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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2017-CA-00246

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

vs.

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

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT OF RANKIN COUNTY
HONORABLE JOHN H. EMFINGER, CIRCUIT JUDGE

RANKIN COUNTY BOARD OF SUPERVISORS' REPLY BRIEF AND RESPONSE TO LAKELAND INCOME PROPERTIES, LLC'S CROSS-APPEAL

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

The most significant take-aways from Lakeland's response brief are (1) it is undisputed that Lakeland failed to follow the mandatory statutory requirements to present the tax exemption issue to the Board of Supervisors prior to filing its appeal in the Circuit Court and (2) Rankin County's taxation of the strip mall[1] (i.e., not exempting it under the airport property tax exemption) is entitled to a legal presumption of correctness; exemption statutes must be strictly construed against the taxpayer; and Lakeland has come nowhere near meeting its heavy burden to overcome the presumption to demonstrate that it is "clearly" and unquestionably entitled to the exemption. Rather, Rankin County has a reasonable interpretation of the exemption statute, and there is an utter lack of evidence that the strip mall meets the criteria for the exemption under either party's interpretation. On this second point, in truth, the Board of Supervisors itself really did not conduct any particularized analysis or make an actual determination and finding in connection with the 2015 assessment because the issue was never appropriately presented to it--which goes back to the first point and why the case never should have been filed in court to begin with.

Respectfully, this Court should do one of three things: First, the Court should reverse the Circuit Court's judgment and render judgment in favor of Rankin County because Lakeland failed to follow the mandatory statutory requirements prior to appeal. Lakeland's arguments on this point are inconsistent and squarely rejected by this Court's opinion in North American Old Roman Catholic Diocese v. Havens, 144 So. 473 (Miss. 1932). If the Court reaches this conclusion, it will be unnecessary for the Court to address the remaining issues in this appeal, including the question of first impression regarding the proper interpretation of the airport property tax exemption statute.

[1] The strip mall is located on Lakeland Drive beside Mugshots restaurant and Renasant Bank.

Second, if the Court does not resolve the appeal on the procedural ground, the Court should decide that there is no sufficient basis to disturb Rankin County's presumptively correct taxation of this property and reverse and render judgment for Rankin County. Both parties agree that the Circuit Court erred in its interpretation that any land leased by an airport authority for any "commercial purpose" is exempt from ad valorem taxes under the airport property tax exemption statute Section 61-3-21. The standard of review and burden on the taxpayer in an exemption context is the key. Rankin County's interpretation that the exemption requires the property to be used in connection with an airport's aeronautical operations such as the landing and taking off of aircraft is entitled to a legal presumption of correctness and is certainly not clearly and unquestionably unreasonable. There is zero evidence in the record to demonstrate that this property is being used for any aeronautical purpose such as the landing and taking off of aircraft.

Third, if the Court were to decide that Rankin County's interpretation of the exemption statute is clearly and undoubtedly unreasonable, even under Lakeland's interpretation of the statute (i.e., that property need not be used for any aeronautical purposes to be exempt), Lakeland offered insufficient summary judgment evidence to support its argument that the strip mall is a "buffer area" or "airport compatible development." As a result, the Circuit Court's judgment should be reversed and judgment rendered for Rankin County or, at a minimum, there is a disputed question of fact about whether the strip mall falls within the ambit of the statutory definition of "airport" and this case should be remanded to the Circuit Court for a jury trial on the issue of whether the strip mall property is exempt.

II. ARGUMENT

A. The Circuit Court erred in denying Rankin County's Motion to Dismiss Lakeland's appeal of the 2015 ad valorem tax assessment due to Lakeland's failure to follow the mandatory statutory requirements prior to filing the appeal of the assessment in Circuit Court.

1. A taxpayer seeking an exemption must first present the issue to the board of supervisors pursuant to Sections 27-35-93 and/or 27-35-143.

It is undisputed that Lakeland did not file an objection to the 2015 taxes with the Board of Supervisors at the August 2015 meeting or timely file an application to change or decrease the assessment based on the claim to an exemption. Lakeland argues that when a taxpayer is claiming an exemption to an assessment instead of challenging the amount of an adjustment in the way an assessment was calculated, the taxpayer is not required to file an objection with the Board pursuant to Miss. Code § 27-35-93.[2] Further, Lakeland represents to the Court that "there is no authority" that Section 27-35-93 requires an objection for tax exemptions. Lakeland Response brief at p. 8. Lakeland's arguments are not valid. The issue of whether a taxpayer must file an objection or application with the board of supervisors prior to pursuing relief on a tax exemption in court has been specifically addressed by this Court.

In North American Old Roman Catholic Diocese v. Havens, 144 So. 473 (Miss. 1932), the Mississippi Supreme Court held that as a result of the taxpayer's failure to either appear at the August meeting of the board to raise an objection to the assessment, or file an application with the board to change such assessment, the taxpayer was foreclosed from going into court to challenge a statutory tax exemption. In Havens, the Catholic Diocese purchased four properties for religious and charitable purposes. Id. at 473. Under Section 3108 of the Code of 1930,

[2] Section 27-35-93 does not say anything about "amount." It is entitled "Filing of objection mandatory" and says any person "dissatisfied" with an "assessment" must file and present objections at the August meeting of the tax year at issue. Lakeland's own Notice of Appeal states that it is "aggrieved" by the 2015 "assessment." (R. 1218.) No one can doubt that Lakeland is dissatisfied with the 2015 assessment. It should have filed an objection. Even if amount were somehow important, Lakeland is dissatisfied that the amount taxed was not zero.

properties belonging to religious societies and used exclusively for religious and charitable work were exempt from taxation. Id. On three separate occasions, the Catholic Diocese provided "notice" to the board of supervisors that the properties were used for religious and charitable purposes and entitled to be exempt from taxation. Id. Additionally, the Catholic Diocese filed a petition with the board requesting an exemption from taxation. Id. The board failed to act on the petition; the board assessed taxes on the properties; and the sheriff advertised the properties to be sold for taxes. Id.

The Catholic Diocese, just like Lakeland in this case, went to court without filing with the board of supervisors the statutory objection or application to change the assessment. Id. The trial court decided the case in favor of the board, and the Catholic Diocese appealed to the Mississippi Supreme Court. Id. This Court explained the required statutory procedure when a taxpayer is claiming an exemption from taxation based on the nature and use of the property:

> The property involved in the case at bar was subject to taxation unless it was being used for religious or charitable purposes. In other words, it is not such property as is absolutely exempt from taxation, but is subject to taxation or not, according as the facts may be. In such cases, the owner of the property should appear at the meeting of the board of supervisors which is fixed by law, and of which notice is given by publication that the board will hear objections to assessments, and if at such meeting property is assessed for taxation, an appeal should be taken to the circuit court, where the case may be tried de novo.

Id. at 474 (emphasis added). This Court held if the taxpayer fails to follow the mandatory statutory requirement of Section 3165, code of 1930, the predecessor to Mississippi Code § 27-35-93, "the assessment becomes final." Id.

The Court in Havens further explained that the predecessor to Section 27-35-143 gives a taxpayer aggrieved by an assessment an opportunity to seek a change in the assessment based on an exemption. Id. The Court held the Catholic Diocese, just like Lakeland, "did not resort to either of these methods by presenting its claim for exemption and so is concluded by the

assessment. . . ." Id.[3] Lakeland argues that since there is a trial de novo in circuit court there is no need to present the issue first to the Board of Supervisors. As seen above, Havens specifically rejects that notion. The Court specifically explained that a taxpayer must file an objection to an assessment with the board of supervisors or an application for change of assessment prior to pursuing the trial de novo in court.

The logic behind these mandatory statutory prerequisites is sound. During the same time period that objections are due (August of each year), the Board is setting its budget for the year. The objection process is crucial for the Board of Supervisors to simultaneously set its budget. Removing the ability of the Board of Supervisors to consider an objection would strip the local government officials, such as the tax assessor advising the Board, of the opportunity to consider tax assessments and alleged exemptions before the matter is taken to court.[4] For this Court to say that a taxpayer can just skip the objection, hearing and application process with the board of supervisors and go straight to circuit court when they are dissatisfied with the assessment or exemption would disrupt this entire process. This procedure is not difficult. Taxpayers follow it every day and have for years.

2. Section 27-35-143(13) applies to all tax exemptions.

Lakeland also argues that Section 27-35-143(13) applies only to some exemptions – but not all. This argument is contrary not only to Havens but also to the express language of Section

[3] Other states follow the same rationale and have similar holdings. See, e.g., Reynolds Fasteners, Inc. v. Wright, 197 So. 2d 295, 297 (Fla. 1967) (taxpayer must first seek exemption and refund from state comptroller and must exhaust that administrative remedy before bringing court action for refund); V-1 Oil Co. v. Bannock Cty., 554 P.2d 1304, 1307 (Idaho 1976) (taxpayer must first exhaust its administrative remedy and request that the Board of County Commissions correct an assessment for a missed exemption before the taxpayer can pursue action in court).

[4] The Circuit Court correctly recognized that the issue presented by Rankin County's Motion to Dismiss regarding Lakeland's failure to comply with the mandatory statutory requirements prior to filing the appeal in Circuit Court was a "jurisdictional issue." (Transcript of January 18, 2017 Hearing (Ruling of the Court) at pg. 7.)

27-35-143(13) that does not limit its application only to some exemptions. Nor is there any case law to support this argument.

Specifically, Lakeland argues that Section 27-35-143 only applies to exemption statutes which themselves expressly require an application. For its authority, Lakeland cites a decision which rejected a tax exemption for the tax years where the taxpayer failed to file an application prior to taking action in court. City of Jackson v. Sly, 343 So. 2d 473 (Miss. 1977). Lakeland claims that the City of Jackson case is significant because it dealt with a tax exemption statute (Section 27-31-107) that explicitly provided for a detailed *initial* application process, and thus, Lakeland surmises that a Section 27-35-143 application must only be required if the specific tax exemption statute at issue expressly requires an application. That is not what City of Jackson held.

Lakeland is improperly conflating the concept of an initial prior application for exemption and a Section 27-35-143(13) application to go back and "change" an assessment. The statute in City of Jackson required an *initial* application to even be entitled to the exemption. Id. at 476. While it is true the airport property tax exemption statute does not require an initial application, as explained in Havens, regardless of whether the exemption statute expressly required an application, if the taxpayer feels aggrieved by not receiving an exemption – then the taxpayer must file an objection or an application to seek to "change" the assessment.

When a tax exemption statute expressly references an application, that simply means the taxpayer must apply to the board of supervisors even to be considered for the exemption for the coming year. But numerous exemptions apply without the need for an initial application--See Section 27-31-1 and the numerous general property tax exemptions. Most, if not all, of those exemptions do not require an initial application, but that certainly does not mean that Section 27-35-143 (or Section 27-35-93) does not apply to those exemptions. In all instances, if

the taxpayer believes that the property was taxed but should be exempt, he or she has the right to file an objection or an application to change the roll. Section 27-35-143(13) specifically lists exemptions as being covered by that section, but under Lakeland's logic, the reference to exemptions in Section 27-35-143(13) would be meaningless.

Lakeland also argues that "automatic" exemptions do not have to follow the application process of Section 27-35-143 and that Section 61-3-21 falls into the category of an "automatic" exemption. See Lakeland Response brief at p. 10. Lakeland's alleged exemption is definitely not "automatic." Lakeland provides no authority that says the Section 61-3-21 exemption is "automatic," *i.e.*, that it makes property absolutely nontaxable under any condition, use or facts. Lakeland simply cites to a case where the Court held that an exemption for a "non-producing" mineral interest in property was exempt from taxes and did not require an application be submitted to the board of supervisors because the exemption was "self-operating." Gray v. Steelman, 137 So. 2d 797, 799 (Miss. 1962). That is different. There was no factual question about the use of the property to be decided by the board of supervisors in Gray. Nothing was subjective, and reasonable minds could not differ. Whether a property was "non-producing" was an undisputed fact.

Yet again, Lakeland's argument is addressed and rejected by Havens, which explained that since a question had to be answered of whether the property "was being used for religious or charitable purposes" or not, then "such property" was not "absolutely exempt," "but is subject to taxation or not, according as the facts may be." Id. at 474. In other words, when there is a factual question for the board of supervisors to decide, about the use of the property or otherwise, then Havens and applicable statutes require that the board of supervisors first be given the opportunity to decide that factual question before any action is taken in court.

The exemption potentially available to airport property is similar to the religious/charitable use exemption in Havens. The exemption applies depending upon how the property is "used, or intended for use." Miss. Code § 61-3-3(a). Indeed, the airport property exemption requires an even more detailed factual determination of whether the strip mall is used in connection with the operation of an airport. Lakeland itself concedes that the exemption in this case would only apply, if at all, if the property is in a buffer area to the Jackson Airport or airport compatible development. See Lakeland's Response brief at p. 14. Whether the property is in a buffer area or airport compatible is a factual determination just like in Havens and is not "automatic."

It makes sense that this factual question must be presented to the board of supervisors before coming to court, particularly in a situation like this where the application of the exemption depends on a factual determination concerning use of the property. The board is much better equipped than a circuit court to address these factual questions in the first instance. The board of supervisors has the local knowledge of assessing that particular property every year, and the board has the tax assessor available to gain insight into how the property is being used and whether any additional administrative investigation is required in order to make a determination.

3. There is no authority to support Lakeland's contention that a taxpayer may go directly to circuit court to challenge a tax assessment without first filing an objection or application with the board of supervisors.

As predicted, in its Response brief, Lakeland cites two older cases to support its contention that a taxpayer may appeal a decision from the board of supervisors to assess ad valorem taxes without first presenting the issue to the Board of Supervisors. See Lakeland Response brief at p. 11 (citing Robinson Land & Lumber Co. v. Roberson, 89 So. 160, 161

(1921) and Louis Cohn & Bros. v. Lincoln Cty, 81 So. 492, 492 (1919)). Both cases are easily distinguishable as discussed in Rankin County's opening brief.

Lakeland also cites Lenoir v. Madison Cty., 641 So. 2d 1124 (Miss. 1994), and Rankin County has already addressed that opinion as well. An additional point about Lenoir: that case dealt with the interplay between a different general statute (Section 11-51-75 that deals with filing a bill of exceptions in appeals from a board of supervisors) and the relatively more specific statute for tax appeals (Section 11-51-77 that deals with how to appeal a decision of an ad valorem tax assessment and is silent on a bill of exceptions requirement). Lenoir, 641 So. 2d at 1132 (Miss. 1994). However, for the different issue in this case – which is whether a taxpayer must first file an objection/application with the board of supervisors before appealing in court--then Sections 27-35-143 and 27-35-93 are the more specific statutes that control over the more general statute (Section 11-51-77).

Next, Lakeland claims that "11-51-77 should be liberally interpreted." See Lakeland Response brief at p. 7. No court has ever held that Section 11-51-77 should be liberally interpreted. In fact, the case cited by Lakeland actually discusses the exact procedural requirements that Lakeland is trying to get around. See Ditto v. Hinds Cty., Miss., 665 So. 2d 878, 879 (Miss. 1995) (noting that the City first objected to Hinds County's placement of the Mississippi Bar Center as tax exempt by petitioning the Board of Supervisors "on August, 1, 1991," and then recognizing that the Board of Supervisors "met on August 19, 1991, and voted in favor of the Foundation's property tax exemption after hearing argument from both sides" and holding that the City's appeal to the Circuit Court was timely). Moreover, this Court has a history of recognizing that pre-suit requirements concerning a board of supervisors "is both mandatory and jurisdictional, and where an appeal is not perfected within the statutory time constraints, no jurisdiction is conferred on the appellate court; and the untimely action should be

dismissed." Lowndes Cty. ex rel. Bd. of Supervisors v. McClanahan, 161 So. 3d 1052, 1056 (Miss. 2015).

Lakeland argues that there is no requirement for an objection or application when there is a Section 11-51-77 appeal. Under that flawed logic, a taxpayer would never need to submit anything to the board of supervisors for any appeal. As explained in Havens, if the Rankin County Board of Supervisors had been given the appropriate opportunity to decide the merits of the potential 2015 exemption, and if Rankin County had denied the exemption, then Lakeland could have appealed pursuant to Section 11-51-77. The interpretation offered by Lakeland would render the entire objection and application process meaningless, would bypass the local authorities, would prevent the development of an administrative and local record by the tax assessor and board, and would further burden the court system with disputes that are administrative in nature for the local government. Such an interpretation is unprecedented and untenable. A ruling for Lakeland on this issue would set a terrible precedent and would be inconsistent with years of accepted practice.

4. Lakeland's 2014 Mississippi Tort Claims Act Notice does not constitute either a written objection to assessment or application for change in assessment.

Finally, Lakeland makes a last ditch argument that a Tort Claims Act Notice sent on August 27, 2014, and some email correspondence from the Board attorney was sufficient to "substantively" comply with the objection or application requirement. See Lakeland's Response brief at p. 12. Lakeland cites no authority for this contention because there is none. Once again, this Court's decision in Havens addresses and rejects Lakeland's argument. As discussed above, Havens has recognized that even multiple written correspondence and notices and petitions to a board of supervisors before taking legal action against the board is not sufficient if the statutory objection and application process is not followed. Havens, 144 So. at 473.

In addition, the Tort Claims Act Notice was not an objection or application at all. The Notice states it is a "MISSISSIPPI TORT CLAIMS ACT NOTICE OF CLAIM" seeking over $112,000 in damages. (R. 1319 – 1323.) The purpose of the Notice was to inform Rankin County that Lakeland was taking court action against Rankin County – not that Lakeland was requesting that Rankin County first make a decision before Lakeland took court action.

Second, the Tort Claims Act Notice was for the 2014 tax year. Lakeland filed a 2014 appeal, but the appeal related to that tax year was dismissed for failure to prosecute. (R. 427.) The tax year at issue in this appeal is 2015. So the Tort Claims Act Notice was for different tax year (and before a different board of supervisors) than the tax year at issue in this case. All the statutes and case law make clear that for tax assessments and appeals, each year stands on its own. Laws change, numbers change, assessments change, and boards change. This Court has held that a taxpayer must pursue relief for the specific year it seeks an exemption. City of Jackson v. Sly, 343 So. 2d 473 (Miss. 1977); see also Pascagoula-Gautier Sch. Dist. v. Bd. of Supervisors of Jackson Cty., 212 So. 3d 742, 745 (Miss. 2016); Miss. A.G. Op. No. 96-0159, Hammack, 1996 WL 224001 (Miss. A.G. April 26, 1996) (recognizing that a taxpayer was only eligible for a refund for an exemption for the tax year in which the taxpayer submitted an application pursuant to 27-35-143(13)).

Third, the Tort Claims Act Notice was late for even the 2014 tax year. The Notice was sent on August 27, 2014. (R. 1319.) Section 27-35-89 recognizes that any objections to assessments should be heard by the Board of Supervisors by the first Monday in August. Similarly, the October 2014 email from Rankin County's Board Attorney could not be considered any type of official "decision" on an "application" that would trigger Lakeland's right to appeal to circuit court. (R. 1324.) There must be a vote that is reflected in the official minutes in order for there to be a decision that ripens an appeal. It is undisputed that the Board of

Supervisors never voted on granting or denying Lakeland's request for an exemption for tax year 2015. Lakeland is trying to appeal when there are no lower proceedings from which to appeal.

This Court's precedent recognizes the following: (1) if a taxpayer fails to appear at the August meeting and object, then the "assessment becomes final," (2) if the taxpayer submits an "application" for an exemption before the end of the following August, then the Board of Supervisors has the ability "to change such assessment," and (3) if a taxpayer does "not resort to either of these methods of presenting its claim for exemption," then the taxpayer "is concluded by the assessment." Havens, 144 So. at 474 (citing to the identical predecessor statutes to Miss. Code § 27-35-93 and Miss. Code § 27-35-143(13)).

All of the applicable statutes, case law, and attorney general opinions agree that in this situation, before a taxpayer comes to court to challenge or appeal a particular year's tax assessment (or failure to grant an exemption), the taxpayer should present the issue to the board of supervisors in a timely objection or application and give the board an opportunity to hear and determine the issue. See Havens; Pascagoula-Gautier School Dist., 212 So. 3d at 745; §27-35-93; §27-35-87 (assessments subject to the right of parties to be heard on objections); §27-35-89; § 27-35-143; Miss. A.G. Op. No. 99-0094, Prichard, 1999 WL 152690 (Miss. A.G. Feb. 26, 1999) (recognizing that objections apply to exemptions and if taxpayer does not timely file objection, taxpayer cannot later challenge the assessment). As a result of Lakeland's failure to follow this statutory process, the Circuit Court erred in denying Rankin County's Motion to Dismiss. Lakeland's argument is unsupported by any authority, is directly contrary to the Mississippi Supreme Court case law and the plain language of the statutes and would undercut the regular and established process of how the tax assessment and appeal process works. Thus, the Circuit Court's judgment should be reversed and judgment rendered for Rankin County on this basis alone.

B. The Circuit Court erred in its interpretation of Miss. Code § 61-3-21, and there is no evidence that the strip mall is being used in connection with the operation of an airport to qualify for the exemption.

The briefs demonstrate that the parties agree that the Circuit Court erred in holding that any land leased by an airport authority for any "commercial purpose" is exempt from ad valorem tax assessments. (R. 1329, n. 1); see Lakeland's Response brief at p. 13-14. Further, both parties agree that in order to qualify for the statutory exemption, the leased premises must be "connect[ed] with the operation of an airport" and must meet the statutory definition of "airport." See Lakeland's Response brief at p. 13-14. The parties disagree, however, on whether the definition of "airport" continues to require after the 2004 amendment that the connection be such that the property is being used for an aeronautical purpose such as the landing and taking off of aircraft. Rankin County believes it does. In resolving this disagreement, it is critical for this Court to be mindful of and start with the governing standard of review and burden on the taxpayer. Lakeland fails to address the standard of review and burden in its brief no doubt because it is fatal to Lakeland's position.

In a tax exemption case, the "presumption is in favor of the taxing power, and the burden is on the claimant to prove or establish clearly his right to exemption." Kerr-McGee Chem. Corp. v. Buelow, 670 So. 2d 12, 16 (Miss. 1995). To that end, this Court must construe the applicable tax exemption statutes strictly against Lakeland Income. Kerr-McGee, 670 So. 2d at 16. And when analyzing whether a tax exemption is available, "in all cases having doubts as to legislative intention, or as to inclusion of particular property within the terms of statute, presumption is in favor of taxing power, and burden is on claimant to prove or establish clearly his right to exemption, bringing himself clearly within the terms of such conditions that statute may impose." Id. at 17. This standard requires the Court to give every benefit of the doubt to Rankin County. Id. If the Court views this case as a close call, if the Court gives credence to

both sides' arguments, or if the Court has any doubt about the Legislature's intent with this statute, the issue must be resolved in favor of Rankin County. Id.

1. Rankin County's assessment is supported by a reasonable interpretation of the statutes and the lack of any evidence that the strip mall is being used for an aeronautical purpose connected with the operation of an airport.

The very first sentence in the airport property tax exemption statute makes clear that to be eligible for the tax exemption the property must be used "[i]n connection with the operation of an airport." Miss. Code § 61-3-21(1) (emphasis added); Miss. A.G. Op. No. 2002-0164, Mitchell, 2002 WL 1057926 (Miss. A.G. April 19, 2000). Lakeland claims that a strip mall on Lakeland Drive should be exempt under the airport property tax exemption, even if the strip mall has no "nexus to the operation of the Jackson-Medgar Wiley Evers International Airport," does not support the "landing and taking off of aircraft" and does not serve any aeronautical purpose within the common understanding and definition of airport. See Lakeland's Response at pgs. 14, 16. Lakeland points to no evidence or authority as to how a strip mall - on Lakeland Drive - is connected to the "operation" of an airport. The strip mall does not need the landing strip for its business. The strip mall does not need the airport at all for its business. The airport does not need the strip mall. The strip mall is no different than a strip mall across the street that is not on airport property. Contrary to Lakeland's argument, it is certainly reasonable and makes all the sense in the world for Rankin County's interpretation of the airport exemption statute to require that the property's use have a connection to an aeronautical purpose such as the landing and taking off of aircraft.

"This Court construes statutes to produce a harmonious conclusion consistent with common sense and natural justice." Mississippi Dep't of Pub. Safety v. Durn, 861 So. 2d 990, 998 (Miss. 2003); Edmonds v. State, No. 2015-CA-01788-SCT, 2017 WL 2813295, at *12

(Miss. June 29, 2017) ("we must interpret statutes consistent with reason and common sense, applying the most rational meaning of the words."). "Furthermore, courts should avoid constructions which will render legislation absurd." Edmonds, 2017 WL 2813295, at *12 (Miss. June 29, 2017).

Lakeland has never offered any evidence, not in the trial court and not now, that the land on which the strip mall is located (strip mall property) is serving any aeronautical purpose connected to the operation of an airport. Lakeland's attorney makes the conclusory statement, unsupported by any citation to record evidence, that the property is "serving as a protective barrier from incoming and outgoing air traffic." See Lakeland Response brief at p. 16. Attorney argument without record evidence is obviously insufficient. There is no evidence anywhere in the record to support the notion that this strip mall property is serving any sort of protective purpose for the airport. Recognizing that reality, in order to prevail in this case (and contrary to common sense), Lakeland is trying to convince this Court that a strip mall, which has no aeronautical purpose or connection to the "landing and taking off of aircraft," can now be considered part of the Legislature's definition of an "airport." Even more important, Lakeland must carry the heavy burden and overcome the presumption to demonstrate that Rankin County's contrary interpretation is clearly and unquestionably unreasonable--keeping in mind that exemption statutes are required to be strictly construed against the taxpayer.

When the Legislature's airport definition is broken down, Lakeland's creative theory to avoid the tax is shown to be just as flawed as it sounds. The definition of an airport can be found below:

> "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.

Miss. Code Ann. § 61-3-3 (emphasis added).

The first part of the definition makes clear that an airport can only be "land or water" that is "used, or intended for use for the landing and taking off of aircraft." Id. Since one cannot use a term to define the term itself, every subsequent time the term "airport" is used again in the definition, it relates back to the underlying description, and the Court should substitute "use[d] for the landing and taking off of aircraft" in place of "airport."

For example, the second part of the definition elaborates that "any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way," are considered an airport. In other words, an airport is also the *appurtenant* buildings, facilities, or rights-of-way which are used or intended for use for the "landing and taking off of aircraft." These are the facilities and buildings used for and connected to the actual landing and taking off of aircraft, *i.e.*, the baggage claim facility, hangars, and terminals, etc. That language has always been in the statute.

The third and final part of the definition involves the 2004 amendment. A plain reading of the words in the statute shows that the 2004 amendment did not rid the definition of the fundamental requirement that the property must be used for the aeronautical purpose such as the landing and taking off of aircraft. Indeed, the term "airport" is a part of "airport compatible development." So long as the land is used for an "appropriate" purpose--such as what is already described in the definition as "the landing and taking off of aircraft," then buildings on a buffer area or compatible development are considered part of an airport.[5] It is certainly reasonable to

[5] The rules of statutory construction also support Rankin County's interpretation. For instance, *ejusdem generis* means "[w]here special words are used in a statute followed by terms more general, the general terms are to be limited to like kind and character as the special words, unless the contrary appears."; Judge Leslie Southwick, 8 MISS. PRAC. ENCYCLOPEDIA OF MISS. LAW § 68:68, *Tools of Statutory Interpretation, Textual Canons, Ejusdem generis*; see also Better Living Servs., Inc. v. Bolivar Cty., 587 So. 2d 914, 916–17 (Miss. 1991) (rejecting tax exemption for non-profit apartment complex that claimed

interpret "other appropriate purposes, including buffer or airport compatible development" as retaining the requirement that the property's use have some connection with aeronautical operation of an airport such as landing and taking off of aircraft--which has always been required under the statute.

While there is no legislative history for the 2004 amendment,[6] it is certainly reasonable to conclude that the 2004 amendment merely clarified and provided specific examples of properties that could be used for aeronautical and airport purposes and fall within the tax exemption. The 2004 amendment could easily have said all "airport" owned property used for "commercial purposes" is exempt. That is what Lakeland wants the statute to mean, but that is not what it says. Instead of such a broad exemption, the exemption is limited to "appropriate purposes" such as airport compatible development and buffers that are connected to the airport's daily aeronautical operations.[7] These terms are not defined. However, Webster's definitions of

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it was a "charitable society") *Ejusdem generis* requires the special and specific words of the "landing and taking off of aircraft" to control over general words such as "other appropriate purposes" and "airport compatible development." Similarly, the doctrine "*noscitur a sociis*" also supports this conclusion. State Farm Ins. Co. v. Gay, 526 So. 2d 534, 537 (Miss. 1988) ("*Noscitur a sociis* is a familiar maxim and is useful in the construction of statutes . . . which is that that the meaning of a doubtful word may be ascertained by reference to words associated with it."). Finally, *inclusio unius est exclusio alterius* recognizes "that where a statute enumerates and specifies the subjects or things upon which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned, or, under a general clause, those not of like kind or classification as those enumerated." State ex rel. Whall v. Saenger Theatres Corp., 200 So. 442, 446 (1941).

[6] The arguments from Lakeland and the *amicus* brief about the purpose of the 2004 amendment in relation to prior Attorney General opinions are unsupported speculation and must yield in the tax exemption context to Rankin County's reasonable assumptions, interpretation and application of the amendment.

[7] The history of the Jackson-Medgar Wiley Evers International Airport provides an important historical backdrop for this case. In the 1960s, the City of Jackson wanted to build a larger airport, but the City of Jackson needed property in Rankin County to accomplish this goal. As a result, in 1964, the Mississippi Legislature enacted Section 61-9-1, *et. al.* to permit a municipality to incorporate its airport within another county. As a compromise for having another city's airport in an entirely different county, Section 61-9-3(4) recognized that "Nothing in this section shall be construed to restrict the county wherein the airport or air navigational facility is geographically located from levying and collecting state, county and school district *ad valorem* taxes . . . ." Lakeland's unprecedented interpretation of the airport property tax

"compatible" include "able to be used together" and "designed to work" together, and Webster's uses the example of "devices and especially computers" because objects that are compatible must "be able to be used together."[8] The common and ordinary meaning of "buffer" is "something that serves as a protective barrier" or "to protect from something."[9] Lakeland makes no effort to even argue (and certainly offers no evidence) that this particular strip mall property is compatible as designed to work together with airport operations or in furtherance of any airport operations.

Lakeland's interpretation creates what the Illinois Appellate Court warned against: an interpretation that would yield "absurd results" such as the creation of "a substantial tax loophole to be exploited by private lessees," that would "render virtually meaningless the limitation in the Code requiring that exempt land be used for airport authority purposes." Du Page Cty. Airport Auth. v. Dep't of Revenue, 831 N.E.2d 30, 49 (Ill. Ct. App. 2d. Dist. 2005). (R. 1298-1313.). Lakeland's meager attempt to distinguish the Illinois case falls flat. Lakeland states that the Illinois case involved a term ("Airport Authority Purposes") that was not readily defined, and so Illinois could only fall back on the narrow construction for any proposed tax exemption. See Lakeland's Response brief at p. 14. Like in Illinois, the Mississippi Legislature has not defined the terms "connection" or "operations" found in Section 61-3-21, nor has the Legislature defined "other appropriate purposes," "compatible development" or "buffer areas" found in 61-3-3. The exact same reasoning used by the Illinois Appellate Court applies directly to this case, and this Court should reach the same result.

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exemption is an affront to the Legislature's intent expressed in this other provision in the same Title of the Code.

[8] Available for review at the following link: http://www.merriam-webster.com/dictionary/compatible.

[9] Available for review at the following link: http://www.merriam-webster.com/dictionary/buffer.

Additionally, prior to the 2004 amendment, the Attorney General recognized that the airport tax exemption only applies if the property is "used in connection with the airport," such as being used for the landing and takeoff of aircraft or to aid air navigation—i.e., some aeronautical function. Miss. A.G. Op. No. 2002-0164, Mitchell, 2002 WL 1057926 (Miss. A.G. April 19, 2000). Section 61-3-21 has not been amended to remove or eliminate the requirement that to be exempt, the property must be used in "connection with the operation of an airport."

As such, a reading of the plain language of Sections 61-3-21 and 61-3-3, Webster's definitions,[10] Attorney General opinions, case law from other jurisdictions and common sense all support Rankin County's reasonable interpretation that property qualifies for the airport property tax exemption only if it is used in connection with an airport's aeronautical operations such as landing and taking off of aircraft. There is no Mississippi case law interpreting these statutes otherwise. Rankin County's taxing of the strip mall property is entitled to the presumption of correctness, exemptions must be narrowly construed and all reasonable doubts must be resolved in Rankin County's favor. Even if this Court does not agree exactly with Rankin County's decision, unless it is unquestionably unreasonable, it should be allowed to stand. Under these circumstances, it certainly cannot be said that Lakeland has carried its heavy burden of showing that Rankin County's taxing decision is clearly and unquestionably unreasonable. Lakeland has pointed to no evidence that the property is serving any purpose in connection with the aeronautical operations of the airport. The Circuit Court's judgment should be reversed and judgment rendered for Rankin County on this additional basis.

[10] Available for review at the following link: http://www.merriam-webster.com/dictionary/airport.

2. Even under Lakeland's interpretation of the statutes, Lakeland failed to proffer sufficient summary judgment evidence to support its argument that the strip mall is in a buffer area or is an airport compatible development.

Rankin County's interpretation of the statute and lack of evidence to meet the statute is reasonable, but even if the Court were to somehow believe that the County's interpretation of the statute is "clearly" wrong and unreasonable, the Circuit Court's judgment should still be reversed because Lakeland has pointed to no evidence to satisfy even its interpretation of the statute. In its Response brief, Lakeland fails to provide any citation to any record evidence, affidavit or otherwise, establishing that the strip mall on Lakeland Drive is constructed in a buffer area or is an airport compatible development. See Lakeland's Response brief at pgs. 15-16. Instead, Lakeland relies on inadmissible, conclusory attorney argument unsupported by any evidence in the record. See Lakeland Response brief at p. 16. As stated above, Lakeland's attorney cannot just make these statements in a brief that this property is near the airport and that the property "and the airspace above it" is therefore a buffer area serving as a protective barrier for the Jackson Airport. How far does the buffer go? How is the airport being protected by this strip mall property? From what? Summary judgment requires evidence, and none was provided by Lakeland in this case to show that this property is being used as a protective buffer.

Lakeland says the Jackson Municipal Airport Authority ("JMAA") lease provides evidence that the property is "airport compatible". But the lease only says that the JMAA has the "power . . . to lease property . . . including areas for airport compatible development." (R. 113.) That is not the issue. Rankin County does not dispute that fact. There is nothing in the lease (and nothing in the record otherwise) that evidences, explains or articulates how or even if this particular piece of property is indeed airport compatible--under any definition.

On the other hand, Rankin County presented a plethora of evidence that the strip mall is not connected to the operation of the airport, is not in a buffer area, and is not airport compatible development that would support the tax exemption. In 2008 (obviously after the 2004 amendment to Section 61-3-3), the JMAA specifically determined that the strip mall property is not "airport property" that would be covered by the tax exemption and should instead be treated as general commercial "surplus property" "not necessary for aeronautical use" and "no longer needed for Authority purposes" or the "Authority's operations." (R. 536-37 (citing Miss. Code Ann. § 57-7-1, which specifically identifies "surplus land" as "lands which are not needed for airport purposes") (R.E. 9); (R. 251-52) (R.E. 8.) The purpose of this reclassification was to remove the strip mall property from the airport tax exemption statute and place it within the surplus property statute that does not contain a requirement that improvements on the leased property revert to the JMAA upon expiration of the lease. (R. 536-37.) Such a reclassification would allow Lakeland to obtain better financial terms from lenders in connection with the construction of additional improvements by Lakeland on the leased property. (Id.)

The CEO of JMAA stated that as a result of "rounds of discussions" with Lakeland's Mr. Chamblee, and in an effort to make Lakeland more "bankable" and for "economic feasibility," the JMAA recommended some lease modifications. (R. 536.) The CEO further explained that "[i]n an effort to preserve the ad valorem tax exemption available to leases of airport properties . . . JMAA has treated each of the leases as a lease of airport property." (Id.) Moving forward, however, and with regard to the leases, the CEO then requested a formal declaration acknowledging that "the land is not currently necessary for aeronautical use" and that the improvements currently located on the land are "surplus due their limited expected economic useful lives . . ." (R. 536-37.) The Memorandum further stated that the changes to the leases are necessary because the leases are similar to the "general commercial (as opposed to airport)

properties in the area." (R. 537.) The JMAA accepted the CEO's recommendation and formally determined by publically recorded declaration that the property is "surplus" and "no longer needed" for airport "purposes" and not to be used for airport "operations". (R. 251.) Based on these documents, the JMAA itself, at least in 2008, agrees with Rankin County's interpretation of the airport property tax exemption statute and the taxation of this property, and Lakeland voluntarily abandoned any argument for an airport tax exemption in exchange for a better financial deal with lenders.

Based on the evidence (and lack of evidence from Lakeland) presented to the Circuit Court, summary judgment should not have been granted to Lakeland on this issue. Lakeland failed to offer sufficient evidence to support its argument that the property is in a buffer area or is airport compatible development, and Rankin County offered substantial evidence to the contrary. The Circuit Court offered no analysis of the summary judgment evidence because of its erroneous interpretation of the statute. As such, the Circuit Court's summary judgment should be reversed and judgment should be rendered for Rankin County. Or at a minimum, a question of fact exists regarding whether the strip mall meets the statutory definition of "airport," and the judgment of the Circuit Court should be reversed and the case remanded for a jury trial on this issue.

3. The Mississippi Airports Association's *amicus curiae* brief does not change the fact that a strip mall cannot fall within the Mississippi Legislature's definition of an airport.

According to the *amicus curiae* brief, the sole issue the Mississippi Airports Association ("MAA") seeks to address is to support Lakeland's argument that property is exempt from taxation under the airport tax exemption statute even if the property is *not* used for aeronautical purposes. See *amicus curiae* brief at p. 3. The *amicus* brief raises no argument on the primary issue in this appeal: whether Lakeland's failure to comply with the mandatory statutory

requirements of presenting a written objection to assessment or application for change of assessment to the board of supervisors bars the appeal to circuit court. The *amicus* brief also does not address the critical fact of Lakeland's failure to present summary judgment evidence necessary to overcome the presumption that the property was not being used for any purpose identified in the statute.

In fact, the MAA's argument should not impact this appeal in any way. It is not the role of this Court to determine what statutory construction might benefit one group the most. The function of the Court is not to decide what a statute should provide, but to determine what the statute does provide by its language. Russell v. State, 94 So. 2d 916, 917 (Miss. 1957).

The MAA suggests that airports will be harmed by Rankin County's interpretation. That is not the case at all, as can best be seen by the very examples of leases discussed by the MAA in its brief. The leases cited in the *amicus* brief confirm the reality that counties across the State have always and still do interpret the tax exemption statute the same way as Rankin County. For instance, the MAA stated that the tax incentive has been used for companies such as "Airbus Helicopters, Inc.," "Stark Aerospace and Aurora Flight Sciences." See *amicus curiae* brief at n.7 (emphasis added). Rankin County does not dispute that these companies would qualify for the tax exemption, as these are companies that are clearly using the property for an aeronautical purpose and are therefore exempt. For example, Airbus builds helicopters, and Stark and Aurora Flight Sciences build unmanned planes.[11] Some of these unmanned planes are the size of military jets. It is not a coincidence that they locate near an airport. These companies decide to locate at an airport because they require an airport to function. Each of the companies must use the landing strip and air traffic control for the design, engineering, quality control, and testing of

[11] See the following links for these companies: http://www.airbus.com/helicopters.html; https://starkaerospace.com/; http://www.aurora.aero/.

their aircraft. Regardless, this appeal is not about these other companies. Nobody is challenging that they are exempt. This case is about a strip mall on Lakeland Drive housing a mortgage company and sushi restaurant. That is quite different from those three aeronautical entities. Lakeland wants this Court to adopt a new and different interpretation that would open this exemption up beyond anything being done, or that has ever been done, in any county or that was ever contemplated by the Legislature.

The *amicus* brief further discusses funding received by airports and suggests that Rankin County's interpretation would impair or harm the finances of the airports. To the contrary, it is Rankin County (and other counties) that would be severely harmed by the MAA's proffered interpretation.[12] As MAA recognizes, "most local governments barely have sufficient funds for essential municipal services such as police and fire services . . ." See *amicus curiae* brief at p. 2. Rankin County does not receive sales tax from commercial developments. Interpreting the airport tax exemption statute in the manner advanced by the MAA will significantly and detrimentally impact the counties and localities that depend heavily on the collection of ad valorem taxes to fund schools, infrastructure, bridges, roads and services for the areas developed. Just as the Illinois Appellate Court explained, the interpretation offered by Lakeland would create "a substantial tax loophole to be exploited by private lessees," that would "render virtually meaningless the limitation in the Code requiring that exempt land be used for airport authority purposes." Du Page Cty. Airport Auth. v. Dep't of Revenue, 831 N.E.2d 30, 49 (Ill. Ct. App. 2d. Dist. 2005). (R. 1298-1313).

[12] As an example, it is well-known that Rankin County spent $4.5 million dollars on the East Metro Parkway to serve and support the area around the Jackson Airport. See The Rankin County News, September 6, 2017, p.4. http://www.rankincn.com/editionviewer/default.aspx?Edition=b3c4bdad-d2ab-4fb5-953f-a5e3d243aded. If this Court affirms the Circuit Court's judgment, then any commercial development, regardless of its use, will be exempt from ad valorem taxes to help pay for this infrastructure.

The airport tax exemption is indeed useful and beneficial to airports across the state in exempting properties like those listed by the MAA in their brief - which have a connection to aeronautical purposes. However, the MAA's (and Lakeland's) argument that the airport tax exemption statute applies to a strip mall - with no connection to aeronautical operations - is a novel and expansive interpretation of the statute which would be a drastic change in how this statute is currently interpreted by counties across the State. The airport tax exemption statute was enacted decades ago, and no one to date has ever attempted to liberalize its interpretation in the way advanced by Lakeland and the MAA. This Court should follow the plain language of the statutes, the relevant persuasive authorities and common sense and not the expansive reading offered by MAA and Lakeland.

LAKELAND'S CROSS-APPEAL

Even if Rankin County's interpretation of the airport tax exemption statute is rejected, Lakeland is not entitled to a refund for any tax years prior to 2015.

The Circuit Court correctly ruled that Lakeland is not entitled to any refund of taxes paid prior to 2015 because Lakeland failed to take necessary and timely action to seek relief in those prior years. As an initial point in fact, as discussed in the first section of this brief, Lakeland is not entitled to any relief or refund in this matter at all because it failed to follow the mandatory statutory requirements prior to initiating this case in circuit court. The entire case should have been dismissed.

Lakeland and its predecessors have leased the subject property for 23 years. (R. 239.) The tax year 2014 was the first time that Lakeland sought to challenge the assessment of ad valorem taxes on the property. Lakeland's appeal of 2014 taxes was dismissed without prejudice on May 16, 2016. (R. 427, 449.) That appeal has not been reinstated. As a result, any claim related to the 2014 taxes is invalid.

Lakeland did file a Notice of Appeal in November 2015. (R. 6-8.) This Court has recognized that if a business could "wait three (3), five (5), or even nine (9) years to apply for tax exemption and obtain a retroactive exemption for those years in which it failed to seek same, the taxing authority, if required to refund taxes, could be placed in an untenable position on its revenues (refund of taxes)." City of Jackson v. Sly, 343 So. 2d 473, 476 (Miss. 1977) (holding that the "failure to apply timely for the exemption waives it for those years previous to the entry of the final order granting the exemption.").[13]

Lakeland claims that the City of Jackson v. Sly case does not control this issue because that case involved a tax exemption that required an application to be submitted, where the present matter involves a tax exemption that does not require an application. Lakeland's argument is unpersuasive for multiple reasons.

First, as previously briefed, this case does require an objection or application to change the assessment, and Lakeland's failure to submit an application or objection bars Lakeland's claim for any refund. See Miss. A.G. Op. No. 96-0159, Hammack, 1996 WL 224001 (Miss. A.G. April 26, 1996) (recognizing that a taxpayer was only eligible for refund or exemption for the tax year in which taxpayer submitted application pursuant to 27-35-143(13)).

Second, the Circuit Court was correct that Lakeland was required to take affirmative action to appeal the tax assessment for every year it seeks a refund – just as the taxpayer in City of Jackson v. Sly was required to take the affirmative action to apply for the tax exemption. Mississippi Code Section 11-51-77 sets forth a detailed process for appealing a tax assessment from a Board of Supervisors, including a ten day deadline to appeal. This ten day deadline is

[13] See also State of New Jersey v. Wright, 117 U.S. 648 (1886) (United States Supreme Court case holding that taxpayer acquiesced to tax assessment where the taxpayer failed to seek an exemption for 60 years and recognizing that "a much shorter period, would be amply sufficient for . . . raising a conclusive presumption of a surrender of the privilege" of the tax exemption"); State ex rel. Council Apartments, Inc. v. Leachman, 603 S.W.2d 930, 931 (Mo. 1980) ("An exemption from taxation can be waived.")

identical to the Bill of Exceptions deadline for appealing a decision of a board of supervisors. See Miss. Code Ann. § 11-51-75. The Bill of Exceptions statute (Section 11-51-75) is the immediately prior code section to the section for appeals from tax assessments (Section 11-51-77). This Court has repeatedly recognized that "Section 11–51–75's ten day period to file an appeal is both mandatory and jurisdictional, and where an appeal is not perfected within the statutory time constraints, no jurisdiction is conferred on the appellate court; and the untimely action should be dismissed." Lowndes Cty. ex rel. Bd. of Supervisors v. McClanahan, 161 So. 3d 1052, 1056 (Miss. 2015).

While no Mississippi case has specifically addressed this issue, it follows that the ten day deadline to appeal a tax assessment pursuant to Section 11-51-77 is also mandatory and jurisdictional. See, e.g., Yazoo Delta Inv. Co. v. Suddoth, 12 So. 246, 248 (1893) (where a taxpayer fails to appeal from the assessment fixed by an assessment roll, then the taxpayer is precluded from seeking relief from the assessment).

Rankin County acknowledges the Attorney General opinion cited by Lakeland which suggests a taxpayer may obtain a refund for three years for any tax exemption sought. See Lakeland's Response brief at pg. 19 (citing Nowak). In reaching this conclusion, the Attorney General relied upon the applicable tax refund statute. Id.; see also Miss. Code Ann. § 27-73-7 (authorizing tax collector to refund taxes). Yet, the Attorney General has not had a situation like this one where he is forced to address the interplay between the mandatory and jurisdictional ten day appeal deadline of a tax assessment from a board of supervisors set forth in Section 11-51-77 and whether a board of supervisors is allowed to provide a refund pursuant to Section 27-37-7 when the taxpayer failed to appeal. As such, though Attorney General opinions can be considered persuasive for this Court, the Attorney General opinion cited by Lakeland does not even address the issue at hand. The opinion is not controlling or persuasive in this instance.

Further, even if Section 27-37-7 did still allow for a refund when a taxpayer failed to file an appeal, the Attorney General opinions recognize that a taxpayer must first "apply or petition for such a refund" from the board of supervisors. Miss. A.G. Opin, No. 2003-0423, Griffith, 2003 WL 22348868, at *1 (Miss. A.G. Sept. 12, 2003). In fact, the Attorney General opinions suggest that the board of supervisors retains the "discretion" to approve a refund or not. Id.; see also Miss. A.G. Opin. No. 2001-00440, Tutor, 2011 WL 6813974, at *3 (Miss. A.G. Nov. 4, 2011); Walters, 1985 WL 70381, at *1 (Miss. A.G. July 26, 1985) ("The authority to make refunds is found in § 27-73-7 which authorizes the Board of Supervisors, in their discretion, to refund the county share of all taxes collected on erroneous or duplicate assessments when requested by the taxpayer to do so, and upon satisfactory evidence of such error, or duplication in said assessment.").

In other words, consistent with the primary procedural issue briefed above, to obtain a refund, the taxpayer is required first to present to the board of supervisors an application or petition with satisfactory evidence and is dependent upon the discretionary authority of the board of supervisors as to whether a refund is granted. Here, Lakeland does not argue that it submitted any such application, petition or evidence seeking a refund. For all of these reasons, Lakeland is barred from seeking a refund for any tax year.

III. CONCLUSION

The critical shortage of funds for schools, bridges, roads and infrastructure in Mississippi has been well-documented over the past months. This is certainly not the time to create a new and "substantial tax loophole" (as the Illinois court called it) to take more funds from local governments. Most Mississippians would be perplexed that a strip mall with a mortgage center and sushi restaurant on Lakeland Drive would even attempt to call itself an "airport" for the airport property tax exemption. Just as bizarre is Lakeland's position that it does not even have

to go before the Board of Supervisors to claim this alleged tax exemption before coming to court. All of this discussion about what the statute means and whether the strip mall property falls within it--none of that discussion was ever properly presented to or heard as it should have been by the Board of Supervisors. Mississippi law does not allow a strip mall to qualify for the airport property tax exemption or allow the strip mall to bypass the board of supervisors to get the exemption.

Lakeland failed to follow the mandatory statutory requirements prior to filing this appeal with the Circuit Court, and the Circuit Court erred in denying Rankin County's Motion to Dismiss Lakeland's appeal of the 2015 ad valorem tax assessment. Thus, the Circuit Court's judgment should be reversed and judgment rendered for Rankin County on this basis alone.

Next, if the Court affirms the Circuit Court's denial of Rankin County's Motion to Dismiss, the Circuit Court erred in its interpretation of Section 61-3-21 in holding that land leased by an airport authority for <u>any</u> "commercial purpose" is exempt from ad valorem tax assessments without regard to whether the "commercial purpose" has a nexus to the operation of an "airport" as defined by the statute. Rather, Rankin County's tax of the strip mall property is based on a reasonable interpretation of the ad valorem exemption under Section 61-3-21 and the lack of evidence from Lakeland to satisfy the statutory exemption. Lakeland failed to offer any evidence to satisfy the statutory definition, while Rankin County offered evidence showing that the property is not airport property and is not serving any function in connection with the operation of the airport--buffer or otherwise. Accordingly, the Circuit Court's judgment granting in part Lakeland's Second Motion for Summary Judgment and awarding a refund to Lakeland of the 2015 ad valorem taxes it paid should be reversed and either judgment rendered as a matter of law for Rankin County or the case remanded to the Circuit Court for a trial to determine if the strip mall satisfies the required elements to be exempt from taxation under the statute.

Finally, Lakeland's cross-appeal should be denied because it has never taken the appropriate action to seek a refund from the Board of Supervisors---in 2015 or any prior year.

This the 20th day of October, 2017.

Respectfully submitted,

RANKIN COUNTY BOARD OF SUPERVISORS

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CERTIFICATE OF SERVICE

I, W. Trey Jones, counsel of record for Appellant/Cross-Appellee Rankin County Board of Supervisors, do hereby certify that I have this day filed the foregoing Reply Brief with the Clerk of this Court using the Court's MEC 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 Reply Brief via United States mail, postage prepaid to:

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

This the 20th day of October, 2017.

/s/ W. Trey Jones
Attorney for Appellant/Cross-Appellee
Rankin County Board of Supervisors