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IN THE SUPREME COURT OF MISSISSIPPI

NO. 2017-CA-00246

RANKIN COUNTY BOARD OF SUPERVISORS — **APPELLANT/ CROSS-APPELLEE**

v.

LAKELAND INCOME PROPERTIES, LLC — **APPELLEE/ CROSS-APPELLANT**

LAKELAND INCOME PROPERTIES, LLC'S REPLY BRIEF IN SUPPORT OF ITS CROSS-APPEAL

ORAL ARGUMENT IS REQUESTED

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I. INTRODUCTION

Since the parties have fully briefed their arguments already regarding the issues appealed by the Rankin County Board of Supervisors ("the Board"), this Brief is being submitted solely in support of Lakeland Income Properties, LLC's ("LIP") Cross-Appeal. LIP's Cross-Appeal turns on whether the Circuit Court of Rankin County erred when it decided LIP was only entitled to a refund of one (1) year of taxes paid, instead of a refund of the taxes paid within three (3) years of LIP's Notice of Appeal.

II. ARGUMENT

The Circuit Court erred when it decided LIP was only entitled to a refund for one (1) year of taxes instead of three (3) as evidenced by the relevant facts and applicable law discussed in detail below. The following facts are relevant to LIP's Cross-Appeal and cannot be reasonably disputed:

- LIP filed its Notice of Appeal in this matter with the Rankin County Circuit Court on November 23, 2015. The amount of taxes paid by LIP within three (3) years of November 23, 2015 is $152,605.98. (R.166-167).
- LIP first provided written notification to the Board of this dispute on August 26, 2014 via a letter from LIP's counsel to the Board President at the time, Mr. Greg Wilcox. (R.1319-1323). LIP's August 26, 2014 letter contains the following statement:

  > Without waiver of the relief requested herein, LIP submits this letter as a petition for an order of the Rankin County Board of Supervisors immediately refunding the last three years of taxes paid by LIP, or $112,417.65, and correcting the 2014 tax roll to reflect that no taxes are owed by LIP.

- After receiving LIP's petition for the Board to order a refund of LIP's taxes, the Board failed to hold a hearing or otherwise respond to LIP's petition except through counsel. (R.1324-1325).

The Circuit Court's failure to award LIP taxes paid within three (3) years of the filing of its Notice of Appeal is contrary to Miss. Code Ann. §§ 27-73-5 and 27-73-7.

Both parties agree that the applicable refund statute is Miss. Code Ann. § 27-73-7 which does not specify a time period for refunds. However, Section 27-73-5, provides, in relevant part, that, ". . . all applications or proceedings for any refund or credit of these taxes shall be filed or made within three years next after the return was filed, or from the date the assessment of the tax was made, or from the date the tax was paid, as the case may be." Clearly, Sections 27-73-5 and 27-73-7, read together, provide a three (3) year window in which to recover taxes erroneously paid, such as the taxes at issue in this case. In addition, as the Board acknowledges in its Brief, the Mississippi Attorney General has opined that the applicable relief under Section 27-73-7 is a refund of three (3) years of taxes, not one (1). See Op. No. 2007-212, Nowak (Miss. A.G., April 27, 2007).

The Board heavily relies on City of Jackson v. Sly, 343 So.2d 473 (Miss. 1977), for its argument that LIP is only entitled to a refund of one (1) year's taxes. However, the statutory tax exemption at issue in Sly, Miss. Code Ann. § 27-31-107, contains its own statute of limitations because it requires the taxpayer to submit its application, "on or before June 1 of the year following the year of completion of the new enterprise." Miss. Code Ann. § 27-31-107. By contrast, the statutory tax exemption at issue in this case, Miss. Code Ann. § 61-3-21 (the Airport Lease Tax Exemption), provides no timing requirement at all, and Miss. Code Ann. § 27-73-5 provides that all "proceedings for any refund or credit of these taxes shall be filed or made within three (3) years next . . . from the date the tax was paid."

The remainder of the Board's appellate argument on this issue is simply a regurgitation of the Board's position that a pre-suit objection or petition was required by LIP before filing its Notice of Appeal, which issues was addressed in LIP's opening Brief. In doing so, the Board

cites North American Old Roman Catholic Diocese v. Havens, 144 So. 473 (Miss. 1932), for the first time in this case, in response to LIP's argument that Miss. Code Ann. § 27-35-93 (statute that provides procedure for objecting to assessment) does not apply to tax exemptions.

It is true that in the 1932 Havens decision this Court mentioned the predecessor to Section 27-35-93, but only in dicta, as the dispositive issue in Havens was whether the taxpayer was entitled to file for an injunction in chancery court, or whether it should have filed an appeal in circuit court. Havens, 144 So. at 124-25. Tellingly, Havens has not been cited in any subsequent Mississippi decision for the proposition asserted by the Board in this case.

In addition, Havens also mentions Miss. Code Ann. § 27-35-143 as an option for the taxpayer. If Miss. Code Ann. § 27-35-143 does apply, as argued by the Board, LIP's August 26, 2014 letter suffices for such petition and was not submitted late, as the Board suggests. The date mentioned in Miss. Code Ann. § 27-35-143 is the last Monday in August, but that deadline is for the Board of Supervisors to "change, cancel or decrease an assessment," not for the taxpayer to file its petition. There is no time requirement for the taxpayer in Section 27-35-143.

In other words, upon a finding by this Court that no application or petition is required prior to filing a taxpayer's Notice of Appeal, then all of the Board's arguments fail on this issue because those arguments are all predicated on the premise that a pre-suit petition or objection was required. In the alternative, any pre-appeal petition requirement, if any, was satisfied by virtue of LIP's submission of its August 26, 2014 letter, which quotes the language from Miss. Code Ann. § 27-35-143, and LIP still prevails and the three (3) year statute of limitation applies pursuant to Miss. Code Ann. § 27-73-5.

A Board of Supervisors should not be allowed to use its own failure to respond, hold a hearing, or otherwise decide whether a taxpayer's petition to apply an exemption, as a sword against the taxpayer in defending an appeal of the Board's decision to wrongfully assess taxes.

That's exactly what the Board has attempted to do in this case. After receiving LIP's August 26, 2014 letter, which contained a petition to cancel the assessment, the Board did nothing except respond through counsel. If the Board's arguments are correct, Miss. Code Ann. § 27-35-143, which the Board claims applies, would have no use or effect for taxpayers because the Board could just ignore it, and then move to dismiss any appeal because, as the Board argues, there would be no record to appeal from. This case provides another example of why this Court has repeatedly provided the following guidance for tax dispute cases such as this one:

> 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 in 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)).

III. CONCLUSION

As stated in LIP's opening brief, the Rankin County Circuit Court was correct in ruling that LIP followed the proper procedure in perfecting its appeal, and that the Board erred in not applying the Airport Lease Tax Exemption. However, the circuit court erred by only awarding LIP a refund for one year instead of three.

This the __ day of November, 2017.

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 Lakeland Income Properties, LLC's Reply Brief in Support of Its Cross-Appeal 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 _____ day of November, 2017.

/s/ David B. Ellis
David B. Ellis