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

RANKIN COUNTY BOARD OF SUPERVISORS **APPELLANT**

vs.

LAKELAND INCOME PROPERTIES, LLC **APPELLEE**

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

BRIEF OF APPELLANT RANKIN COUNTY BOARD OF SUPERVISORS

ORAL ARGUMENT REQUESTED

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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, Grantham, Grower & 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/*Joseph Anthony Sclafani*
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Counsel for Rankin County Board of Supervisors

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I. STATEMENT REGARDING ASSIGNMENT AND ORAL ARGUMENT

This appeal presents an important issue of first impression that is of fundamental importance to the public. Specifically, this appeal provides the first opportunity for the Mississippi Supreme Court to interpret the airport tax exemption statute, Miss. Code § 61-3-21, and determine whether to qualify for the ad valorem exemption under the statute the "commercial purpose" of the leased premises must have a nexus to the function of an "airport" as defined by the statute. Thus, pursuant to Mississippi Rule of Appellate Procedure 16(d), Appellant Rankin County Board of Supervisors ("Rankin County") respectfully submits that this appeal should be retained by the Supreme Court.

Additionally, pursuant to Mississippi Rule of Appellate Procedure 34(b), Rankin County respectfully requests oral argument. In addition to the issue of first impression presented, this appeal presents an opportunity for the Mississippi Supreme Court to confirm the mandatory statutory procedures that a taxpayer **must** follow by either raising an objection in writing with the board of supervisors to an assessment prior to the final approval of the tax roll, or making a written application to the board of supervisors for change in assessment by the last Monday in August of the year following the assessment **before** the taxpayer may file an appeal of a tax assessment in the Circuit Court. Further, oral argument will assist the Mississippi Supreme Court in its review of the sufficiency of the evidence (or lack thereof) offered by the taxpayer Lakeland Income Properties, LLC ("Lakeland") to meet its heavy burden to establish that it clearly was entitled to receive the airport tax exemption. Thus, Rankin County submits that this case should be retained by the Mississippi Supreme Court and that the decisional process will be substantially aided by oral argument.

II. STATEMENT OF THE ISSUES

1. Did the Circuit Court err in denying Rankin County's Motion to Dismiss Lakeland's appeal of the 2015 ad valorem tax assessment when Lakeland failed to submit to the board of supervisors either a written objection or application for change concerning the tax assessment before it filed its appeal in the Circuit Court?

2. Did the Circuit Court err in its interpretation of Miss. Code § 61-3-21 in holding that land leased by an airport authority for any "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?

3. Did Lakeland offer sufficient evidence in the summary judgment record to meet its heavy burden to clearly establish as a matter of law its right to receive the airport tax exemption?

III. STATEMENT OF THE CASE

A. NATURE OF THE CASE

Rankin County is requesting that this Court reverse the summary judgment granted to Lakeland on its 2015 tax appeal and render judgment for Rankin County or, in the alternative, reverse the summary judgment and remand the case for a trial. The case involves an appeal filed by the taxpayer Lakeland of Rankin County's 2015 ad valorem tax assessment on property leased to Lakeland by the Jackson Municipal Airport Authority ("JMAA"). The property at issue, located on Lakeland Drive in Rankin County, includes a strip mall occupied by a mortgage company, U.S. Navy Recruiting Center, optical store, sushi restaurant and smoothie shop.

Prior to initiating this appeal in the Circuit Court, Lakeland failed to follow the mandatory statutory requirements to either raise an objection to the assessment in writing to the Board of Supervisors prior to the final approval of the tax roll (pursuant to Miss. Code § 27-35-

93), or make a written application to the Board of Supervisors for change in assessment (pursuant to Miss. Code § 27-35-143). As a result of Lakeland's failure to comply with these mandatory statutory procedural requirements, the Board of Supervisors **never** was presented with an appropriate opportunity to make a decision about whether the subject property is exempt, as Lakeland contends, from 2015 ad valorem taxes pursuant to the airport property tax exemption statute (Miss. Code § 61-3-21). It is axiomatic that for a taxpayer to appeal to the Circuit Court a tax assessment by Rankin County, that taxpayer **must** first raise the issue with the Board of Supervisors, either through a written objection or an application to change the assessment, and give the Board of Supervisors an opportunity to consider and make a decision on the issue. Thus, the Circuit Court erred in denying Rankin County's Motion to Dismiss Lakeland's appeal of the ad valorem tax assessment.

Next, the Circuit Court erred in ruling for Lakeland on the parties' cross motions for summary judgment and in its interpretation of Miss. Code § 61-3-21---holding that land leased by an airport authority for any "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. Such a boundless interpretation of the airport tax exemption statute is unsupported by the plain text of the statute and contrary to Mississippi Attorney General's Opinions, the only reported decision from any court interpreting a similar airport tax exemption statute, and the positions of the parties which both recognize that the exemption is limited by the statutory definition of "airport". As recognized by one Illinois Appellate Court, the Circuit Court's limitless interpretation of an airport tax exemption statute would "yield absurd results" and "create a substantial tax loophole to be exploited by private lessees."

Finally, summary judgment for Lakeland was erroneous because Lakeland failed to offer sufficient evidence to meet its heavy burden to clearly establish as a matter of law its right to

receive the airport property tax exemption. Specifically, Lakeland failed to offer any admissible evidence to establish that the strip mall was either constructed on an airport buffer area or is an "airport compatible development" to satisfy Lakeland's burden to clearly establish that the property falls within the statutory definition of "airport." Rather, the undisputed record evidence establishes that the JMAA itself determined that this lease involves "general commercial (as opposed to airport properties)" and that the leased premises is "surplus," "no longer needed for Authority purposes," "not to be used in the Authority's operations," and "no state agency, board, commission or governing authority . . . has expressed a need or use for the Leased Property. . . ." Thus, the record evidence clearly establishes that the strip mall is neither constructed on an airport buffer area nor is an "airport compatible development." Accordingly, the Judgment of the Circuit Court 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 judgment should be rendered as a matter of law for Rankin County. In the very least, the case should be remanded for a trial on the issue of whether the property is exempt under the statute.

B. COURSE OF PROCEEDINGS/DISPOSITION IN THE TRIAL COURT

On November 23, 2015, Lakeland commenced this action in the Circuit Court of Rankin County by filing a Notice of Appeal of "the Rankin County Board of Supervisors' decision to assess any ad valorem taxes to [Lakeland] for real property in Rankin County, Mississippi, owned by the Jackson Municipal Airport Authority and leased by [Lakeland]. . . ." (R. 6.) (R.E. 2.)[1] Despite failing to raise either a written objection to the 2015 assessment of ad valorem taxes to the Board of Supervisors prior to the final approval of the tax roll, or filing a timely claim for change in assessment, Lakeland contends for the first time in the Notice of Appeal that

[1] Throughout this Brief, citations to the appeal record are listed as (R. [page number]), and citations to the Record Excerpts that accompany this Brief are listed as (R.E. [tab number]).

"[p]ursuant to Miss. Code 61-3-21 [(the airport property tax exemption statute)], Rankin County should not be assessing ad valorem taxes for the Property." (Id.) Because Lakeland failed to follow these mandatory statutory requirements, the Board of Supervisors never had an opportunity to consider and determine whether Lakeland had met its heavy burden to clearly establish its right to receive the airport property tax exemption for the tax year 2015. Further, in the Notice of Appeal, Lakeland additionally seeks "a refund of taxes paid for the previous three years, or $112,101.00." (Id.)

On July 29, 2016, Lakeland filed its Second Motion for Summary Judgment arguing that Rankin County "wrongfully assessed ad valorem taxes to the Property for tax years 2012 through 2015." (R. 195.) Specifically, Lakeland argued "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 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.'" (R. 196-97.) Lakeland contended because it has established by affidavit that it uses all the property it leases from JMAA "for a commercial purpose, which is a retail/professional center," that "Property, and all structures and improvements thereon, are exempt from taxation by Rankin County." (R. 197.) Additionally, Lakeland argued it was entitled to a refund of all taxes paid to Rankin County within three years of the date of its Notice of Appeal in the amount of $152,605.98. (R. 199-200.)

On November 7, 2016, Rankin County filed a Motion to Dismiss Lakeland's appeal of the 2015 ad valorem tax assessment. (R. 1215-1217.) In support of its Motion to Dismiss, Rankin County pointed out that Lakeland "never gave the Rankin County Board of Supervisors the chance to address any alleged improper assessment. If there is no decision, then there can be

no appeal." (R. 1215.) Thus, Rankin County argued "[t]he appeal is defective, there is no jurisdiction and the appeal should be dismissed." (Id.)

In addition to moving to dismiss Lakeland's appeal, Rankin County also filed a Motion for Summary Judgment. (R. 203-207.) In support of the Motion, Rankin County argued "a strip mall that has nothing to do with airport operations and is miles from the entrance to the central airport" does not fall within the ambit of the statutory definition of "airport" and thus is not entitled to the airport property tax exemption. (R. 203.) In short, Rankin County argued that for a leased premises to qualify for the airport tax exemption, the premises must bear a nexus to the operation of an "airport," as defined by the statute. (Id.) Further, Rankin County argued that Lakeland is barred from seeking a refund for any tax year that predates 2015 because no appeal of any such tax assessment was timely filed within ten days of the assessment by the Board of Supervisors. (R. 204.)

On January 25, 2017, the Circuit Court entered Judgment resolving the pending dispositive motions. (R. 1329-1331.) (R.E. 3.) The Circuit Court denied Rankin County's Motion to Dismiss, granted in part and denied in part Lakeland's Second Motion for Summary Judgment, and granted in part and denied in part Rankin County's Motion for Summary Judgment. With respect to the airport property tax exemption statute, the Circuit Court read out of the statute the requirement that the leased premises bear a nexus to airport operations, and instead ruled that the 1992 amendment to the statute provided "that land leased for commercial purposes are exempt from ad valorem taxes." (R. 1329.) Thus, the Circuit Court granted in part Lakeland's Second Motion for Summary Judgment "reversing" Rankin County's "decision to assess ad valorem taxes for 2015 to the real property and improvements thereon. . . leased by [Lakeland] from the Jackson Municipal Airport Authority" and awarded a refund to Lakeland in the amount of $37,575.44. (R. 1330.) Further, the Circuit Court granted in part Rankin

County's Motion for Summary Judgment to the extent Rankin County seeks summary judgment in its favor as to Lakeland's "claims to a refund for any taxes paid prior to the 2015 taxes." (Id.)

On February 22, 2017, Rankin County timely filed a Notice of Appeal from the January 25, 2017 Judgment of the Circuit Court. (R. 1334-36.) (R.E. 4.) On March 2, 2017, Lakeland timely filed a Notice of Cross-Appeal. (R. 1337-38.)

C. STATEMENT OF RELEVANT FACTS TO THE ISSUES PRESENTED

In 2013, Lakeland entered into a 50 year lease with the JMAA for property on Lakeland Drive in Rankin County ("Lease").[2] (R. 208-238.) The Lease specifies that the property is "to be utilized by [Lakeland] in connection with the development and operation of a shopping center and related improvements," (R. 211) and the property shall only be subleased for the "operation of a shopping center." (R. 216.) (R.E. 10.) A "retail/professional center," more commonly referred to as a strip mall, was constructed on the leased parcel. (R. 42-43 at ¶ 3.) As of April 2016, tenants of the strip mall included a mortgage company, U.S. Navy Recruiting Center, optical store, sushi restaurant and smoothie shop. (Id.)

It is undisputed that at all relevant times Rankin County has assessed ad valorem taxes on the leased parcel. Further, it is undisputed that Lakeland has never raised a written objection (pursuant to Miss. Code § 27-35-93) with the Board of Supervisors to the assessment of ad valorem taxes on the leased parcel. Finally, it is undisputed that Lakeland has never filed an application for change in assessment (pursuant to Miss. Code § 27-35-143) with the Board of Supervisors seeking to recover the ad valorem taxes it has paid on the leased parcel. For the tax years 2012 through 2015, Rankin County has assessed and Lakeland has paid ad valorem taxes totaling $152,605.98 on the leased parcel. (R. 42-43 at ¶ 4.)

[2] The parcel is located at the extreme north-west corner of the property leased by JMAA, miles from the entrance to the airport. A map of the entire property is in the Record at 851-853. (R.E. 5.)

With respect to the tax year 2015, on July 15, 2015, Rankin County (pursuant to Miss. Code § 27-35-83) provided notice to the public by publication in the Rankin County News that the tax rolls were ready for inspection and examination.[3] On October 23, 2015, the Mississippi Department of Revenue issued an Order approving the tax rolls and assessments for the tax year 2015. (R. 34.) On November 16, 2015, the Board of Supervisors certified the Department of Revenue's Order approving the tax rolls and assessments, and voted unanimously to finally approve the tax rolls for 2015. (R. 28.) (R.E. 7.) At the time that the Board of Supervisors finally approved the tax rolls for 2015, no proper submission or evidence had ever been presented to the Board of Supervisors to establish that the leased parcel was exempt from 2015 ad valorem taxes, and the Board of Supervisors appropriately recognized the leased parcel and strip mall constructed on the parcel as not tax exempt. Specifically, Lakeland did not submit to the Board a written objection to the proposed 2015 assessment of ad valorem taxes on the leased parcel prior to the final approval of the 2015 tax roll. Additionally, Lakeland did not file with the Board of Supervisors by the August 2016 statutory deadline an application for change in the assessment and seeking a refund of taxes assessed and paid.

On November 23, 2015, Lakeland filed with the Circuit Court a Notice of Appeal seeking review of the Rankin County Board of Supervisors' decision to assess any ad valorem taxes on the leased parcel. (R. 6-12.) (R.E. 2.)

[3] The Court may take judicial notice of this publication in the Rankin County News on July 15, 2015 at Volume 167, Number 52. See http://rankincn.com/editionviewer/default.aspx?Edition=6ebde774-fb55-414e-ac26-ee0ec549f8a0. (R.E. 6.)

IV. SUMMARY OF THE ARGUMENT

The following is undisputed:

- At all relevant times, Rankin County has assessed ad valorem taxes on the strip mall and parcel that Lakeland leases from JMAA. For the tax years 2012 through 2015, Lakeland was assessed and has paid ad valorem taxes totaling $152,605.98.

- Lakeland has never submitted a written objection (pursuant to Miss. Code § 27-35-93) to the Rankin County Board of Supervisors concerning the assessment prior to the final approval of the tax roll for any tax year, including for the tax year 2015.

- Lakeland has never submitted to the Rankin County Board of Supervisors an application for change in assessment (pursuant to Miss. Code § 27-35-143) seeking to recover the ad valorem taxes it has paid for any tax year, including for the tax year 2015.

- Lakeland failed to offer to the Circuit Court even a scintilla of admissible evidence to meet its heavy burden to clearly establish that its strip mall is either constructed on an airport buffer area or is an "airport compatible development." Further, Rankin County receives the benefit of the presumption that Lakeland's strip mall is subject to ad valorem taxes and not tax exempt.

As a result of Lakeland's failure to follow the mandatory statutory requirements to either submit an objection to the assessment in writing to the Board of Supervisors prior to the final approval of the tax roll (pursuant to Miss. Code § 27-35-93), or timely make a written application to the Board of Supervisors for a change in assessment (pursuant to Miss. Code § 27-35-143), the Board of Supervisors **never** was presented with an opportunity to make a decision concerning whether for the tax year 2015 the subject property is exempt, as Lakeland contends, from ad valorem taxes pursuant to the airport tax exemption statute (Miss. Code § 61-3-21). Thus, there is no decision of the Board of Supervisors to appeal from to the Circuit Court.

Further, Lakeland's reliance on a statute of general application (Miss. Code § 11-51-77) is misplaced, as such a general statute cannot somehow supersede or void explicit statutory requirements that mandate a taxpayer to provide the board of supervisors with an opportunity to consider and rule on a taxpayer's objection to an assessment or application for change in assessment before there is an appeal to the Circuit Court of the taxation question. Accordingly, the Circuit Court erred in denying Rankin County's Motion to Dismiss Lakeland's appeal of the 2015 ad valorem tax assessment.

In the event that the Court affirms the Circuit Court's denial of Rankin County's Motion to Dismiss, the Circuit Court plainly erred in its interpretation of Miss. Code § 61-3-21 in holding that land leased by an airport authority for any "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. The Circuit Court's boundless interpretation of the airport tax exemption statute is unsupported by the text of the statute, contrary to Mississippi Attorney General's Opinions and the only reported decision from any court interpreting a similar airport tax exemption statute. The Circuit Court's decision is even contrary to the positions of the parties in this case, which both recognize that the exemption is limited by the statutory definition of "airport." Such a limitless interpretation of the airport tax exemption statute would yield absurd results and create a substantial tax loophole to be exploited by private lessees resulting in either diminished funding for public schools and other public services in Rankin County or necessitating a tax increase to make up for the shortfall created by this untenable loophole. Rather, in order to qualify for the ad valorem exemption under Miss. Code § 61-3-21, the "commercial purpose" of the leased premises must have a "connection with the operation of the airport" as defined by the statute.

Finally, when viewing Lakeland's strip mall through the lens of the statutory definition of "airport," Lakeland has failed to offer any credible evidence to establish that the strip mall was either constructed on an airport buffer area or is an "airport compatible development." To the contrary, the undisputed record evidence establishes that JMAA itself has determined that the lease should not be treated as "airport property" covered by the tax exemption statute and is instead "surplus," "no longer needed for Authority purposes," "not to be used in the Authority's operations," and "no state agency, board, commission or governing authority . . . has expressed a need or use for the Leased Property. . . ." Thus, the record evidence clearly establishes that the strip mall is neither constructed on an airport buffer area nor is an "airport compatible development." Accordingly, the Judgment of the Circuit Court 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 judgment should be rendered as a matter of law for Rankin County. In the alternative, summary judgment should be vacated and the case remanded for a trial on the issue of whether the property is exempt.

V. 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 to either present an objection to the assessment in writing to the Board of Supervisors prior to the final approval of the tax roll, or make a written application for change in assessment to the Board of Supervisors prior to filing this appeal of the assessment in Circuit Court.

STANDARD OF REVIEW

"When reviewing a trial court's grant or denial of a motion to dismiss or a motion for summary judgment, this Court applies a *de novo* standard of review." Burleson v. Lathem, 968 So. 2d 930, 932 (Miss. 2007) (citing Scaggs v. GPCH-GP, Inc., 931 So. 2d 1274, 1275 (Miss.2006); Park on Lakeland Drive, Inc. v. Spence, 941 So. 2d 203, 206 (Miss.2006);

McLendon v. State, 945 So. 2d 372, 382 (Miss.2006); Monsanto Co. v. Hall, 912 So. 2d 134, 136 (Miss.2005)). "For questions of law, this Court's standard of review is *de novo*." Ware v. Entergy Mississippi, Inc., 887 So. 2d 763, 766 (Miss. 2003) (citing Saliba v. Saliba, 753 So. 2d 1095, 1098 (Miss. 2000)). "This Court reviews law application *de novo* and our scope of review is plenary." Kerr-McGee Chem. Corp. v. Buelow, 670 So. 2d 12, (Miss. 1995) (citing Miss. State Tax Com'n v. Medical Devices, 624 So. 2d 987, 989 (Miss. 1993)).

1. Mississippi law mandates a specific procedure for the assessment of ad valorem taxes, raising objections to an assessment of ad valorem taxes, and filing an application to "change, cancel or decrease" an assessment of ad valorem taxes.

The board of supervisors of each county is empowered to levy ad valorem taxes on taxable property located in the county.[4] Ad valorem taxes may be assessed and used by the board of supervisors for "any general county purpose," including funding the construction of roads and bridges, and providing law enforcement, fire and garbage services, but must be assessed in an amount sufficient to fund the public schools in the county.[5] With respect to the funding of public schools, each school board located in the county must submit annually to the board of supervisors (or other levying authority) an order requesting a specific dollar amount of ad valorem taxes necessary to support the school district.[6] Upon receipt of the school board's order, the board of supervisors shall determine the millage rate necessary to generate funds equal to the amount requested and levy such taxes.[7] A school board shall not budget for an increase in ad valorem taxes unless it has first advertised its intention to do so,[8] and any increase that would

[4] Miss. Code § 27-39-303.
[5] Id.
[6] Miss. Code § 37-57-104(1).
[7] Id.
[8] Miss. Code § 27-39-207(1).

necessitate a millage rate greater than 55 mills must be approved by referendum and majority vote of the taxpayers.[9]

If the assessment of ad valorem taxes is conducted by or under the direction of the county tax assessor, the assessor shall complete the assessment of real and personal property and file a tax roll (or rolls) with the clerk of the board of supervisors on or before the first Monday in July of each year.[10] At the July meeting of the board of supervisors, the tax roll shall be equalized, and when such equalization is completed, notice shall be provided by newspaper publication that the tax roll is ready for inspection and examination by the taxpayers in the county.[11] The equalization and subsequent notification by publication that the tax roll is ready for inspection and examination shall be provided at least ten days before the August meeting of the board of supervisors.[12]

On the first Monday in August, the board of supervisors "shall" hold a meeting at the courthouse or chancery clerk's office to hear objections to the ad valorem tax assessments.[13] The board of supervisors may take any objections under advisement, however, the board of supervisors "shall" enter an order on the objections on or before the first Monday of September.[14] The Department of Revenue then shall examine the tax rolls approved by the counties to ensure that the assessed valuation of each class of property is equal and uniform throughout the State.[15] If the results of the examination reveal that the rolls are reasonably equal and uniform, the rolls shall be approved and notification of the same shall be transmitted to the

[9] Miss. Code § 37-57-104(2).
[10] Miss. Code § 27-35-81(1).
[11] Miss. Code § 27-35-83.
[12] Id.
[13] Miss. Code § 27-35-89(1).
[14] Miss. Code § 27-35-89(2).
[15] Miss. Code § 27-35-113.

president of the board of supervisors.[16] Upon approval of the final tax roll, the clerk of the board of supervisors shall provide notice by mail to any taxpayer who objected to an assessment, and any such taxpayer who feels aggrieved by the action of the board of supervisors in equalizing his assessment shall have the right of appeal to the circuit court within twenty days after the date the notice is mailed.[17] The filing of such an appeal shall not delay the collection of the tax due by the assessment as approved.[18] Any person who is dissatisfied with an assessment but fails to file an objection at the August meeting of the board of supervisors "**shall be concluded by the assessment and precluded from questioning its validity after its final approval by the board of supervisors or by operation of law**."[19]

Once the tax roll has been finally approved by the board of supervisors, any interested person may file an application to "change, cancel or decrease an assessment" based on one of fourteen specifically enumerated circumstances and "no other," provided such application is filed prior to the last Monday in August of the year following the assessment.[20] One of the fourteen enumerated circumstances under which an application for change may be filed is when property has been "assessed as subject to county and district taxes and is **exempt** from such taxes."[21] The application "shall" be in writing, on the prescribed form(s), and provided to the board of supervisors where such assessment is made.[22] The board of supervisors shall take up the written application at any meeting, may request the submission of evidence to substantiate the application, and determine the matter presented by the application.[23] There is no specific statute addressing the right to appeal the decision where the board of supervisors denies a written

[16] Miss. Code § 27-35-115.
[17] Miss. Code § 27-35-119.
[18] Miss. Code § 27-35-121.
[19] Miss. Code § 27-35-93(emphasis added).
[20] Miss. Code § 27-35-143.
[21] Miss. Code § 27-35-143(13) (emphasis added).
[22] Miss. Code § 27-35-145.
[23] Id.

application to "change, cancel or decrease an assessment." However, pursuant to Title 11 of the Mississippi Code addressing civil practice and procedure--a statute of general application to "a decision of the board of supervisors . . . as to the assessment of taxes"-- a right of appeal is provided to the circuit court within ten days after the adjournment of the meeting at which the decision to be appealed was made.[24]

This statutory process was concisely summarized in a recent Attorney General Opinion:

> Pursuant to Miss. Code Ann., Section 27-35-81, the tax assessor completes the assessment of real and personal property and files the tax rolls with the clerk of the board of supervisors on or before the first Monday of July. Immediately following equalization of the tax rolls by the board of supervisors, the board is required to notify the public, by way of newspaper advertisement, that the tax rolls are ready for inspection and examination. Miss. Code Ann., Sections 27-35-81 and 27-35-83. This notification is to allow persons to file objections to the tax assessment before the board of supervisors approves the assessments and submits the tax rolls to the Department of Revenue for final approval.
>
> Once all objections have been heard and the rolls finalized, the assessment roll is forwarded to the Department of Revenue for final approval. After this point, the only manner in which the assessment rolls can be amended is pursuant to Miss. Code Ann., Section 27-35-143, which provides that during the following year, up until the last Monday in August, the assessment roll can be amended only for the reasons expressly listed therein "and no other."

State of Mississippi Opinion No. 2012-00457, 2012 WL 6086329, *4.

2. Having failed to either raise an objection to the 2015 assessment of ad valorem taxes prior to the final approval of the tax roll, or file a written application to "change, cancel or decrease" the 2015 assessment of ad valorem taxes, Lakeland is barred from challenging the assessment, and its appeal to the Circuit Court should have been dismissed.

As outlined above, a taxpayer like Lakeland has two opportunities to raise with the board of supervisors a challenge to an assessment of ad valorem taxes. First, pursuant to Miss. Code § 27-35-89, prior to the final approval by the board of supervisors of the tax roll, a taxpayer may submit a written objection to an assessment of ad valorem taxes. Second, pursuant to Miss. Code

[24] Miss. Code § 11-51-77.

§§ 27-35-143 and 145, a taxpayer may file a written application to "change, cancel or decrease" an assessment of ad valorem taxes up until the last Monday in August in the year following the assessment. It is undisputed that Lakeland neither filed an objection to the 2015 assessment of ad valorem taxes prior to the final approval of the tax roll, nor did it file a written application for change of the 2015 assessment of ad valorem taxes by the last Monday of August 2016. As a result, Lakeland **never** properly presented to the Rankin County Board of Supervisors its argument that the subject property is exempt from ad valorem taxes pursuant to the airport property tax exemption statute, and the Rankin County Board of Supervisors **never** had the appropriate opportunity to consider this argument and make a decision regarding the application of the airport tax exemption statute. County tax rolls are voluminous, and it is not practical for boards of supervisors to review them on a property-by-property basis. Thus, unless an objection is timely raised by a taxpayer, the board of supervisors will be unaware of the possible application of a specific statutory exemption to a specific property. As the Circuit Court "wondered" aloud, in the absence of an application by Lakeland in 2015 "how would the county know that the property is to be exempt?" (Transcript of May 25, 2016 hearing at pg. 4.) Accordingly, as a result of Lakeland's failure to timely submit a written objection or application for change concerning the 2015 assessment of ad valorem taxes, Rankin County respectfully submits that the Circuit Court erred in denying its Motion to Dismiss Lakeland's appeal of the assessment.

Indeed, Lakeland's failure to submit an objection to the 2015 assessment of ad valorem taxes prior to the final approval by the Rankin County Board of Supervisors of the tax roll, standing alone, requires dismissal of its appeal to the Circuit Court. The plain and unambiguous terms of Miss. Code § 27-35-93 titled "Filing of objection mandatory" provides: "All persons who fail to file objections shall be concluded by the assessment and precluded from questioning

its validity after its final approval by the board of supervisors. . . ." Thus, by the plain and unambiguous terms of Miss. Code § 27-35-93, Lakeland is barred from seeking judicial review of the 2015 assessment. See, e.g., Worsham Bros. v. Bd. of Sup'rs of Prentiss Cty., 118 So. 2d 616, 617 (Miss. 1960) (citing Adams County v. Bank of Commerce, 128 So. 110, 110-11 (Miss. 1930)) ("where a taxpayer does not make objection to assessments in writing, but objects orally, the taxpayer is concluded by the assessment **and cannot appeal therefrom**.") (emphasis added).

Moreover, even if Lakeland is afforded an opportunity for a second bite at the proverbial apple through a written application to "change, cancel or decrease" the 2015 assessment of ad valorem taxes pursuant to Miss. Code §§ 27-35-143 and 145, Lakeland failed to file an application for change in assessment by the last Monday in August 2016. Thus, the Rankin County Board of Supervisors never had an opportunity to consider a written application for change in assessment, and there certainly is no decision from the Rankin County Board of Supervisors on such a written application that Lakeland may appeal to the Circuit Court.

An appeal is, by definition, a request to review a lower body's decision. BLACK'S LAW DICTIONARY, 2d Ed., *appeal*; http://thelawdictionary.org/appeal/ ("The complaint to a superior court of an injustice done or error committed by an inferior one, whose judgment or decision the court above is called upon to correct or reverse."). It is axiomatic that the issue must first be presented to the lower body and there must be a decision on the precise issue before any appeal can be had. Having failed to properly present its position regarding the application of the airport tax exemption to the attention of the Rankin County Board of Supervisors either before the final approval of the 2015 tax roll, or by application for change in assessment filed by the last Monday in August 2016, there is no decision of the Rankin County Board of Supervisors from which to appeal. Thus, the Circuit Court erred in denying Rankin County's Motion to Dismiss Lakeland's appeal of the ad valorem tax assessment. See, e.g., Southside, Inc. v. Mississippi Dep't of

Revenue, 158 So. 3d 277, 279-80 (Miss. 2014) (affirming the trial court's grant of the Department of Revenue's motion to dismiss because the taxpayer failed to comply with the statutory requirements rendering the trial court "without appellate jurisdiction to hear the appeal"); Khurana v. Mississippi Dep't of Revenue, 85 So. 3d 851, 855 (Miss. 2012) (vacating the order of the trial court and holding that the trial court did not have "appellate jurisdiction" over the taxpayer's appeal because the taxpayer failed to "fulfill the mandatory requirements" under the statute).

3. Lakeland's argument that a statute of general application governs over specific statutes addressing objections and applications for change of assessment is contrary to both clear Mississippi law and recognized canons of statutory construction.

Lakeland's argument presented to the Circuit Court in opposition to Rankin County's Motion to Dismiss rests solely on its contention that a statute of general application, Miss. Code § 11-51-77, supersedes or voids the specific statutory requirements set forth in Miss. Code § 27-35-93 (prior to appealing an ad valorem tax assessment, one must "present objections" to the Board of Supervisors "in writing" and "[a]ll persons who fail to file objections shall be concluded by the assessment and precluded from questioning its validity after its final approval by the board of supervisors.") and Miss. Code § 27-35-143(13) (for a tax exemption, the taxpayer must submit an "application" to the "board of supervisors" to "change" or "cancel" an assessment for property that should allegedly be exempt, and this "application" must be submitted by "August next."). Lakeland is mistaken that a statute of general application can somehow do away with the other explicit statutory requirements—requirements that mandate a taxpayer to provide the board of supervisors with an opportunity to consider and rule on the taxpayer's objection to an assessment or application for change of an assessment before there is an appeal to the Circuit Court of the taxation question. Mississippi law is clear and consistent

with well-recognized canons of statutory construction: "*[A] specific statute will control over a general one.*" Lenoir v. Madison County, 641 So. 2d 1124, 1129 (Miss. 1994) (citing Benoit v. United Companies Mortg. of Miss., 504 So. 2d 196 (Miss. 1987) ("Moreover, we have recognized as *a principle of statutory construction* that, in the event of apparent conflicts, statutes dealing specifically with a matter are to be preferred over those of a more general nature.")) (all emphasis original).

Further, there is nothing in the text of Miss. Code § 11-51-77 that is inconsistent with Rankin County's argument regarding the statutory obligations under the specific statutes governing a taxpayer's obligation to raise an objection in writing to the assessment of ad valorem taxes prior to the approval by the board of supervisors of the tax roll, or to file an application for change within one year after the assessment is finally approved before a taxpayer may file an appeal in Circuit Court. Miss. Code § 11-51-77 merely sets forth *how* and *when* a taxpayer is supposed to *appeal* a "decision" by the Board of Supervisors on the taxation question previously presented to the Board. Namely, pursuant to Section 11-51-77, a taxpayer has "ten days after" the Board's "meeting" [when the Board considers the objection] and "decision" [on the objection] to appeal "to circuit court" and post a bond. Tellingly, Section 11-51-77 requires a certified copy of all "papers on file" with the Board "related to the controversy." [*i.e.*, the written objection, minutes from the hearing, and decision.] On the other hand, Miss. Code § 27-35-93 and Miss. Code § 27-35-143(13) set forth *how* a taxpayer is supposed to *present the taxation objection first* to the Board of Supervisors so it can make a "decision" before the appeal to the Circuit Court can take place.

Lakeland cited Louis Cohn & Bros. v. Lincoln Cty, 81 So. 492 (1919) to the Circuit Court in support of its argument that a taxpayer may appeal the assessment of a tax by the board of supervisors without first raising an objection to the assessment with the board. However,

subsequent opinions from this Court have clarified the Louis Cohn & Bros. decision. In circumstances where a taxpayer is challenging an unreasonable or unlawful tax assessment made by the tax assessor, the taxpayer must first raise an objection to the assessment with the board of supervisors before an appeal can be made of the board of supervisors' taxation decision. In such a circumstance, the taxpayer is initially seeking relief from the board from a decision by the tax assessor. See, e.g., Adams Cty. v. Bank of Commerce in Liquidation, 128 So. 110, 110–11 (Miss. 1930). However, if the board of supervisors unilaterally raises a taxpayer's taxes "at the August meeting or a subsequent meeting," having the effect of the board ignoring the decision of the tax assessor, then no objection to the board is required prior to filing an appeal with the Circuit Court. In such a circumstance, the assessment would be a unilateral action taken by the board that has nothing to do with the board hearing any type of objection to a tax assessment. Id.; Rawlings v. City of Hattiesburg, 157 So. 254, 254–55 (Miss. 1934) (same); Day Bros. v. Bd. of Sup'rs of Webster Cty., 184 So. 453, 454 (Miss. 1938) (same); Worsham Bros. v. Bd. of Sup'rs of Prentiss Cty., 118 So. 2d 616, 617 (Miss. 1960) ("where a taxpayer does not make objections to assessments in writing, but objects orally, the taxpayer is concluded by the assessment and cannot appeal therefrom."). [25]

To further attempt to distance itself from the controlling statutes, Lakeland cites to Lenoir v. Madison Cty., 641 So. 2d 1124, 1132 (Miss. 1994), a case in which this Court held that a bill of exceptions was not required to be filed with an appeal of an ad valorem tax assessment. Lenoir is irrelevant, as Rankin County has not taken the position that the appeal to the Circuit

[25] Lakeland also cited to the Circuit Court a 1921 case holding that the Attorney General did not have to file a written objection before appealing a decision from the Board of Supervisors approving the assessment for a large corporation. Robinson Land & Lumber Co. v. Roberson, 89 So. 160, 161 (1921). Robinson is inapposite. The Attorney General is not prosecuting this appeal on Lakeland's behalf. Further, Robinson dealt solely with a specific set of statutes on the books during the early 1900s that gave the Attorney General the explicit right to appeal a decision from the Board of Supervisors without first objecting to the Board. Id.

Court should have been dismissed because Lakeland failed to file a bill of exceptions. Nor does Rankin County argue that Lakeland failed to correctly handle *how* the case should be appealed to the Circuit Court. Rankin County's argument is that the appeal itself is jurisdictionally defective because the Board of Supervisors was never presented with the objection and arguments which were presented in the first instance to the Circuit Court. The specific, governing statutes mandate that the Rankin County Board of Supervisors be given the opportunity to address Lakeland's request for a tax exemption under the airport tax exemption, before Lakeland can file an appeal in the Circuit Court.

Further, rather than supporting Lakeland's position, Lenoir actually supports Rankin County's position, as the Lenoir Court recognized, "when construing two statutes that encompass the same subject matter, a specific statute will control over a general one." Id. at 1129-30 (citations omitted). As discussed above, there is no question that the statutes requiring a person to raise an objection to an unlawful assessment to the board of supervisors or file an application for change of an assessment are specific statutes, and thus a statue of general application like Miss. Code § 11-51-77 does not control. In any event, as noted above, the statutes are not inconsistent, but rather are in complete accord with each other.

Additionally, Lakeland cited Gray v. Steelman, 137 So.2d 797 (Miss. 1962) to the Circuit Court and argued it provides clarity on this issue. Gray did not involve an appeal to Circuit Court of an alleged improper assessment of ad valorem taxes or the propriety of such an appeal when the taxpayer failed to raise any objection with the board of supervisors. Rather, Gray addressed the issue of whether a specific statute exempted non-producing mineral interests from ad valorem taxes, thus, such mineral interests were not subject to a tax lien and could be severed and transferred prior to the tax sale. Id. at 297. The Court deemed the statutory exemption at issue in Gray as "self-operating" and not "an ordinary exemption statute. . . ." Id. at 300.

Specifically, the Court held the statutory exemption in the severed mineral interests is created "upon the payment of a substituted tax and the exemption applies upon creation of the interest." Id. Thus, Gray is plainly inapposite.

Finally, Lakeland has argued that since ad valorem tax assessments are reviewed *de novo* by the Circuit Court, then this alone demonstrates that no objection is required to the board of supervisors before the appeal to Circuit Court. Not only does this argument once again ignore the plain language of the statutes requiring an objection to the assessment be raised with the board of supervisors, it evidences a misunderstanding of a trial de novo. "'A trial de novo, within the common acceptation of that term . . . means that the case shall be tried the same *as if it had not been tried before*, and that court conducting such a trial may substitute its own findings and judgment for those of the inferior tribunal from which the appeal is taken.'" Equifax, Inc. v. Mississippi Dep't of Revenue, 125 So. 3d 36, 42 (Miss. 2013) (quoting California Co. v. State Oil and Gas Bd., 27 So. 2d 542, 544 (Miss. 1946)) (emphasis original). In this instance, a trial *de novo* simply means that the circuit court has the same power and responsibility as the board of supervisors. Many appeals are heard *de novo*, but such appeals require that the issue first be presented to a lower body. For example, summary judgments are reviewed *de novo* by this Court. In such a circumstance, this Court has the same power and responsibility as a lower court to decide the issue and reverse a lower court decision in that capacity. But, that does not mean that arguments relevant to summary judgment can be raised to this Court for the first time on appeal. See, e.g., Johnson ex rel. Johnson v. Blackwood, 919 So. 2d 1053, 1058 (Miss. Ct. App. 2005) (argument in opposition to summary judgment cannot be raised for first time on appeal).

In the present case, it is even more drastic than that. The better analogy is that this appeal initially filed with the Circuit Court is akin to Lakeland attempting to appeal from a decision on a summary judgment motion when the motion was never even filed in the trial court – much less a

hearing ever had on the issue. The recent Pascagoula-Gautier School District case discusses this exact point. See Pascagoula – Gautier Sch. Dist. v. Board of Supervisors of Jackson County, Mississippi, 2016 WL 6125423, at *2 (Miss. 2016) (discussing the procedural background of the tax appeal, and that the circuit judge ruled that the appeal and trial *de* novo were improper because the appellant failed to present the objection and the issue to the Board of Supervisors and that the Board must conduct a hearing on the issue so that a complete record could be made prior to appeal).[26] Moreover, Lakeland failed to cite any authority to the Circuit Court to support its argument that a trial *de novo* somehow renders the statutory requirements for written objections to be inapplicable.

In short, because Lakeland failed to follow the mandatory statutory requirements to either present an objection to the 2015 assessment in writing to the Rankin County Board of Supervisors prior to the final approval of the tax rolls (pursuant to Miss. Code § 27-35-93), or make a written application to the Rankin County Board of Supervisors for change in the 2015 assessment (pursuant to Miss. Code § 27-35-143) before filing this appeal in Circuit Court, the Rankin County Board of Supervisors was never presented with an appropriate opportunity to consider and make a determination regarding whether the subject property is exempt from 2015 ad valorem taxes pursuant to the airport property tax exemption statute (Miss. Code § 61-3-21).

[26] The Pascagoula decision is the first opinion from this Court which discusses specifically how the statutes, about trial *de novo* and written objections to the Board, work together in a tax appeal. Pascagoula-Gautier Sch. Dist., 2016 WL 6125423. While the case did not analyze and reach a holding on the issue, the opinion gives a detailed discussion of how the process is supposed to work and how a hearing on written objections is a mandatory prerequisite to the trial *de novo*. Just like Lakeland, the plaintiffs relied on Section 11-51-77 and asked for a trial *de novo* after filing only a notice of appeal and without presenting written objections to the Board of Supervisors. Id. The Circuit Judge correctly denied their request and ordered a hearing by the Board of Supervisors on objections and recognized that a complete record was necessary before proceeding with the appeal in Circuit Court. Id. Thereafter, the plaintiffs properly submitted their written objections to the Board of Supervisors, the Board held a hearing and made a decision on the objections, and then the plaintiff appealed that decision to the Circuit Court pursuant to Section 11-51-77. Id. That is the exact process that the governing statutes mandate should have been followed in this case.

Thus, Rankin County respectfully submits that the Circuit Court erred in denying its Motion to Dismiss Lakeland's appeal of the 2015 ad valorem tax assessment.

B. The Circuit Court erred in its interpretation of Miss. Code § 61-3-21 and holding that any land leased by an airport authority for any "commercial purpose" is exempt from ad valorem tax assessments without regard to whether the "commercial purpose" has a connection to the operation of an "airport" as defined by the statute.

STANDARD OF REVIEW

In tax cases, "[t]his Court reviews a lower court's grant or denial of summary judgment *de novo*." Fishbelt Feeds, Inc. v. Mississippi Dep't of Revenue, 158 So. 3d 984, 987 (Miss. 2014) (citations omitted). In Kerr-McGee Chem. Corp. v. Buelow, 670 So. 2d 12, 17 (Miss. 1995), the Court provided the following guiding principles for resolving disputes over a tax exemption:

> Since taxation is the rule and the exemption is the exception, and since **exemptions from taxation are not favored**, the general rule is that a grant of exemption from taxation is never presumed; on the contrary, **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 (emphasis added). Thus, in tax exemption cases, the "presumption is in favor of taxing power, and burden is on the claimant to prove or establish clearly his right to exemption." Id. at 16 (emphasis added) (quoting Miss. State Tax Com'n v. Medical Devices, Inc., 624 So. 2d 987, 990-91 (Miss. 1993)); see also City of Jackson v. Sly, 343 So. 2d 473, 474–75 (Miss. 1977); Local Union No. 845, United Rubber, Cork, Linoleum & Plastic Workers of Am., Home Ass'n, Inc. v. Lee Cty. Bd. of Sup'rs, 369 So. 2d 497, 499 (Miss. 1979). To that end, this Court is required to interpret the applicable tax exemption statutes strictly against Lakeland. Kerr-McGee, 670 So. 2d at 16 ("an asserted tax exemption is to be construed strictly against the one who asserts a claim of exemption"); see also Better Living Servs., Inc. v. Bolivar Cty., 587 So.

2d 914, 917 (Miss. 1991) (applying the strict construction standard in an appeal of an ad valorem tax assessment from a board of supervisors); Local Union No. 845, 369 So. 2d at 499 (same). Accordingly, if this Court views Lakeland's request for an exemption as a close case, then any doubt must be resolved in favor of taxation and against Lakeland's claim to the exemption. Id.

ARGUMENT

The Circuit Court held that the airport property tax exemption statute, Miss. Code § 61-3-21, "specifically provides that land leased for commercial purposes are exempt from ad valorem taxes." (R. 1329 at n.1) (R.E. 3.) In reaching this conclusion, the Circuit Court read out of the airport tax exemption statute all limiting language requiring that the "commercial purpose" of the leased property have a nexus or connection to the operation of an "airport" as defined by the statute. Rather, the Circuit Court held that the airport tax exemption applies to any land leased by an airport authority for any commercial purpose. Plainly, such a boundless interpretation of the airport tax exemption statute is unsupported by the plain text of the statute, and is contrary to Mississippi Attorney General's Opinions, the only reported decision from any court interpreting a similar airport tax exemption statute and the position of the parties to this appeal which have both recognized that the exemption is limited by the statutory definition of "airport." Further, such a limitless interpretation of the airport tax exemption statute would yield absurd results and create a substantial tax loophole to be exploited by private lessees resulting in either diminished funding for public schools and other public services in Rankin County or necessitating a tax increase to make up for the shortfall created by this untenable loophole.

The relevant portions of the airport tax exemption statute provide 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.
>
> In each case the authority may establish the terms and conditions and fix the charges, rentals or fees for the privileges or services, which shall be reasonable and uniform for the same class of privilege or service and which shall be established with due regard to the property and improvements used and the expenses of operation to the authority. **In no case shall the public be deprived of its rightful, equal and uniform use of the airport**, air navigation facility or portion or facility thereof.
>
> ….
>
> (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.

Miss. Code § 61-3-21 (emphasis added). Under the plain text of the statute, in order for a leased premise to qualify for the ad valorem tax exemption, the leased premise must be used in "connection with the operation of an airport or air navigation facility." Id. Specifically, in order to qualify for the exemption, the "commercial purpose" of the leased premises must bear a nexus to "the operation of an airport or air navigation facility."

In 2002, the Tupelo Airport Authority requested an opinion from the Mississippi Attorney General regarding "whether Section 61-3-21(3) authorizes ad valorem tax exemption of property owned by an airport authority and operated as an industrial park which adjoins the airport, and whether personal property owned by a private business or individual located within that industrial park would be exempt as well." State of Mississippi Opinion No. 2002-0164,

2002 WL 1057926 at *1. The Mississippi Attorney General concluded that such property utilized as an industrial park "is not used in connection with the airport or air navigation facility under [the statutory definitions]," and thus the exemption provided by Miss. Code § 61-3-21 "would not be available to such property." Id. at *2. The Attorney General reached this conclusion based on a plain reading of the statutory text:

> In response to your final inquiry related to the property owned by the Tupelo Airport Authority which adjoins the airport and is used as an industrial park, we point out that **to be eligible for the tax exemptions** provided in 61-3-21(3) and 61-5-11(3), **the property must be used in connection with an airport or air navigation facility**. We must examine the definitions of airport and air navigation facility. Sections 61-3-3 and 61-5-3 contain identical definitions for each of those terms. The term airport is defined as "any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon." The term air navigation facility is defined as "any facility other than one owned and operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities." **We are of the opinion that property which is utilized as an industrial park, even if it may be owned by a municipality or municipal airport authority, is not used in connection with the airport or air navigation facility under these definitions.** Therefore, the exemptions provided by Sections 61-3-21(3) and 61-5-11(3) would not be available to such property. Sections 61-3-77 and 61-5-43 continue to offer tax immunity to property held or acquired by a municipal airport or airport authority **for airport purposes**.

Id. (emphasis added).

Moreover, the only reported decision from any court interpreting a similar airport tax exemption statute held the exemption inapplicable to a golf course, insurance agency, auto repair shop, commercial cellular tower, sod farm and grain farm reasoning such a broad interpretation would "yield absurd results," "create a substantial tax loophole to be exploited by private lessees," and would "render virtually meaningless the limitation in the Code requiring that except

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.) In reaching this conclusion, the Illinois Appellate Court, Second District, affirmed the decision of the Department of Revenue that "exemptions from the Code should be construed narrowly and that the exemption sought would impermissibly broaden the scope of section 15-160 of the Code to include land use bearing absolutely no relationship to aviation or aeronautics." Id. at 481.

Finally, the Circuit Court's erroneous interpretation of the statute effectively reading out the requirement that the "commercial purpose" of the leased property bear a nexus to the operation of an "airport" as defined by the statute is even contrary to Lakeland's position regarding the appropriate interpretation of the statute. In its Response to Rankin County's Motion for Summary Judgment, Lakeland dedicates the first four pages of its "Argument" to addressing the statutory definition of "airport" and arguing that the strip mall it operates on the leased premises falls within the statutory definition of "airport" (R. 873-877): "The main flaw in the Board's argument that the Property does not qualify for the tax exemption is that the Board adopts its own definition of 'airport' instead of using the Legislatures definition of 'airport'. . . ." (R. 873; see also Lakeland's Brief in Support of Motion for Summary Judgment (R. 195-196) (arguing that the strip meets the statutory definition of "airport").) Thus, while Rankin County and Lakeland disagree on the question of whether the strip mall falls within the ambit of the statutory definition of "airport," both parties do agree that the strip mall must meet the statutory definition of "airport" in order to qualify for the airport tax exemption. Respectfully, the Circuit Court's reasoning and decision is unquestionably erroneous and should be reversed.

In short, the Circuit Court erred in its interpretation of Miss. Code § 61-3-21 and holding that the airport property tax exemption applies to any land leased by an airport authority for any commercial purpose. Rather, in order for the exemption to apply, the "commercial purpose"

must be in "connection with the operation of an airport or air navigation facility." Thus, the Judgment of the Circuit Court granting in part Lakeland's Second Motion for Summary Judgment should be reversed.

C. Lakeland failed to offer in the summary judgment record sufficient evidence to meet its heavy burden to establish that it was clearly entitled as a matter of law to receive the airport tax exemption.

STANDARD OF REVIEW

"Matters of statutory interpretation also are reviewed by this Court using a de novo standard." Chandler v. McKee, 202 So. 3d 1269, 1271 (Miss. 2016) (citing Wallace v. Town of Raleigh, 815 So. 2d 1203, 1206 (Miss. 2002) (citing Donald v. Amoco Prod. Co., 735 So. 2d 161, 165 (Miss. 1999))). As this Court recently affirmed: "[I]t is the taxpayer's burden to prove some statute or regulation would exempt the taxpayer from the tax." Castigliola v. Miss. Dep't of Revenue, 162 So. 3d 795, 799 (Miss. 2015) (citations omitted). It bears repeating and emphasizing that "tax exemptions 'must be construed most favorably to the taxing power, and the claimant has the burden of showing clearly his right to an exemption.' Moreover, 'since exceptions from taxation are not favored, [the] general rule is that a grant of exemption from taxation is never presumed; on the contrary, it all cases having doubt as to legislative intention, or as to inclusion of particular property within [the]terms of [the exemption statute, [the] presumption is in favor of [the] taxing power, and [the] burden is on [the] claimant to prove or establish clearly his right to the exemption.'" Id. (quoting Miss. State Tax Comm'n v. Med. Devices, Inc., 624 So. 2d 987, 990-91 (Miss. 1993)). Stated differently: "The statutes exempting property from taxation are to be strictly construed in favor of the taxing authority and against the exemption, [and the] one seeking the benefit of the exemption must clearly show or demonstrate that he is within the letter of the exemption, all reasonable doubts generally being resolved against the exemption." Local Union No. 845, United Rubber, Cork, Linoleum & Plastic

Workers of Am., Home Ass'n, Inc. v. Lee Cty. Bd. of Sup'rs, 369 So. 2d 497, 499 (Miss. 1979). Accordingly, Rankin County receives the presumption that the property is subject to taxation, and it is Lakeland's burden to clearly establish it is entitled to the tax exemption.

ARGUMENT

In order to qualify for the airport property tax exemption, it is the taxpayer's burden to clearly establish that the property is being used in "connection with the operation of an airport or air navigation facility." Miss. Code § 61-3-21. Stated differently, the airport tax exemption is available to taxpayers that clearly establish that the "commercial purpose" of the leased premise bears some nexus to the operation of an "airport." Thus, Lakeland bears the heavy burden of clearly establishing that the statutory definition of "airport" includes its strip mall occupied by a mortgage company, U.S. Navy Recruiting Center, optical store, sushi restaurant and smoothie shop. A review of the record readily reveals that Lakeland has failed to offer any admissible evidence, much less sufficient evidence, to carry this burden on summary judgment.

The Mississippi Legislature has defined an "airport" as follows:

> "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 § 61-3-3. Breaking down this statutory definition, the first section of the definition defines "airport" as "land or water which is used, or intended for use, for the landing and taking off of aircraft"--the common dictionary definition of "airport."[27] The next section of the definition addresses appurtenant land on which "airport buildings" or "airport facilities"--such as terminals and hangers--are constructed, as well as other airport "right-of-ways." The final

[27] Webster's defines an airport as "a place where aircraft land and take off and where there are buildings for passengers to wait in and for aircraft to be sheltered." See http://www.merriam-webster.com/dictionary/airport

section of the definition addresses other appropriate "airport"-related purposes, including "buffer areas" and "airport compatible development."[28] The word "airport" modifies each and every item specifically enumerated in the definition, including the land or water used for the landing and taking off of aircraft, buildings or facilities, rights-of-way, buffer areas, and other compatible development. Thus, in order for Lakeland's strip mall to fall within the ambit of this statutory definition, it must bear some nexus to the operation of an "airport."

It is undisputed that Lakeland's strip mall does not fall within the scope of either the first or second sections of the statutory definition of "airport," as a strip mall plainly is not either "land or water which is used, or intended for use, for the landing and taking off of aircraft," or an "airport buildings", "airport facilities" or "right-of-ways." Thus, it is Lakeland's burden to clearly establish that its strip mall falls within the scope of other appropriate "airport"-related purposes, including being constructed on an airport "buffer area" or is an "airport compatible development."

Setting aside the arguments of its counsel, which plainly are not admissible evidence, Lakeland failed to proffer to the Circuit Court any admissible evidence to establish that the strip mall was either constructed on an airport buffer area or is an "airport compatible development." Lakeland offered zero evidence, expert or otherwise, establishing that this property serves as any type of protective barrier or buffer or that the property was designed to work together and compatible in the airport's operations. Indeed, the record is bereft of any affidavit or

[28] The third and final section of the definition was added by amendment in 2004. Prior to 2004, it was unclear if either facilities constructed on airport buffer areas, or areas of airport compatible development fell within the scope of the definition of "airport" because they arguably were not appurtenant or sufficiently connected to "the operation of an airport." The 2004 amendment was passed to address this uncertainty. The 2004 amendment clarified that if the facility is constructed on an airport buffer area or if the development is "airport compatible" it falls within the scope of the definition of "airport" and thus eligible for the airport tax exemption. Nowhere in the 2004 amendment is there any suggestion or support for the argument that the exemption was expanded to include property or development unconnected to the underlying purpose of an airport—the landing and taking off of aircraft.

documentary evidence relevant to meeting Lakeland's burden to establish that it is clearly entitled to the exemption.

On the other hand, the undisputed record evidence establishes that the JMAA itself has specifically and expressly determined (consistent with Rankin County's position) that the subject strip mall and lease should not be treated as airport property that is covered by the tax exemption statute and should instead be leased as general commercial property under an entirely different "surplus" statute. JMAA determined that the leased premises is "surplus," "no longer needed for Authority purposes," "not to be used in the Authority's operations," and "no state agency, board, commission or governing authority . . . has expressed a need or use for the Leased Property. . . ." (2008 Special Meeting Minutes of JMMA at page 10; R. 251.) (R.E. 8.) Further, a Memorandum from the CEO of the JMAA dated January 22, 2008, states that that JMAA Staff determined that the leased property "is not currently necessary for aeronautical use. . . ." (R. 536.) (R.E. 9 at 27.) The Memorandum goes on to state that requested changes in the lease with Lakeland "are necessary and in keeping with similar ground leases of general commercial (as opposed to airport) properties in the area." (R. 537.) (R.E. 9 at 28.) (emphasis added) In sum, JMAA recognized that the lease does not cover "airport property." (Id.)

Additionally, the 2013 Lease between Lakeland and JMAA also supports Rankin County's position that the strip mall is not on a buffer area or an "airport compatible development." The Lease specifies that the property is "to be utilized by [Lakeland Income] in connection with the development and operation of a shopping center and related improvements," and the property shall only be subleased for the "operation of a shopping center." (R. 211, 216.) (R.E. 10.) To accomplish this goal, the Lease requires Lakeland Income to build "a fence" to "reasonably preclude patrons and refuse from migrating from [Lakeland Income's] commercial enterprise to JMAA's properties adjacent to the Demised Premises." (R. 213.) (R.E. 10.) Thus,

the Lease is further evidence that the leased premises has absolutely no connection whatsoever to the operation of an "airport."[29]

The purpose of the airport property tax exemption is to recognize that land and improvements built in connection with the operation of an airport "serve a public and governmental purpose as a matter of public necessity" and need not be taxed because the structure is not only a public structure but also required for the public necessity. Miss Code § 61-3-21(3). Numerous examples come to mind, such as airport control towers, hangars, private company fire services, terminals for private airlines, and others. For example, in a 2012 opinion, the Mississippi Attorney General advised the Tippah County Tax Assessor that the airport tax exemption may be applicable to four private airport hangers. See State of Mississippi Opinion No. 2012-00024, 2012 WL 1071307. Unlike private airport hangers, a fenced off strip mall is not a public necessity that has any connection to the operation of an airport. If the Legislature intended to exempt strip malls or other businesses not connected to the operation of an airport, then the Legislature would have unambiguously done so. See, e.g., Kerr-McGee, 670 So. 2d at 16 (affirming Chancellor's decision to reject tax exemption where corporation claimed that electricity was a "raw material" subject to statute that exempted raw materials from taxation and where Chancellor recognized that if "the legislature intended to include electricity as exempt, it would have so provided"). The Legislature did not in the plain text of the statute exempt property unconnected to the operation of the airport, nor did it intend to do so. The statute does not say that the property may be used for "any" commercial purposes---it says "other appropriate

[29] While the Lease does require all improvements on the leased premises to comply with federal, state and local laws, including the rules and regulations of the FAA, such a requirement does not change the purpose for which the property is being used. (R. 213.)

purposes." In other words, consistent with the remaining text and overall scheme of the statute, purposes connected to the operation of the airport.

When construing a tax exemption statute, this Court has made it clear that every benefit of the doubt goes to the taxing authority and in favor of the tax, and the taxpayer bears a heavy burden of clearly establishing its right to the exemption. Despite having the burden of proof, Lakeland failed to present any admissible evidence to establish as a matter of law that the strip mall should be considered airport property. On the other hand, Rankin County receives the benefit of the presumption in favor of taxation and has presented significant evidence to support the rendering of summary judgment in its favor as a matter of law, as the undisputed record evidence establishes that the leased premise has been determined by JMAA to be "surplus" and no longer needed for airport "purposes" or "operations." Thus, because this Court must strictly construe the tax exemption against Lakeland and presume that Rankin County may assess ad valorem taxes on the leased premises, the decision of the Circuit Court granting the exemption for 2015 ad valorem taxes to Lakeland should be reversed and judgment should be rendered in favor of Rankin County. Alternatively, the Court should remand this case to the Circuit Court for a trial to determine if the strip mall is either constructed in a "buffer area" or is an "airport compatible development."

VI. CONCLUSION

The record clearly establishes that 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. The Circuit Court's Judgement 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 plainly erred in its interpretation of Miss. Code § 61-3-21 in holding that land leased by an airport authority for any "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, in order to qualify for the ad valorem exemption under Miss. Code § 61-3-21, the "commercial purpose" of the leased premises must have a nexus to the function of an "airport" as defined by the statute. Lakeland failed to offer any evidence to satisfy the statutory definition, while Rankin County offered undisputed evidence showing that the property is not serving any function compatible and in connection with the operation of the airport---buffer or otherwise. Accordingly, the Judgment of the Circuit Court 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 judgment should be rendered as a matter of law for Rankin County. Alternatively, the Court should remand this case 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.

This the 27th day of June, 2017.

Respectfully submitted,

RANKIN COUNTY BOARD OF SUPERVISORS

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One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Joseph Anthony Sclafani, counsel of record for Appellant Rankin County Board of Supervisors, do hereby certify that I have this day filed the foregoing Brief with the Clerk of this 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 United States mail, postage prepaid to:

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

This the 27th day of June, 2017.

/s/Joseph Anthony Sclafani
Joseph Anthony Sclafani