

Habersham Land Co., Inc. v. Beaufort County Assessor, 071699 SCALC, 99-ALJ-17-0154-CC

Habersham Land Co., Inc., Petitioners

v.

Beaufort County Assessor, Respondents

No. 99-ALJ-17-0154-CC

South Carolina Administrative Law Court Decisions

July 16, 1999

Peggy P. Wilson for Petitioner.

Bernice Wright Beaufort County Assessor.

FINAL ORDER AND DECISION

JOHN D. GEATHERS, Administrative Law Judge.

STATEMENT OF THE CASE

This is a contested case brought by Habersham Land Company against the Beaufort County Assessor. This matter involves the denial of the Taxpayer's application, as untimely, for a multiple lot discounted value for the 1998 tax year. The parties exhausted all prehearing remedies with the Beaufort County Tax Equalization Board. Jurisdiction is granted to the Administrative Law Judge Division by S.C. Code Ann. § 12-60-2540 (Supp. 1998). A hearing was held in this matter on June 29, 1999 to determine whether the Taxpayer's filing of its application for the discounted value after the deadline of May 1 constitutes a waiver of the discounted value for the 1998 tax year under S.C. Code Ann. § 12-43-224 (Supp. 1998).

FINDINGS OF FACT

1. The Beaufort County Tax Equalization Board issued a written decision on February 19, 1999 denying the Taxpayer's application, as untimely, for a multiple lot discounted value for the 1998 tax year pursuant to S.C. Code Ann. § 12-43-224 (Supp. 1998).
2. The Taxpayer appealed the Board's decision to this tribunal on March 16, 1999.
3. The Taxpayer owns ten or more unsold lots, within a homogeneous area of the Habersham Subdivision, as specifically referenced in Respondent's Exhibit #1. The Taxpayer, through its employee, Peggy P. Wilson, applied for the multiple lot discounted value pursuant to S.C. Code Ann. § 12-43-224 for these lots on May 12, 1998. The Assessor received the Taxpayer's application on May 12, 1998 with a U.S. postmark bearing the same date. Ms. Wilson testified that she deposited the application in the U.S. mail with the appropriate postage attached on April 24, 1998. Other than her testimony, Ms. Wilson was not able to offer any substantive proof that she applied for the discounted value on or before May 1, 1998.

CONCLUSIONS OF LAW AND ANALYSIS

1. "Generally, the proper valuation of realty for taxation is a question of fact, to be ascertained in each individual case in the manner prescribed by statute." 84 C.J.S. Taxation § 411 at page 793 (1954).

2. The statute dispositive of the issue in this case, S.C. Code Ann. § 12-43-224, provides:

Notwithstanding the requirement that real property is required by law to be appraised at fair market value for ad valorem tax purposes, when undeveloped acreage is surveyed into subdivision lots and the conditional or final plat is recorded with the appropriate county official, the

county assessor shall appraise each lot as an individual property and *then discount his gross actual market value estimate of the developer's* lot holdings under the following conditions:

1. The discount rate shall include only:

(a) typical interest rate as charged by developers within the county to purchasers of lots when the purchase is financed by the developer or, in the absence of financing by the developer, the typical interest rate charged by local savings and loan institutions for mortgages on new homes.(b) the effective tax rate for the tax district that the lots are located in.

2. The developer has ten or more unsold lots within the homogeneous area on the December 31 tax control date.

3. The assessor shall determine a reasonable number of years for the developer to sell the platted lots, however the estimate shall not exceed seven years.

Each of these components shall be based on identifiable factors in determining "The Present Worth of Future Benefits" based on the discounting process.

Platted lots shall not come within the provisions of this section *unless* the owners of such real property or their agents make written application therefore on or before May 1st of the tax year in which the multiple lot ownership discounted value is claimed.

The application for the discounted value shall be made to the assessor of the county in which the real property is located, upon forms provided by the county and approved by the commission and a failure to so apply shall constitute a waiver of the discounted value for that year. (emphasis added.)

1. "By express provision, application of S.C. Code Ann. § 12-43-224 hinges on the Taxpayer's application for a discount." *Lindsey v. S.C. Tax Comm'n*, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990).

In the case at hand, the Taxpayer did not make application for the discounted value within the time period required by S.C. Code Ann. § 12-43-224. The Taxpayer contends that it mailed the application to the Assessor on April 24, 1998, several days prior to the May 1 deadline. However, the Assessor did not receive the application until May 12, 1998. The statute specifically provides that "the application for discounted value shall be made to the assessor." While the statute specifies that application should be on forms supplied by the Assessor, it does not specify the means by which application shall be made. Making application clearly connotes either that the application must be personally delivered or mailed to the Assessor on or prior to the prescribed deadline.^[1] Although Ms. Wilson contends that she deposited the application in the mail on April 24, 1998, the date postmarked on the envelope was May 12, 1998. While a postmarked date is not dispositive where timely service by mail is at issue, it is nonetheless, the most compelling evidence in this case. See *Green v. Green*, 320 S.C. 347, 465 S.E.2d 130 (Ct. App. 1995).

Under § 12-43-224, the responsibility for making application rests squarely with the Taxpayer. See also *Lindsey, supra*. Further, because the discount results in a reduced property tax liability, it is similar in nature to a deduction from income for income tax purposes, which is not a matter of right, but is rather a matter of legislative grace. See *Adams v. Burts*, 245 S.C. 339, 140 S.E.2d 586 (1965); *Fennell v. S.C. Tax Comm'n*, 233 S.C. 43, 103 S.E.2d 424 (1958). Accordingly, to obtain the benefits of the multiple lot discount, the taxpayer must bring itself

squarely within the terms of the statute expressly authorizing the discount. See *Avco Corp. v. Wasson*, 267 S.C. 581, 230 S.E.2d 614 (1976).

In the instant case, the Taxpayer did not timely make application and § 12-43-224 does not authorize the Assessor to grant extensions. Accordingly, the Taxpayer waived the discounted value for the 1998 tax year by failing to meet the May 1 deadline. S.C. Code Ann. § 12-43-224.

ORDER

IT IS HEREBY ORDERED that the Beaufort County Assessor decline to apply a multiple lot discounted value for the unsold lots in the Habersham Subdivision, identified herein, for the 1998 tax year.

AND IT IS SO ORDERED.

Notes:

[1] See *Lindsey v. South Carolina Tax Comm'n*, 323 S.C. 57, 448 S.E.2d 577 (Ct. App. 1994). In construing § 12-43-300, the Court stated, "[t]hough the statute does not specify the means by which the property owner or agent should 'serve' notice of objection, logically he has the same option as the assessor, to serve in person or by mail."
