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IN THE SUPREME COURT OF MISSISSIPPI

NO. 2017-CA-00246

RANKIN COUNTY BOARD OF SUPERVISORS

APPELLANT

v.

LAKELAND INCOME PROPERTIES, LLC

APPELLEE

BRIEF OF APPELLEE/LAKELAND INCOME PROPERTIES, LLC

ORAL ARGUMENT IS REQUESTED

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v.

LAKELAND INCOME PROPERTIES, LLC **APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Rankin County Board of Supervisors, Appellant;
2. W. Trey Jones, Esq., Joseph A. Sclafani, Esq., Taylor B, McNeel, Esq., and Brunini Gantham, Grower and Hewes, PLLC, Counsel for Appellant Rankin County Board of Supervisors;
3. Craig L. Slay, Esq., and Palmer & Slay, PLLC, Counsel for Appellant Rankin County Board of Supervisors;
4. Lakeland Income Properties, LLC, Appellee;
5. David B. Ellis, Esq. and Mockbee Hall & Drake, P.A., Counsel for Appellee Lakeland Income Properties, LLC; and
6. Honorable John H. Emfinger, Rankin County Circuit Court Judge.

/s/ David B. Ellis
David B. Ellis, Esq.
Counsel for Lakeland Income Properties, LLC

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STATEMENT REGARDING ORAL ARGUMENT

Lakeland Income Properties, LLC ("LIP") respectfully requests oral argument in this case pursuant to Mississippi Rule of Appellate Procedure 34(b) as LIP believes that oral argument will assist the Court in confirming that; (1) no pre-appeal objection or written application by the taxpayer is required prior to filing a notice of appeal in the circuit court pursuant to Miss. Code Ann. § 11-51-77 when the appeal is based upon Miss. Code Ann. § 61-3-21, (the "Airport Lease Tax Exemption Statute" or the Airport Lease Tax Exemption"); (2) LIP's lease fits squarely within the tax exemption provided by Miss. Code Ann. § 61-3-21, the "Airport Lease Tax Exemption Statute"; and (3) LIP is entitled to (3) years of prior taxes paid instead of one (1) year.

I. STATEMENT OF THE ISSUES

The Appellant, the Rankin County Board of Supervisors ("the Board"), has raised two issues on appeal, which can be categorized as follows:

1. Whether the Circuit Court erred in denying the Board's Motion to Dismiss for LIP's alleged failure to submit either a written objection or application prior to filing its Notice of Appeal in the Circuit Court pursuant to Miss. Code Ann. § 11-51-77; and
2. Whether the Circuit Court erred in granting summary judgment in part in favor of LIP after finding that no genuine issues of fact prevented the Court from ruling as a matter of law that LIP's lease with the Jackson Municipal Airport Authority qualifies for the Airport Lease Tax Exemption contained in Miss. Code Ann. § 61-3-21.

II. STATEMENT OF ASSIGNMENT

This case should be retained by the Supreme Court since this appeal presents an issue of first impression as to the proper interpretation of Mississippi's Airport Lease Tax Exemption Statute, Miss. Code Ann. § 61-3-21.

III. STATEMENT OF THE CASE

A. Nature of the Case

This appeal concerns whether a lease between the Jackson Municipal Airport Authority and a commercial real estate developer, LIP, falls within the ad valorem tax exemption contained in the Airport Lease Tax Exemption Statute, Miss. Code Ann. § 61-3-21.

B. Procedural Background

Since 1993, LIP has leased several acres of real property which is part of the Jackson-Medgar Wiley Evers International Airport property, which real property is situated in Rankin County, Mississippi on the Southeast corner of Lakeland Drive and Airport Road (the "Lease" or the "Leased Property"). (R.96-97; R.E. 6-7). Since 1995, Rankin County has assessed ad valorem taxes to LIP based on the assessed value of the Leased Property and LIP has paid those taxes each and every year. (R.96-97; R.E. 6-7). When LIP first realized that the Leased Property fell within the ad valorem tax exemption provided by Miss. Code Ann. § 61-3-21, LIP submitted a demand in writing to the Board, on August 27, 2014, that the Board cease assessing ad valorem taxes to the Leased Property and refund LIP for the previous three years of taxes paid, pursuant to Miss. Code Ann. § 15-1-49 (general three (3) year statute of limitations) . (R.1319-1323).

On December 5, 2014, after the Board failed to take any formal action in response to LIP's demand other than to deny liability through an email from the Board's attorney, LIP filed a Complaint in Rankin County Circuit Court in a case styled Lakeland Income Properties, LLC v. The Rankin County Board of Supervisors, et al., Case No. 61CI1:14-cv-00317 (the "Rankin County Lawsuit"). (R.1316, 1324-1325).[1] On December 19, 2014, the Board filed its Answer denying that LIP was entitled to the tax exemption. On March 24, 2015, at a hearing on the parties' cross-motions for summary judgment, the Circuit Court did not rule on the motions but instead indicated to the parties that the Court believed that the proper initial filing for the tax issue in dispute would have been a "Notice of Appeal" instead of a "Complaint" like the one LIP had filed. On November 23, 2015, LIP filed a separate Notice of Appeal in the Rankin County Circuit Court styled Lakeland Income Properties, LLC v. Rankin County Board of Supervisors, Case No. 61CI1:15-cv-00239 (the "Rankin County Appeal") appealing the Board's decision to assess taxes to the Leased Property and requesting a refund for the previous three years of taxes paid. (R. 6-12). Having filed the Notice of Appeal, LIP allowed the Circuit Court to dismiss the Rankin County Lawsuit for failure to prosecute on May 16, 2016.

On January 25, 2017, in the Rankin County Appeal, the Circuit Court entered a Judgment denying the Board's Motion to Dismiss, granting in part and denying in part LIP's Motion for Summary Judgment, and granting in part and denying in part the Board's Motion

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[1] The Court can take judicial notice of the Rankin County Lawsuit and the filings referred to in this paragraph as they are all public records available at the MEC Website for the Rankin County Circuit Court. In addition, a copy of the docket sheet for the Rankin County Lawsuit is located in Appellee's Records Excerpts, pp. 8-9.

for Summary Judgment. (R.1329-1331; 1/18/17 T. 1-12[2]; R.E. 10-21). Specifically, the Circuit Court found that LIP was entitled to the Airport Lease Tax Exemption and had properly perfected its appeal, therefore entitling LIP to a refund of the 2015 taxes paid of $37,575.44. (R. 1329-1331; 1/18/17 T. 1-12, R.E. 10-21). However, the Circuit Court also found, erroneously, that the assessment of taxes for any year prior to 2015 was not properly before the Court. Id.

C. Statement of the Facts Relevant to the Issues Presented for Review

In 1993, the JMAA, as Lessor, entered into the Lease with LIP's predecessor in interest, as Lessee, for a 6 acre parcel of land at the corner of Lakeland Drive and Airport Road in Rankin County, Mississippi. (R. 96, 109; R.E. 6). The Lease was assigned to LIP in 1997, and LIP has held the Lease since then to the present. (R.96-97; R.E. 6-7). The original Lease was amended and restated by LIP and JMAA in an Amended and Restated Lease Agreement dated July 17, 2013, for a fifty-year (50) term until July 17, 2063. (R. 110-140). At all times relevant hereto (2012-2017), the Leased Property has been solely used by LIP for commercial purposes, as a retail/professional center. (R. 166-167). Currently, some of LIP's tenants include Smoothie King, Osaka (Japanese Restaurant), Precision Optical, Redrock Mortgage Company and a US Navy Recruiting Center. (R. 166-167).

The parties agreed in the original lease signed in 1993 that the Lease was for "... certain land on the Airport's premises to be utilized in connection with a commercial enterprise owned and operated by [LIP] at the corner of Lakeland Drive and Airport Road."

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[2] There are two transcripts in the record, therefore the date of the hearing is noted to clarify which transcript is being referenced.

(R.100). In the 2013 Amended and Restated Lease Agreement, the parties agreed that JMAA has the power to, "lease property comprising a part of the Airport, including areas for airport-compatible development", pursuant to Miss. Code Ann. § 61-3-21. (R. 113).

Each tax year beginning with the tax year 1995, the tax assessor of Rankin County and the Board have assessed and approved, respectively, ad valorem taxes to be paid by LIP for the Property. (T.96-97; R.E. 6-7). For all tax years at issue herein, the Property has been taxed as Parcel No. F10P000008 00020 and as PPIN049894 on the Rankin County Tax Roll. (R. 166-167). On July 23, 2013 LIP paid $38,861.22 in ad valorem taxes for tax year 2012. (R. 166-168). Subsequently, for the tax years 2013, 2014 and 2015, LIP paid an additional $113,744.76 in ad valorem taxes for the Leased Property which had been assessed by the Board for a total of $152,605.98 for tax years 2012, 2013, 2014 and 2015. (R. 166-167).

On August 27, 2014, LIP, through counsel, sent a certified letter to the President of the Board objecting to the Board's failure to apply the Airport Lease Tax Exemption contained in Miss. Code Ann. § 61-3-21 and demanding a refund of taxes paid for the previous three years. (R. 1319-1323). On October 21, 2014, the Board's counsel sent an email to LIP's counsel stating that, "The Board of Supervisors reviewed this letter and believes that the County is properly assessing the properties referenced." (R. 1324-1325). On December 5, 2014, LIP filed its Complaint in the Rankin County Lawsuit and on December 19, 2014, the Board filed its Answer denying that LIP was entitled to the tax exemption. (R.E. 8-9).

On November 16, 2015, the Board certified the State Tax Commission's Order approving the real and personal property rolls of Rankin County for tax year 2015, which included an assessment to LIP for the Property in the amount of $37,575.44. (R. 167; 172).

On November 23, 2015, LIP initiated the Rankin County Appeal by filing LIP's Notice of Appeal in the Rankin County Circuit Court and posting bond therewith. (R 6-12). LIP has since paid the 2015 taxes under protest in the amount of $37,575.44. (R. 167).

IV. SUMMARY OF THE ARGUMENT

The Circuit Court did not err in denying the Board's Motion to Dismiss because the applicable statutes, Miss. Code Ann. 11-51-77 and Miss. Code Ann. § 61-3-21, do not require the taxpayer to file objections or to apply for a change in assessment prior to filing a Notice of Appeal. Nevertheless, LIP had objected and requested a change, in writing, many times prior to filing its Notice of Appeal with the Rankin County Circuit Court. The Circuit Court also did not err in granting LIP's Motion for Summary Judgment and denying the Board's Motion for Summary Judgment as to the 2015 taxes assessed by the Board and paid by LIP because there is no factual dispute that the Leased Property is a portion of the "airport" as defined by Miss. Code Ann. 61-3-3(a) and that the Leased Property is used for "commercial purposes" as required by Miss. Code Ann. 61-3-21(1). As such, the Leased Property clearly falls within the Airport Lease Tax Exemption.

V. ARGUMENT

A. Standard of Review

LIP agrees with the Board that for each issue on appeal, the standard of review is *de novo*. Burleson v. Lathem, 968 So.2d 930, 932 (Miss. 2007)(standard of review for grant or denial of motion to dismiss or for summary judgment is *de novo*).

B. The Circuit Court was correct in ruling that LIP was not required to object pursuant to Miss. Code Ann. § 27-35-93 or to apply for a change in assessment pursuant to Miss. Code Ann. § 27-35-143 prior to filing its Notice of Appeal pursuant to Miss. Code Ann. § 11-51-77 and Miss. Code Ann. § 61-3-21. However, even if LIP was required to either object or to apply for a change in assessment, any such requirement was fulfilled by LIP.

This issue is a perfect example of why this Court has previously held that Miss. Code Ann. § 11-51-77 should be liberally interpreted. Specifically, this Court has previously stated:

> It is a wise and just policy which seeks to have cases decided upon their merits, within prescribed rules of law. Neither the taxpayer nor the sovereign should be put to the gamble of seizing at just the right moment the shuttlecock as its moves back and forth between the Supervisors and the Commission in an effort to weave the tax fabric of the state.

Ditto v. Hinds County, 665 So.2d 870, 883 (Miss. 1995) (quoting Evans v. Board of Supervisors, 5 So.2d 224 (Miss. 1941)).

1. The Circuit Court did not err by finding that LIP was not required to object in writing or to apply for a change in assessment before filing the Rankin County Appeal.

The appeal procedure for a Board of Supervisors' failure to grant an airport lease tax exemption per Miss. Code Ann. § 61-3-21 is Miss. Code Ann. § 11-51-77, not Miss. Code Ann. § 27-35-93 or 27-35-143 as claimed by the Board.

a. Miss. Code Ann. § 27-35-93 is inapplicable to tax exemptions.

The Board first contends that LIP was required to submit written objections pursuant to Miss. Code Ann. § 27-35-93 prior to appealing. Miss. Code Ann. § 27-35-93 provides that "**a person who is dissatisfied with the assessment** may, at the August meeting, present objections thereto in writing." (Emphasis added). However, LIP was not dissatisfied with the

amount assessed which is the subject matter of Miss. Code Ann. §27-35-93, but instead LIP claimed an exemption to any assessment pursuant to Miss. Code Ann. § 61-3-21 .

It is clear from the statutes preceding Section 27-35-93 (which are discussed in depth in the Board's Brief on pp. 12-15) that Section 27-35-93 only deals with contesting the amount of an assessment by the applicable governing authority, not with a claim for entitlement to a specific statutory tax exemption to any assessment such as in the case *sub judice*. Tellingly, none of the cases cited by the Board for its position were appealed via Miss. Code Ann. § 11-51-77, which both parties agree controls in this case. Further, there is no authority for the Board's premise that Section 27-35-93 controls when a taxpayer asserts an exemption to any assessment instead of an adjustment in the way an assessment was calculated.

b. Miss. Code Ann. § 27-35-143 is inapplicable to the Airport Lease Tax Exemption, Miss. Code Ann. § 61-3-21.

The Board next contends that since LIP did not object pursuant to Section 27-35-93, then Miss. Code Ann. § 27-35-143 required that LIP submit an "application" to the Board "to change, cancel or decrease an assessment" prior to filing a Notice of Appeal with the Circuit Court. The Board argues that Section 27-35-143 is a specific statute that governs over Section 11-51-77, which the Board argues is a general statute. The Board cites Lenoir v. Madison County, 641 So.2d 1124, 1129 (Miss. 1994), for the proposition that, "[a] specific statute will control over a general one." However, in Lenoir, the Court was actually referring to Miss. Code Ann. § 11-51-77 as the "specific statute" in that case, so the Board's argument that Section 11-51-77 is a general statute is clearly incorrect. Further, there is no reported case

where the taxpayer appealed pursuant to Miss. Code Ann. § 11-51-77, where the appellate court held that a taxpayer's appeal was deficient for failure to make an application for a change in the assessment.

The Lenoir case actually lends credence to LIP's position that taxpayer appeals taken pursuant to Miss. Code Ann. § 11-51-77 do not require a pre-appeal application to be filed. In Lenoir, the taxpayer filed two separate actions with the Madison County Circuit Court seeking a reduction in ad valorem taxes on her real property owned in Madison County. Id. The trial court dismissed both actions because the taxpayer failed to file a bill of exceptions. Id. The Supreme Court agreed with the taxpayer that, "Miss. Code Ann. § 11-51-77 (1972), controls the general statute [Section 11-51-75] and it only requires that the appeal to the circuit court be commenced within ten (10) days after the adverse decision from the board of supervisors." Id. at 1128. In this case, Section 11-51-77 is specific and Sections 27-35-93 and 27-35-143 are general.

Just as a bill of exceptions is not required, neither is an application for change in assessment. The Lenoir Court reasoned that a bill of exceptions was not required in tax cases which are appealed pursuant to Section 11-51-77 because they are unnecessary since the case will be tried *de novo* by the circuit court. The same logic applies to the issue of whether an application is required because in a trial *de novo* there is no logical reason why the trial court (or jury) would need anything more than a notice of appeal describing the decision of the Board that was being appealed.

A pre-appeal application is especially unnecessary in this case because the Airport Lease Exemption Statute, Section 61-3-21, is automatic and makes no mention of any

application to be entitled to the exemption. Instead, Section 61-3-21 provides that all contracts entered into pursuant to Section 61-3-21, "shall be free and exempt from all state, county and municipal ad valorem taxes on real property and personal property..." See Miss. Code Ann. § 61-3-21(3).

In another case involving an "automatic" tax exemption like the Airport Lease Tax Exemption, the Mississippi Supreme Court found that an application was unnecessary for the taxpayer to be entitled to the exemption. See Gray v. Steelman, 137 So.2d 797 (Miss. 1962). In Gray, the tax statute in question was a statute that exempted certain mineral interests from all ad valorem taxes levied on or after January 1, 1947. Id. at 797. The Appellant in that case argued that the predecessor to Miss. Code Ann. § 27-35-143 required the application procedure to be followed for the exemption to apply. Gray 137 So.2d at 797. However, the Supreme Court disagreed, holding that, "[w]e do not think this argument is valid for [the exemption statute] is self-operating and grants the exemption upon creation of the severed mineral interests." Id. at 799. Likewise, Miss. Code Ann. § 61-3-21 is automatic and "self-operating" as it provides, in relevant part, that the leases in question "shall be free and exempt from all State, County, and municipal ad valorem taxes...".

LIP concedes that some statutory tax exemptions would in fact require a pre-appeal application, but only if the statute that grants the exemption specifically requires it. In City of Jackson v. Sly, 343 So.2d 473 (Miss. 1977), a case cited by the Board, one such tax exemption is discussed. Sly is distinguishable because the specific numerated exemptions listed in Miss. Code Ann. § 27-31-107, "requires that an application be filed with the municipality..." and set out the information which qualifies the taxpayer for the exemption.

Id. at 474. In contrast, the statute at issue herein, Section 61-3-21, requires no such application to be submitted by the taxpayer.

c. Miss. Code Ann. § 11-51-77 provides the procedure for a Miss. Code Ann. § 61-3-21 appeal.

The plain language of Miss. Code Ann. § 11-51-77, the statute which provides the procedure for LIP to appeal, does not require written objections to be filed. Neither does Miss. Code Ann. § 61-3-21, the Airport Tax Exemption Statute. Instead, Section 11-51-77 provides as follows, in relevant part:

> Any person aggrieved by a decision of the board of supervisors . . . as to the assessment of taxes, may within ten days after the adjournment of the meeting at which such decision is made, appeal to the circuit court of the county, upon giving bond, with sufficient sureties, in double the amount of matter in dispute, but never less than One Hundred Dollars ($100.00).

The only two (2) cases in the annotations to Section 11-51-77 regarding the objections issue affirm LIP's position that no such objections are required. See Robinson Land & Lumber Co. v. Roberson, 126 Miss. 535, 89 So. 160 (1921) (attorney general may appeal without first objecting); see also, Louis Cohn & Bros. v. Lincoln County, 119 Miss. 718, 81 So. 492 (1919) (taxpayer may appeal board of supervisors' decision increasing valuation though taxpayer did not object thereto).

The Board argues that the recent Mississippi Supreme Court decision, Pascagoula-Gautier School District v. Board of Supervisors of Jackson County, Mississippi, No. 2014-CA-01774-SCT, 2016 WL 6125423 (Miss. Oct. 20, 2016), supports its position that a pre-appeal objection was required. However, in that decision, the Supreme Court did not even pass upon the issue of whether written objections are required prior to a tax appeal and the

Court held; "[t]o be clear, we do not address whether the PGSD and the City followed the appropriate procedures." Id. at 10. Not only that, it is clear that at least some part of the trial court proceedings in that case were based upon Miss. Code Ann. § 11-51-75, not Miss. Code Ann. § 11-51-77. Id. at 7.

Therefore, properly applying Sections 11-51-77 and 61-3-21, and recognizing that Sections 27-35-93 and 27-35-143 do not apply, LIP was not required to file objections or an application prior to filing its Notice of Appeal with the Circuit Court.

2. Alternatively, even if a written application was required, LIP substantively complied with any such requirement.

Even if the Circuit Court were incorrect as to whether a written application was required, the Circuit Court did not err when it denied the Board's Motion to Dismiss based on the Board's arguments because LIP actually complied with any such requirement having first demanded, via a letter to the Board dated August 27, 2014, that the Board apply the tax exemption and refund LIP's taxes on August 27, 2014, which letter was an "application" for the Board to "cancel" the tax assessment to LIP as the Board claims is required by Section 27-35-143. After this demand, however, the Board failed to hold a hearing as set forth in Section 27-35-145, or to otherwise respond to LIP's request except to send an email from the Board's counsel indicating that the Board was denying LIP's request. At that point, the dye was cast and the parties' positions were clear. In fact, the parties litigated the issue first in the Rankin County Lawsuit, then in the Rankin County Appeal, which is presently before this Court. Therefore, the Board's statement that it was never presented with appropriate opportunity to make a decision about the exemption of the Property is disingenuous, especially in light of

the Board's failure to hold a hearing on the issue.

C. The Lease unquestionably qualifies for the tax exemption provided in Miss. Code Ann. § 61-3-21.

Miss. Code Ann. § 61-3-21 provides, in relevant part, as follows:

> (1) In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases and other arrangements for terms not to exceed fifty (50) years with any persons: (a) granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes; (b) conferring the privilege of supplying goods, commodities, things, services or facilities at the airport or air navigation facility; and (c) making available services to be furnished by the authority or its agents at the airport or air navigation facility.
>
> (3) All contracts, leases, and other arrangements entered into pursuant to this section are deemed to serve a public and governmental purpose as a matter of public necessity; therefore, all such contracts, leases, and other arrangements and all structures, improvements and other facilities erected, installed, constructed, or located in connection therewith on an airport or air navigation facility owned or controlled by an authority, or any portion of facility thereof or space therein shall be free and exempt from all state, county and municipal ad valorem taxes on real property and personal property for so long as may otherwise be lawful, and the charges, rentals and fees received by an authority in connection with such contracts, leases, and other arrangements shall be deemed to be in lieu of said taxes.

(Emphasis added).

Importantly, the statute that defines the term "airport", Section 61-3-3(a), was amended in 2004 to expand the definition of "airport" as follows (added language is underlined):

> "Airport" means any area of land or water which is used, or intended for use, for the landing and taking off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, or for other appropriate purposes, including buffer areas and areas for airport compatible development, together with all buildings and facilities located thereon.

(Emphasis added) See Laws, 2004, ch. 335, § 1. Under this definition, "airport" includes not only the land which is used for the landing and taking off of aircraft, but also the "appurtenant areas" to that land, and "buffer areas and areas for airport compatible development, together with all buildings and facilities located thereon."

The Board's reading of "airport" is not supported by Section 61-3-3(a) because the statutory definition is clearly broader than that. The Board would also have the Court ignore the 2004 amendment, which was clearly in response to the pre-2004 Attorney General opinions denying the exemption. Taking the Legislature's broad definition of "airport", it is clear that the Leased Property qualifies for the exemption because (1) the Leased Property is in an area of "airport compatible development" and is a "buffer area" to the Jackson-Medgar Wiley Evers International Airport, and (2) LIP is using the Property for "commercial purposes".

The Illinois case cited by the Board, Du Page Cty. Airport Auth. v. Dep't of Revenue, 831 N.E.2d 30 (Ill. Ct. App. 2d. Dist. 2005), is inapplicable because the Illinois airport lease exemption statute is clearly not as broad as Mississippi's. In Illinois, the applicable statute provides that the leased property must by used for "Airport Authority Purposes", which term is not defined explicitly by statute. Id. at 39-42. For that reason, the Illinois Court of Appeals, Second District, interpreted the phrase narrowly since it construed a tax exemption. Id. To

the contrary, the Mississippi Legislature has clearly defined "airport" such that the Leased Property fits squarely within exemption provided in Miss. Code Ann. § 61-3-21.

In statutory interpretation cases such as this one, "the first question a court should decide is whether the statute is ambiguous." Estate of Klaus v. Vicksburg Healthcare, LLC, 972 So.2d 555, 556 (Miss. 2007). If the statute is not ambiguous, "the court should simply apply the statute according to its plain meaning and should not use principles of statutory construction." Miss. State University v. People for the Ethical Treatment of Animals, Inc., 992 So.2d 595, 606 (Miss. 2008). Further, if a term has been defined by the Legislature, that is the definition to be used, not a dictionary definition. City of Tchula v. Miss. Public Service Comm., 187 So.3d 597, 600 (Miss. 2016)(citing Kerr-McGee Chem. Corp. v. Buelow, 670 So.2d 12, 19 (Miss. 1995).

The Mississippi Attorney General's Office has opined that the phrase "commercial purposes" contained in Section 61-3-21(1) can be interpreted to mean, ". . .for the purpose of engaging in business or for the purpose of buying or selling goods, products or property." Op. No. 2012-00024, B. Sean Akins, Esq. (Miss. A. G., February 21, 2012).

Therefore, taken together, the applicable statutes unambiguously provide that where, as here, JMAA leases airport property, including buffer areas surrounding the Jackson-Medgar Wiley Evers International Airport, and/or areas for airport compatible development, for a commercial purpose(s), then the lease shall be "free and exempt from all state, county and municipal ad valorem taxes on real property and personal property".

As stated in the affidavit of Rodney Chamblee, deceased, LIP's former manager, which was the only evidence submitted on this issue, LIP uses all of the Property for a

commercial purpose, which is a retail/professional center. (R. 166-167). As such, it is clear that the Property, and all structures and improvements thereon, are exempt from taxation by Rankin County.

Despite all of the above clear statutory authority for LIP's position on appeal, the main flaw in the Board's argument that the Leased Property does not qualify for the tax exemption is that the Board adopts its own definition of "airport" instead of using the Legislature's definition of "airport", and instead attempts to use a dictionary definition or a common use definition, which is not permissible. The Board wrongly argues the Lease must have a nexus to the operation of the Jackson-Medgar Wiley Evers International Airport, instead of a nexus to the operation of an "airport" as defined by the Legislature in Section 61-3-3(a).

The Board goes to great lengths in its Brief in its attempt to categorize the Leased Property as something other that a "buffer area" to the Jackson-Medgar Wiley Evers International Airport. As stated above, the Leased Property, even if not a "buffer area", is still tax-exempt because it is in an area of "airport compatible development", as stated in the Lease. However, the Leased Property does serve as a buffer area for the incoming and outgoing air traffic. The Leased Property is situated less than one mile from the north end of the runway and is in the direct flight path for air traffic. The Leased Property is also part of the same contiguous block of land upon which the main airport buildings are located. As such, it is clear that the Leased Property, including the airspace above it, serves as a protective barrier from incoming and outgoing air traffic.

The only evidence submitted by the Board for the proposition that the Leased Property does not fit within the exemption are Meeting Minutes from a 2008 meeting of JMAA

wherein JMAA made some unilateral statements about the Lease. However, none of those statements ever became part of any contract or lease amendment between JMAA and LIP. Accordingly, LIP objected to the Board's use of the Meeting Minutes in the Circuit Court. Further, even if admissible, the Meeting Minutes do not preclude summary judgment in LIP's favor because nothing in the minutes changes the qualities of the Lease or the Leased Property. For example, in the minutes, JMAA determined that the Leased Property was "surplus", and "no longer needed for Authority purposes". This does not change the fact that the Leased Property is a "buffer area" to the Jackson-Medgar Wiley Evers International Airport which was being leased by LIP for "commercial purposes".

As more fully described above, the Circuit Court did not err by granting summary judgment to LIP as to the application of the tax exemption and requiring the Board to refund LIP for its 2015 tax payment.

VI. CONCLUSION

The Leased Property clearly falls within the Airport Lease Tax Exemption and LIP was not required to comply with Miss. Code Ann. § 27-35-93 nor Miss. Code Ann. § 27-35-143 before filing the Rankin County Appeal. Even if LIP was subject to the requirements of § 27-35-143, LIP actually complied. Therefore, the Circuit Court did not err in denying the Board's Motion to Dismiss and granting LIP's Motion for Summary Judgment on these issues.

CROSS-APPEAL

VII. STATEMENT OF ISSUE ON CROSS-APPEAL

The Circuit Court erred by holding that LIP was only entitled to a refund of the 2015 taxes instead of also granting a refund for all taxes paid by LIP within three (3) years of LIP's Notice of Appeal, which was filed on November 23, 2015.

VIII. STATEMENT OF ASSIGNMENT

See Section II above.

IX. STATEMENT OF THE CASE

See Section III above.

X. SUMMARY OF ARGUMENT

Miss. Code Ann. § 15-1-49 provides that the statute of limitations for which no other period of limitations is prescribed is three (3) years. Therefore, LIP is entitled to a refund of all taxes paid within three (3) years of November 23, 2015, the date LIP filed its Notice of Appeal in the Circuit Court.

XI. ARGUMENT

A. Standard of Review

The issue on cross-appeal pertains to the Circuit Court's rulings on the parties' motions for summary judgment, so the applicable standard of review is *de novo*. Burleson v. Lathem, 968 So.2d 930, 932 (Miss. 2007).

B. LIP is entitled to a refund of three years of taxes paid.

As described in Section V. above, which is incorporated herein by reference, LIP was wrongly assessed taxes on the Lease by the Board. As such, the taxes were collected in error

and Miss. Code Ann. § 27-73-7 provides that LIP is entitled to a refund. Section 27-73-7 provides as follows:

> The tax collector is authorized and empowered to refund any individual, firm or corporation any ad valorem, privilege or excise tax which has been paid or collected through error or otherwise when such person, individual, firm or corporation has paid any such tax in excess of the sum properly due whether paid under protest or not. Taxes erroneously paid within the meaning of this section shall include, but not be limited to, double payment, or overpayment, or payment on state, United States, vacant and exempt land, and the purchase paid for the redemption of lands erroneously sold for taxes.
>
> All refunds under this provision shall be made out of any monies collected by the tax collector from the same source of revenue, or if such source of revenue no longer exists the refund shall come from the general fund collections. The tax collector shall issue a warrant to the claimant and deduct the proper amounts from his next settlement.

The Mississippi Attorney General has opined that the three-year statute of limitations contained in Section 15-1-49 applies when issuing a refund owed under Section 27-73-7, so LIP is entitled to a refund of all taxes paid within three years of its Notice of Appeal. See Op. No. 2007-212, Nowak (Miss. A. G., April 27, 2007). The Nowak opinion refers to three years prior to the date of the taxpayer's petition, but Section 27-73-5 also refers to the initiation of "suits" or "proceedings" as the date to use for time purposes.

In this case, LIP's Notice of Appeal was filed on November 23, 2015, therefore the Board should issue a refund to LIP for all taxes paid within three years of the date of the Notice, or $152,605.98. Accordingly, LIP is entitled to a refund of $152,605.98.

XII. CONCLUSION

The Board failed to apply the Airport Lease Tax Exemption and therefore, collected taxes in error from LIP. As such, LIP is entitled to a refund for the taxes paid within three (3) years of the date of LIP's Notice of Appeal.

Respectfully submitted,

LAKELAND INCOME PROPERTIES, LLC

By Its Attorneys,

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CERTIFICATE OF SERVICE

I, David B. Ellis, hereby certify that on this day I electronically filed the foregoing Brief of Appellee/Lakeland Income Properties, LLC with the Clerk of the Court using the Court's ECF System, which sent electronic notification of the same to all counsel of record.

I, further certify, that I have this day sent a copy of the foregoing Brief via U. S. Mail, postage prepaid to:

Honorable John H. Emfinger
Rankin County Circuit Court Judge
Post Office Box 1689
Brandon, MS 39043

This the 11th day of August, 2017.

/s/ David B. Ellis
David B. Ellis