are subsequently employed within the Opinion to reach the ultimate conclusion that essentially arises from this single finding (i.e. taxpayers can simply notice/apply for the ATI Exemption at any point after an ATI, except as may be limited by the countywide reassessment process as clarified by the refiled Opinion), such analysis and authority misconstrues the practical and actual tax assessment and billing processes that are controlled by definitions of fair market value which dictate the operations of every county assessor in this State. To wit, the isolated phrase under subsection (B)(2) that the exemption "applies at the time to the ATI fair market value first applies" is utilized in the Opinion to suggest that the legislature intended the exemption's value be set and established at the time the assessable transfer of interest occurs. While correct in part, this "suggestion" is then broadly applied in the context of an expansive reading of an isolated phrase to reach an end to a means of ascertaining and giving effect to an intent of the Legislature that the statutory scheme does not support.

The statutory definition of "current fair market value" clearly provides that it is the fair market value reflected on the books of the property tax assessor for the current property tax year. Furthermore, the definition of "fair market value" makes it clear that the property tax assessor shall reappraise the value of real property either after an ATI or periodically under § 12-43-217 (the five-year countywide reappraisal). The fair market value following an ATI (the "ATI Fair Market Value") is then entered in the assessor's books as the "current fair market value." This designation is *mandated* by S.C. Code §12-37-3140(A)(1) (2014) which states that "the fair market value of real property is its fair market value applicable for the later of: ... (b) December thirty first of the year in which an assessable transfer of

interest has occurred." (Emphasis added). The issue misconstrued in the Court of Appeals' Opinion is how the timing of the taxpayer's application/notice to the tax assessor for eligibility for the exemption affects which "current fair market value" the Assessor can use in calculating whether the exemption can be granted.

The Court of Appeals, like the ALC, opines and concludes, particularly by way of flawed example, that the Assessor's application of the definition for "current fair market value" would result in the ATI exemption "collapsing" on itself in similar fashion to the Assessor's argument regarding the shifting definition of "current fair market value" otherwise necessitated by law. The Court posits that a taxpayer who purchases property after January of a tax year must have through January 30th of the following year to claim the ATI exemption, but that by that time the law envisions the property will have been reappraised. This is correct in that the property will have been reappraised by that time, but if the ATI fair market value under the exemption statute applies at the time of the ATI, then upon a *timely* application or notice from the taxpayer of eligibility—before current fair market value necessarily changes by way of other statute—then the current fair market value that the Assessor must look to under the exemption statute *will* be the current fair market value on its books pre-ATI (i.e. the pre-sale fair market value). Although the Opinion subsequently negates this concept, it nonetheless directly acknowledges that this "pre-sale fair market value" establishes the "floor" for property tax purposes under the exemption statute. However, it is the taxpayer's timely notice that triggers if the "floor" will be applicable in successive tax years. Otherwise, the necessary and operative definition of "current fair market value" for all successive tax years will apply pursuant to Section 12-37-3140(A)(1)(b), and the exemption can never be granted.

Thus, although the Respondents timely filed for the exemption in January of 2014 for the 2014 tax year, the limitations imposed by § 12-37-3135 (B)(2)(a) and (b) resulted in the Assessor’s inability to grant the exemption as no such mechanism was afforded to the Assessor by virtue of the operation of the statutory definitions imposed by the Code—that is, if an exemption value is not established in the tax year immediately following the ATI, the new ATI fair market value *will* and must become the current fair market value for subsequent tax years.

In this case, a timely application for an exemption prior to January 31, 2013 would have required the Assessor to compare the current fair market value reflected on its books for 2012 (i.e. pre-ATI) against the new ATI fair market value, which would have been two completely different values—an “apples-to-oranges” comparison for the analysis required under subsection (B)(2) of the statute. However, when such an exemption is not sought and granted within the admittedly narrow time frame following an ATI, both the statutory definitions and the ATI valuation statute require county Assessors to adopt the newly appraised ATI fair market value as *the* fair market value of the property, which thus becomes the current fair market value for the tax years subsequent to the ATI. By practical application and operation of law, a shift occurs in the definitions that force South Carolina’s Tax Assessors to compare identical valuations if a taxpayer applies for the exemption at any point after January 30 of the tax year in which the ATI fair market value first applied; and, most importantly in the analysis, if the values for comparison are identical—an “apples-to-apples” comparison of values for the necessary calculations under subsection (B)(2)—it naturally follows that no exemption can be granted by the plain language of the statute.

When the Respondents did not notice an exemption following the ATI, the newly appraised value triggered pursuant to the ATI then *became* the current fair market value as reflected on the books of the property tax assessor for the 2013 property tax year and for all subsequent years as the same is defined in § 12-37-3135 (A)(2). This “shifting definition” is paramount in a proper analysis of when and how the exemption sought by the Respondents could occur, and must remain paramount in ascertaining the intent of the legislature in interpretation of the statute at issue, and without resort to isolated phrases or forced construction. When construing a statute, the cardinal rule is to ascertain the intent of the legislature. *SCANA Corp. v. South Carolina Dept. of Revenue*, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009). "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." *Id.* at 23, 579 S.E.2d at 336. The words of the statute "must be given their plain and ordinary meaning without resort[ing] to subtle or forced construction to limit or expand [the statute's] operation." *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (internal citations omitted). "In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. *Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992).

B. Taxation is the rule, and exemption is the exception.

It is well established in South Carolina that an exemption of private property is strictly construed, that taxation is the rule and exemption is the exception. *State v. City of Columbia*, 115 S.C. 108, 104 S.E.2d 337 (1920). The statute before the Court is an

exemption statute to be narrowly construed, and taxpayers bear the burden of bringing themselves squarely within the parameters of the statute which grants the exemption. *See Owen Indus. Prods., Inc. v. Sharpe*, 274 S.C. 193, 262 S.E. 2d 33 (1980). The Opinion overlooks or misapprehends this rule of construction.

Although the Opinion raises concern that taxpayers may have to rush to notice the Assessor depending upon the time of year they purchase the property, a plain reading of the statute in conjunction with an understanding of its operation among the other property tax statutes governing the timeline for assessment, billing, and payment of property taxes, renders such concerns as misplaced. The Petitioner's argued construction of the statute is in accord with that of the Department of Revenue, and the Court's Opinion overlooks deference afforded to the Department as the agency charged with the statute's administration. "The 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." *Dunton v. S.C. Bd. of Exam'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987). In the matter before the Court, Petitioner would respectfully request review of the Opinion entered December 23, 2020, and assess the gravity of the affects it may inflict upon the counties. As analogized by frontline staff of an affected office: "If I bought a washer and dryer in 2015 with the understanding I would pay for it in 2016 at 2016 prices, but had a coupon for 25% off if I submit it before January 31 of 2016 then neglect to submit it; should the store honor my coupon two or three years later? Was their intent to reward purchase for that year or gamble on the budget loss for years to come?"

CONCLUSION

For these reasons stated, Petitioner requests the Court grant the with Petition for Writ of Certiorari.

Respectfully submitted,

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