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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
THE HONORABLE RALPH KING ANDERSON, III, CHIEF ADMINISTRATIVE
LAW JUDGE

Appellate Case No. 2020-000983
Trial Court Case No. 17-ALJ-17-0237-CC

Clarendon County, Florence County, Lee County, Sumter County, Williamsburg
County, Williamsburg County School District, Clarendon School District Two,
Florence School District One, Florence School District Three, Sumter County
School District, Clarendon County Hospital District, Lee County School District,
and Clarendon School District One, Appellants,

v.

South Carolina Department of Revenue, Farmers Telephone Cooperative, Inc.,
FTC Communications, LLC, and FTC Diversified Services, LLC,
..... Respondents,

Of Which, Farmers Telephone Cooperative, Inc., FTC Communications, LLC and
FTC Diversified Services, LLC, are theRespondent-
Appellants.

AMICUS CURIAE BRIEF OF THE
SOUTH CAROLINA ASSOCIATION OF COUNTIES

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INTERESTS OF AMICUS CURIAE

The South Carolina Association of Counties (Association) represents the interests of each of South Carolina's forty-six counties. The South Carolina General Assembly granted the counties the statutory power to assess and collect ad valorem property tax on all real and personal property in the counties. *See* S.C. Code Section 4-9-30(5)(a).

Property tax revenue is the single largest source of revenue received by the counties. This revenue is vital to meeting the service needs of county citizens, maintaining public safety and order, as well as funding the myriad service mandates required by the General Assembly.

The Association supports the Appellate counties' and other local government entities' position that the Administrative Law Court erred in its standing and statutory property tax notification deadline decision.

BACKGROUND

The South Carolina Constitution and supporting statutes require that all property in South Carolina be subject to taxation unless specifically exempted. *See* S.C. Const. Art. III, § 29; S.C. Const. Art. X; S.C. Code Section 12-37-210. All taxable property must be valued and assessed in its true value in money. S.C. Const. Art. III, Section 29. The valuation and assessment of property depends largely on the type of property being taxed. S.C. Code Section 12-37-30 requires that all property be taxed based on a uniform assessment. The valuation and assessment of individual real and personal property is determined by the county Assessor pursuant to S.C. Code Section 12-37-90(d). The General Assembly

requires that the Department of Revenue (DOR) assess and value certain business or industrial property such as the property in question in the instant case. *See* S.C. Code Section 12-4-540(A)(1). Each year, county taxpayers subject to DOR property assessment must file property tax returns with DOR. *See* S.C. Code Section 12-37-970. DOR uses these returns to develop an assessment for the property, or in the instant case, to determine whether the taxpayer's property is exempt from taxation. *Id.* The tax assessment developed by DOR must set forth the value of the subject property by ascertaining the fair market value of the property, and then applying the appropriate assessment ratio. *See* S.C. Code Section 12-60-30(19). DOR is required by law to provide the property tax assessment or exemption decision in writing to the taxpayer. *See* S.C. Code Section 12-4-540(A)(1)

While it may be the responsibility of DOR to value the taxpayer's property, the statutory authority to impose property taxes is exclusively granted to local governments, including counties, through the Home Rule Act. *See* 1975 Acts 283. Because each of these local entities are the true recipients of this revenue and thus undeniably impacted by decisions of DOR regarding property tax assessments and exemptions, the General Assembly has established very specific statutory notification requirements and timelines. These requirements include processes and deadlines for both taxpayers to submit tax information, and DOR to complete its valuation and assessments and notify the local governments of those assessments. Finally, these processes include statutory timelines for either the taxpayer or the local government entities to dispute the DOR decisions. *See* S.C. Code Section 12-4-535.

The state Constitution requires that the standing and notification provisions of Title 12 must be liberally construed in favor of local government. *See* S.C. Const. Art. VIII,

Section 17. DOR's responsibilities in granting certain property tax exemption decisions are a direct concern of local government and the failure to strictly follow these statutory requirements would potentially have serious consequences for the local government entities.

ARGUMENT

I. THE ALC ERRED BY RULING THAT THE COUNTIES AND OTHER LOCAL GOVERNMENTS DO NOT HAVE STANDING TO REQUEST A CONTESTED CASE HEARING PURSUANT TO SECTION 12-4-535 OF THE SOUTH CAROLINA CODE.

Since 1976, South Carolina's 46 counties have been authorized to assess and collect taxes on real and personal property within the county. *See* S.C. Code Section 4-9-30(5)(a). Property taxes on individual real and personal property are assessed, billed, and collected directly by the individual counties. However, the General Assembly has granted DOR the responsibility of valuing and assessing certain business and industrial real and personal property. *See* S.C. Code Section 12-4-540(A)(1).

As a result of a state agency's involvement in the assessment of purely local taxes, the General Assembly provided the counties a legislative pathway to challenge the determinations made by DOR regarding property taxes. *See* S.C. Code Section 12-4-535. Without such pathways, the counties, and ultimately local taxpayers, would unnecessarily be at the mercy of a state agency to safeguard legitimate local revenue.

The county parties asserted that the ALC had jurisdiction to hear their contested case under three separate state statutes: Sections 12-4-535, 12-60-2130, and 12-60-2150(H). The ALC correctly held that it had jurisdiction to hear the dispute under Sections 12-60-

2130 and 12-60-2150(H). However, the Association believes that the ALC erred in its conclusion that it did not have jurisdiction under Section 12-4-535. *See* ALC Order 39; R. 45-46.

Section 12-4-535 provides counties (as well as other local government entities) with a right to request a contested case hearing before the ALC in response to DOR's issuance of a department determination. To achieve statutory standing pursuant to Section 12-4-535, a county must comply with the requirements of Sections 12-4-535(B) and 12-4-535(C). Section 12-4-535(B) requires a county, within thirty days of the date the department determination is mailed, or hand delivered, to respond in writing by first class mail or hand delivery to DOR and state its agreement or disagreement with the department determination. Section 12-535(C) requires a county to, by resolution, request a contested case hearing before the ALC within thirty days after the county notice that it disagrees was either mailed or hand delivered.

In the instant case, the ALC found that a series of supplemental certifications sent to the Counties by DOR were "department determinations." (Order 45; R. 51). The only issue is whether the counties complied with the timing requirements of Section 12-4-535 for each tax year in dispute. The facts before the ALC showed that the counties made two filings with the ALC and served a copy of each on DOR by United States Mail less than 30-days after receiving the certifications from DOR. (Stip. of Facts ¶¶ 49-51; R. 4227) The Association argues that these filings complied with the statutory requirements of both Sections 12-4-535(B) and (C) because the record indicates that they were made in writing; indicated the counties disagreed with the decisions of DOR; and mailed to DOR within the required thirty day period. (R. 257 & 293). The filings simultaneously served as a request

for contested case hearing timely objecting to DOR's decisions within thirty days of delivering the "disagreement notice." The Association believes that all of these actions were in statutory compliance with Section 12-4-535(C).

There is no language in Section 12-4-535 prohibiting a county from complying with the statutory notice and hearing request requirements simultaneously. Additionally, no South Carolina court has held such a requirement exists. The lack of specific prohibition from consolidating both the notice and hearing requests is supported by our state Constitution. Article VIII, Section 17 mandates that state laws concerning local governments must be liberally construed in their favor. *Hospitality Ass'n of South Carolina, Inc. v. County of Charleston*, 320 S.C. 219, 227, 464 S.E.2d. 113, 118 (1995), where the Supreme Court found a limited reading of state law concerning municipal authority was inconsistent with liberal rule of construction mandated by the Constitution. While Section 12-4-535 provides a general process for multiple parties to dispute DOR decisions, it none the less directly references local government's processes to dispute a DOR decision regarding property taxes. Therefore, this court should view Section 12-4-535 in light of the provisions of Art. VIII, Section 17.

The Association strongly believes that counties and other local governments may, in the interest of efficiency and judicial economy, properly consolidate the notice and hearing requirements of Sections 12-4-535(B) and 12-4-535(C) into a single step. For these reasons, counties and other local governments have standing pursuant to Section 12-4-535 to request a contested case hearing on property tax exemption decisions of DOR.

II. THE ALC ERRED IN FINDING THAT DOR'S FAILURE TO COMPLY WITH THE JUNE 1ST NOTIFICATION REQUIREMENT SET FORTH IN SECTION 12-4-710 OF THE SOUTH CAROLINA CODE DOES NOT IMPACT ITS AUTHORITY TO GRANT THE EXEMPTION.

The General Assembly carefully constructed a legislative scheme that affords substantive rights to both taxpayers and the local governmental entities that depend on tax revenues for their viability. Section 12-4-710 is one such part of that legislative scheme that is intended to protect the rights of local governmental entities. The statute mandates that DOR shall determine if any property qualifies for exemption from local property taxes under Section 12-37-220 in accordance with the Constitution and general laws of this State. The statute also mandates that a property tax exemption determination must be made on an annual basis and DOR must notify the appropriate county official by June 1st of each year.

DOR failed to comply with Section 12-4-710. The ALC expressly found that "the Department did not comply with its obligation to notify the counties of its initial determination by June 1st." (Order 95; R. 101). The Order concluded that because of the failure to meet the June 1st notification (of the year in which the exemption request was received), the counties did not receive notice of the property tax exemptions in time to consider them before the counties were required to finalize the annual budgets before the July 1st deadline. *See* ALC Order; R. 102.

The South Carolina Supreme Court has stated expressly that the June 1st notification deadline in Section 12-4-710 is intended to benefit counties and local governments by requiring DOR and the taxpayer to comply with statutory deadlines so that the counties and other local governments are afforded sufficient time in which to comply

with their statutorily mandated budgeting requirements. On this point our Supreme Court has previously held that:

[t]he Code requires the Department to make annual determinations concerning exemptions and to notify the appropriate county officials of what property was exempted from taxation by June first. The interpretation advanced... would negate the purpose of notifying county officials by June first because the information given them would be worthless; ... [t]he plain language of these Code sections, when read together, show the legislature intended to set clear deadlines for applying for exemptions as part of an overall plan to enable the counties ... to plan budgets for each fiscal year. Any interpretation allowing the Department to grant exemptions after the deadline would negate the benefit of this plan.

TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 620-21, 503 S.E.2d 471, 476 (1998).

The Association believes the ALC erred in failing to read Section 12-4-710 in light of Article VIII, Section 17 of the state Constitution and its mandatory liberal rule of construction. As discussed earlier, Art. VIII, Section 17 mandates a liberal rule of construction for any constitutional provision or state law concerning local government. The court in *TNS Mills* clearly found that the General Assembly intended that DOR follow the deadlines set forth in Section 12-4-710 for the benefit of the counties and other local taxing entities. In the instant case, the June 1st deadline for DOR to make property tax exemption determinations was enacted to ensure that local governments have a sufficient amount of time to make adjustments to their revenue projections based on these determinations.

The potential impact on county budgets by allowing DOR to ignore the June 1st deadline found in Section 12-4-710 cannot be overstated. Counties are required by law to have their operating and capital budgets finalized prior to July 1st of each year. *See* S.C. Code Section 4-9-140. Section 4-9-140 also requires the county to identify all sources of

anticipated revenue and to levy ad valorem taxes necessary to meet all budget requirements. Should DOR fail to notify the counties before the adoption of the annual budget, there is real potential for revenue shortfalls or the necessity (as is the potential in the instant case) of issuing taxpayer refunds for prior year taxes paid from the current year county operating budget. There are few options available to a county which experiences either a shortfall in anticipated revenue because of a surprise final determination of DOR or is forced to refund tax payments. A county may be forced to cut services, furlough or terminate county employees, or proverbially to *rob Peter to pay Paul* by delaying appropriations in one area to pay something else. If other actions cannot be taken to reduce budget appropriations, South Carolina counties are constitutionally required to levy additional taxes on local taxpayers to make up for any annual budget deficit. *See* S.C. Constitution Art. X, Sec.7(b). The June 1st notification deadline imposed by Section 12-4-710 is vital to the fiscal health of local governmental entities. Counties are forced to rely heavily on ad valorem tax revenues to support their budgets. Counties are prohibited from levying any other type of new tax without the express consent of the General Assembly. *See* S.C. Code Section 6-1-310. Allowing the DOR to ignore this deadline would necessarily jeopardize the counties' ability to fulfill their statutory duty to have annual budgets adopted by the July 1st deadline, and to ensure that the budgeted appropriations do not result in a deficit.

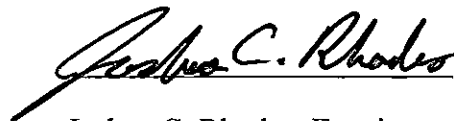
It should be noted that regardless of its decision, the ALC agreed with the position of the local governments by stating in its Order that "the Department's failure to meet the June 1st deadline contravenes the purpose of the statutory scheme identified by the Supreme Court in *TNS Mills*. (Order 96; R. 102). The Association believes that this finding

and its impact on the taxing local governments indicates that the ALC's ultimate decision on this issue was in error.

CONCLUSION

The Association asks this Court to reverse the decisions of the Administrative Law Court on the issues of standing to request a contested case hearing and that DOR is not required to strictly comply with the June 1st notification requirement for notifying local government of property tax decisions. Art. VIII, Sec. 17 of the S.C. Constitution required the ALC to examine these issues liberally in a light most favorable to the local governments. The statutes concerning property tax exemptions and appeals processes grant standing to South Carolina's counties to challenge DOR decisions. In addition, counties are not prohibited by the statute from simultaneously providing DOR with a disagreement with a department determination and requesting a contested case hearing before the Administrative Law Court with the same filing.

Respectfully Submitted,



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