STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Ennis M. Fant, Petitioner, vs. Anderson County Assessor, Respondent.	Docket No. 20-ALJ-17-0126-CC **ORDER DENYING MOTION TO RECONSIDER**

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or court) pursuant to a Motion for Reconsideration (motion) filed by Ennis M. Fant (Petitioner) on June 4, 2021. In his motion, the Petitioner requests that this court reconsider its Final Order dated May 27, 2021, pursuant to SCALC Rule 29(D). Thereafter, on June 11, 2021, the Anderson County Assessor (Assessor or Respondent) filed a return in opposition to the Petitioner's motion. After careful consideration of the parties' arguments, the Petitioner's motion is denied.

DISCUSSION

The Petitioner raises eight (8) primary grounds for reconsideration. Those arguments are addressed *seriatim* below:

1. The Petitioner contends that Section 12-54-85 of the South Carolina Code "is inapplicable to the assessment of residential real property taxes subsequent to payment of the tax[,] which is controlled solely by Section 12-39-220 and Section 12-39-250 . . . ." The court's final order explores the interplay between Section 12-54-85, county assessor duties, and county auditor duties at depth. This issue was, therefore, raised and ruled upon, and the court sees no aspect that it has supposedly overlooked or misapprehended.
2. The Petitioner next argues that Section 12-54-85 applies only to assessments, and that real property taxes are levied by the county auditor in accordance with Section 12-39-180. This issue was similarly raised and ruled upon in substance by the court in its Final Order. To the extent that the Petitioner simply argues that an assessment and a

levy are two different things, the court sees nothing in its Final Order insinuating anything to the contrary. Therefore, nothing about this argument supports a finding that the court overlooked or misapprehended anything.

3. Next, the Petitioner argues generally that "[c]ounty levied property taxes may not be collected through levy, distraint or court action, but only collected in the manner set forth in Title 12 Chapter 49 and 51." However, because he failed to raise this issue during the hearing, or at any point prior to his motion, with any degree of specificity, it is improper for the Petitioner to raise it now.[1] *See Johnson v. Sonoco Products Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."); *Anderson Mem'l Hosp., Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994) ("A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not."). Even if it had been properly raised, the Petitioner does not identify what procedures were supposedly not followed and the court sees no evidence of any breach in protocol relating to Title 12 Chapter 49 and 51. In any event, the Final Order finds that the procedures employed in this case were acceptable under the facts presented. Thus, there does not appear to be any point that the court overlooked or misapprehended.
4. The Petitioner also asserts that "[t]he retroactive modification of a county duplicate does not equate to an assessment of taxes under Section 12-54-85, and may only be made by the auditor . . . and the duplicate may only be modified or altered by the auditor . . . ." Again, the court's Final Order extensively addresses Section 12-54-85 and its relationship with the duties of the county assessor and the county auditor. Thus, this argument was raised to and ruled upon by the court in substance. To the extent that the Petitioner merely argues that the modification of a duplicate is not the same as an assessment, the court sees nothing in its final order casting doubt on such an assertion. As such, the court fails to see any aspect of this argument that has supposedly been overlooked or misapprehended.
5. Next, the Petitioner asserts that "[c]ounty real property tax is not an 'assessment,'"

[1] The Petitioner argued vaguely in his post-hearing memorandum that "[c]ounties, [sic] collect real and personal property taxes in accordance with Chapters 45 or 49 or 51." However, there were no citations to authority and the argument was not elaborated on in greater detail.

along with some general background notes about the duties of county assessors and auditors. As an initial matter, it is unclear from the Petitioner's assertions and citations what, specifically, he is arguing that the court supposedly overlooked or misapprehended. To that end, the court sees nothing in its final order that could remotely be construed as finding that an assessment and a tax are the same thing. Consequently, this argument is without merit.

6. The Petitioner then argues that Section 12-54-85 "is not a 'tax exemption' statute" and urges the court to employ a different, more favorable method of statutory construction for "tax statutes."[2] However, because the Petitioner failed to raise this argument at any point prior to the instant motion, it is not proper to raise it now.[3] *See Johnson*, 381 S.C. at 177, 672 S.E.2d at 570; *Anderson Mem'l Hosp., Inc.*, 313 S.C. at 498, 443 S.E.2d at 400. Even if it was properly before the court, the Petitioner's argument is still unavailing for several reasons. First, the court made no such finding that Section 12-54-85 is a "tax exemption statute." The court referenced the *Se. Kusan, Inc. v. S.C. Tax Comm'n* case not to suggest that Section 12-54-85 itself was a tax exemption statute, but rather to note that, generally, courts construe tax exemption statutes against the taxpayer. To that end, one of the primary points of contention in this case concerned whether and to what extent Section 12-54-85 relates to – or, more specifically, serves to limit – the application of Section 12-43-220(c), which is a tax exemption statute. Thus, the court's citation to *Se. Kusan, Inc.* was merely intended to lend additional support to the court's determination that the operative tax exemption statute in question, Section 12-43-220(c), is subject to the time limitations in Section 12-54-85. Second, the Petitioner's assertion that Section 12-54-85 is a "tax statute" would also be a mischaracterization. Though not a tax exemption statute, Section 12-54-85 does not impose a tax either. *See Mitul Enter.'s, L.P. v. Beaufort Cnty. Assessor*, 410 S.C. 430, 433-34, 764 S.E.2d 720, 722 (Ct. App. 2014) (declining to employ a method of

[2] The Petitioner's motion contains a typographical error identifying two points numerically as the Petitioner's fifth argument. Thus, the sixth paragraph in this order corresponds to the Petitioner's second fifth point, the seventh paragraph corresponds with the Petitioner's sixth argument, and the eighth paragraph corresponds with the Petitioner's seventh argument.

[3] At no point prior to the instant motion has the Petitioner argued that the plain text of Section 12-54-85 is ambiguous such that it necessitated statutory construction, or that any supposed ambiguity demands a construction favorable to himself, the taxpayer.

statutory construction for "tax statute[s]" that would resolve an ambiguity in favor of the taxpayer where the statute in question did not "impose[] a tax"). Thus, were it necessary, Section 12-54-85 would be construed in accordance with the normal canons of statutory construction. Finally, and crucially, while it was cited in support of the court's determination that Section 12-54-85 operates as a statute of limitations for county tax recovery matters initiated pursuant to Section 12-43-220(c), the *Se. Kusan, Inc.* case was not relied upon in making that determination. This is evidenced by the fact that court's final order expressly states that *Se. Kusan, Inc.* further supports its "finding," which the court detailed at length immediately preceding the reference. Therefore, this argument is without merit.

7. Next, the Petitioner asserts that "[o]nly the county auditor may determine the sum to be levied on items of property . . . and, [sic] make corrections to the county duplicate . . . and county treasurers are prohibited from collecting any tax except such as has been first entered upon the tax duplicates of their county . . . ." Again, the court is unable to discern what point was supposedly overlooked or misapprehended from the Petitioner's imprecise statements and citations. That notwithstanding, the court's order explores the interplay between the duties of a county auditor, assessor, and treasurer to a considerable degree. As such, the court sees nothing that was supposedly overlooked or misapprehended.

8. For his final argument, the Petitioner states that he is "[r]eserving [his] objection to the application of Section 12-54-85 . . ." in the following ways:

    a. First, the Petitioner asserts that Section 12-54-85(C)(2) extends the period beyond 36 months only if a "return or document" is not filed, and that a change of residency form "is not a document relating to a 'tax,'" but rather a "document which is required to be filed in order to avoid the penalty contained in Section 12-43-220." However, despite this time-extending provision in Section 12-54-85 being a central issue in this case, the Petitioner failed to raise his interpretation of the word "document" until now. Therefore, it is not properly before the court. *See Johnson*, 381 S.C. at 177, 672 S.E.2d at 570; *Anderson Mem'l Hosp., Inc.*, 313 S.C. at 498, 443 S.E.2d at 400. Nevertheless, even had this been properly raised, nothing in Section 12-54-85 dictates that the

document must "relate to a tax." *See* S.C. Code Ann. § 12-54-85(C)(2) (2014). Furthermore, even if Section 12-54-85 contained such a requirement, the document the Petitioner failed to file relates to the four percent special assessment ratio for real property, which is unequivocally tax related. Thus, this argument is wholly without merit.

b. Second, the Petitioner argues that "[t]he maximum extension pursuant to Section 12-54-85 for the assessment of a tax is 72 months and is in accordance with and consistent with the Federal Internal Revenue Code.[4] [Section] 12-54-85(E) only relates to the **collection** of taxes . . . and operates only as a statute of repose for the collection of an unpaid tax assessment." Again, although the appropriate time frame under Section 12-54-85 was debated extensively in this case, the Petitioner failed to allege that the extension was limited to 72 months under either state or federal law until the instant motion. As such, this argument is not properly before the court. *See Johnson*, 381 S.C. at 177, 672 S.E.2d at 570; *Anderson Mem'l Hosp., Inc.*, 313 S.C. at 498, 443 S.E.2d at 400.

c. Third, the Petitioner contends that "[i]f 12-54-85 is to be applied, when the penalty provided for in [Section] 12-43-220 could only extend 36 months prior to the alleged notice of reassessment from Respondent dated May 23-2019 [sic]." However, the court is unable to ascertain from this statement that is devoid of citations what the Petitioner is arguing and what point was supposedly overlooked or misapprehended. The court is, therefore, without sufficient information to respond. To the extent that the Petitioner argues that Section 12-43-220 prohibits the assessor from reassessing beyond 36 months, the Petitioner failed to raise to this issue prior to his motion. *See Johnson*, 381 S.C. at 177, 672 S.E.2d at 570; *Anderson Mem'l Hosp., Inc.*, 313 S.C. at 498, 443 S.E.2d at 400.

d. Fourth, the Petitioner asserts that, if Section 12-54-85 is applied, subsection (B)(1) requires that the amount of taxes must be determined and assessed after

[4] Apart from the obscure reference to the Federal Internal Revenue Code, the Petitioner's motion does not identify what part(s) of the code supposedly supports his position and the motion contains no citations to any federal code provisions.

the later of the date the tax was due or the first date on which any part of the tax was paid. As such, the Petitioner argues that, because it is stipulated that each tax bill issued by the county was paid when due, no reassessment could occur prior to April 23, 2016. Once again, because the Petitioner failed to raise to this issue at any point prior to this motion, it is not proper to raise it now. *See Johnson*, 381 S.C. at 177, 672 S.E.2d at 570; *Anderson Mem'l Hosp., Inc.*, 313 S.C. at 498, 443 S.E.2d at 400. However, even if the argument was properly raised, there is nothing in the stipulation of facts stating that "each tax bill issued by the county of Anderson from 1999 through the date of the hearing were paid [by the Petitioner] when due . . . ." The only stipulation bearing any resemblance – that Mr. Fant "paid all real estate property taxes billed for [the 150 Gareloch Ln.] property through tax year 2018" – contains no temporal element with respect to when those taxes were paid. To that point, the court is unable to discern how the Petitioner arrived at the April 23, 2016, date referenced, and the Petitioner does not allege what significance that date supposedly holds. Consequently, this argument is without merit.

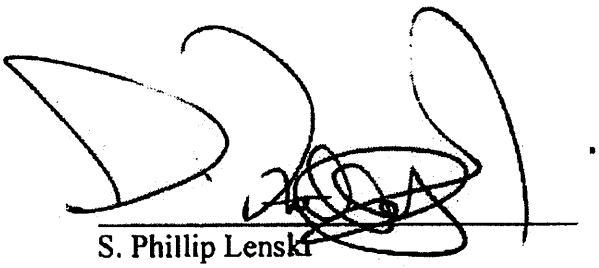
In sum, nothing in the Petitioner's motion causes this court to reconsider its Final Order of May 27, 2021.

ORDER

Based upon the foregoing,

IT IS HEREBY ORDERED that the Petitioner's Motion for Reconsideration is **DENIED.**

AND IT IS SO ORDERED.



June 28, 2021
Columbia, South Carolina

S. Phillip Lenski
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Erika S. Easler
Judicial Law Clerk

June 28, 2021
Columbia, South Carolina