IN THE SUPREME COURT OF MISSISSIPPI

NO. 2018-CA-01227-SCT

G4, LLC, A MISSISSIPPI LIMITED LIABILITY COMPANY

v.

PEARL RIVER COUNTY BOARD OF SUPERVISORS

DATE OF JUDGMENT:	08/10/2018
TRIAL JUDGE:	HON. PRENTISS GREENE HARRELL
TRIAL COURT ATTORNEYS:	ROBIN L. ROBERTS JOE H. MONTGOMERY
COURT FROM WHICH APPEALED:	PEARL RIVER COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	ROBIN L. ROBERTS J. MARC McMILLIAN CHRISTOPHER D. NOBLES
ATTORNEY FOR APPELLEE:	JOE H. MONTGOMERY
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES
DISPOSITION:	AFFIRMED IN PART; REVERSED AND RENDERED IN PART - 02/06/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE KITCHENS, P.J., COLEMAN AND GRIFFIS, JJ.

KITCHENS, PRESIDING JUSTICE, FOR THE COURT:

¶1. G4, LLC, entered into a lease in 2009 with the City of Picayune, Mississippi, for land on the grounds of the Picayune Municipal Airport. After the Pearl River County Board of Supervisors assessed *ad valorem* taxes on the leased land, G4 paid the taxes under protest and petitioned the Board for a refund and for a refund of taxes it had paid on lots in the Tin Hill subdivision. The Board denied G4's petition, and G4 appealed to the Circuit Court of

Pearl River County, which affirmed. Now, G4 appeals, asserting that, according to this Court's decision in ***Rankin County Board of Supervisors v. Lakeland Income Properties, LLC***, 241 So. 3d 1279 (Miss. 2018), it was exempt automatically from paying *ad valorem* taxes on the airport property. We agree, and we reverse and render the circuit court's decision that affirmed the Board's refusal to refund the airport property taxes. We affirm the circuit court's decision that G4 was not entitled to a refund of taxes paid on the Tin Hill subdivision lots.

FACTS AND PROCEDURAL HISTORY

¶2. G4 filed an original and two amended petitions with the Pearl River County Board of Supervisors seeking tax relief regarding the leased airport property and Tin Hill subdivision lots. When the petition was denied, G4 filed a notice of appeal and bill of exceptions in the circuit court.

1. Airport Lease

¶3. On February 3, 2009, G4 entered into a fifteen-year lease with the City of Picayune for property situated at the Picayune Municipal Airport. The lease is devoid of language specifying either that *ad valorem* taxes would be paid or that a tax exemption applied. G4's manager, Tyrone Gill, at a 2014 city council meeting, testified that his understanding was that G4 would be exempt from all *ad valorem* taxes under the lease. Nevertheless, Pearl River County assessed taxes for the airport lease beginning in 2009. This triggered protracted proceedings to ascertain the tax status of the airport lease.

¶4. Initially, Gill contacted Gary Beech, the Pearl River County Tax Assessor and Collector, to protest the 2009 tax bill. Beech requested an attorney general opinion on whether the lease should be exempt from taxes. Miss. Att'y Gen. Op., No. 2010-00370, 2010 WL 3281487, *Beech*, at *1 (July 23, 2010). The attorney general opinion concluded that the leased property would be exempt from *ad valorem* taxation "if a determination is made that the lease satisfies the requirements of [Mississippi Code] Section 61-5-11." *Id.* Section 61-5-11 provides that a municipality's lease of airport property for certain statutorily enumerated purposes will be tax exempt. Miss. Code. Ann. § 61-5-11 (Rev. 2013). The attorney general also opined that a municipality may execute a lease of airport property under Mississippi Code Section 61-5-9 (Rev. 2013), and that such a lease would not be tax exempt. Miss. Att'y Gen. Op., No. 2010-00370, 2010 WL 3281487, *Beech*, at *2 (July 23, 2010). The attorney general advised that, if a certain lease does not reference Section 61-5-11, then outside evidence, such as board minutes, could be consulted to determine whether the lease was intended to be subject to the tax exemption. *Id.*

¶5. After obtaining the attorney general opinion, the city council met on September 7, 2010, and reviewed its airport leases. The city council placed in its minutes that the G4 lease had been entered into under Section 61-5-9 and thus was not exempt from *ad valorem* taxes. Gill claims that he did not receive notice of the city council's meeting or its decision.

¶6. G4 was assessed taxes for the lease from 2009 to 2012 but failed to pay, and the property was sold for taxes for the years 2009, 2010, and 2011. While the sales matured, G4 attempted to resolve its tax status. On August 22, 2012, G4 petitioned the Pearl River County

Board of Supervisors to strike the tax sale for 2009 taxes. The Board entered an order striking that tax sale.

¶7. On August 5, 2013, the Board granted G4 a one-year extension to prove that it was entitled to receive a valid tax exemption and struck the 2011 tax sale for nonpayment of 2010 taxes. But the Board received excerpts of the city council's September 7, 2010, minutes denying tax exempt status to G4. The Board then reconsidered and rescinded its August 5, 2013, order and "requested the Tax Collector to proceed with assessment and collection of all unpaid taxes due and owing."

¶8. Aggrieved, on August 19, 2014, Gill appeared before the city council requesting reconsideration of an exemption. He attempted to show that because G4 was engaged in commercial activities on the leased property, the tax exemption in Section 61-5-11 applied. The city council voted to deny the exemption. On August 22, 2014, before maturation of a tax sale, G4 paid $34,557 in *ad valorem* taxes under protest for the airport property for tax years 2009, 2010, and 2011.

¶9. On October 28, 2014, G4 petitioned the Pearl River County Board of Supervisors for a refund of all taxes paid, plus interest, and reinstatement of the tax exemption on the airport property. In this petition, G4 also requested a refund of taxes paid on the Tin Hill property discussed below.

¶10. At a February 3, 2015, city council meeting, the council acknowledged G4 as a commercial operator, and it cancelled the 2009 ground lease with G4 and issued a new lease

specifically declaring G4 tax exempt under Mississippi Code 61-5-11. But the city council did not make the tax exemption retroactive to 2009.

2. Tin Hill Property

¶11. G4 owns certain lots in the Tin Hill subdivision in Pearl River County. The Board of Supervisors approved the final Tin Hill subdivision plat on September 13, 2010. G4 assigned initial values to the lots before they were to be sold. In 2015, G4 appeared before the Pearl River County Board of Supervisors, arguing that "[t]he value of the lots [had been] incorrectly determined using a flawed formula" beginning in 2011. According to G4, "[e]xtensive meetings with the Board of Supervisors Attorney and the Tax Assessor have resulted in an agreed and proper determination of value," to begin in 2014, and "[t]hese corrected property values should be utilized to retroactively . . . correct land values in the Tin Hill development."[1]

¶12. Alternatively, G4 requested a retroactive refund through the application of a "Developer's Discount," claiming a 75 percent tax deduction on the lots under Pearl River County Subdivision Regulation Section 603. G4 argued that it had been entitled to, but had not received, the regulatory discount for its Tin Hill Subdivision lots but that other Pearl River County property developers had gotten the discount. Additionally, G4 requested that

[1] On appeal to the Pearl River County Circuit Court, G4 contended that it had provided a price list to the Pearl River County Tax Assessor's Office in 2010 that stated the lots were not for sale; G4 claimed that "this was because the plat was not yet approved; however, the list still accurately reflected the prices." Later, "[those] lots were then listed with a realtor for more than actual market price, but that should not have affected the actual value nor the credit required [and,] [s]ince then . . . the Tax Assessor reached an agreed and proper determination of value."

tax sales for the parcels from 2011 to 2013 be set aside and that it receive a refund for amounts overpaid in consideration of the reassessed Tin Hill Subdivision parcel values.

¶13. On April 22, 2015, the Board of Supervisors denied relief on G4's petition for tax relief concerning the airport property and the Tin Hill property. G4 appealed to the Circuit Court of Pearl River County, which affirmed the decision of the Board of Supervisors concerning the airport property and the Tin Hill property.

STANDARD OF REVIEW

¶14. The Court will not disturb a decision by a county board of supervisors unless the decision was "not supported by substantial evidence, was arbitrary or capricious, was beyond the board's scope or powers, or violated the constitutional or statutory rights of the aggrieved party." ***Seyfarth v. Adams Cty. Bd. of Supervisors***, 267 So. 3d 767, 770 (Miss. 2019) (citing ***Hooks v. George Cty.***, 748 So. 2d 678, 680 (Miss. 1999)). On questions of law, a county board of supervisors' decision is reviewed *de novo*. ***A & F Props., LLC v. Madison Cty. Bd. of Supervisors***, 933 So. 2d 296, 300 (Miss. 2006) (citing ***Harrah's Vicksburg Corp. v. Pennebaker***, 812 So. 2d 163, 170 (Miss. 2001)).

DISCUSSION

I. Whether G4, LLC, was exempt automatically from *ad valorem* taxes on the airport lease under Mississippi Code Section 61-5-11.

¶15. Because a presumption favors the taxing power, G4 had the burden to prove clearly its right to the claimed tax exemption. ***Lakeland***, 241 So. 3d at 1287 (citing ***Kerr-McGee Chem. Corp. v. Buelow***, 670 So. 2d 12, 16 (Miss. 1995)). G4 argues that, based on ***Lakeland***, it was exempt from paying *ad valorem* taxes the moment it entered into the airport

lease. We agree with G4's analysis of ***Lakeland***. Just as in this case, the Court in ***Lakeland*** was tasked with determining whether a lessee of airport property was entitled to an automatic *ad valorem* tax exemption. ***Lakeland***, 241 So. 3d at 1287. Mississippi Code Section 61-3-21, which governs regional and municipal airport authorities, was the statute at issue in ***Lakeland***. Miss. Code Ann. § 61-3-21 (Rev. 2013). Under Section 61-3-21(1),

> (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.

Miss. Code. Ann. § 61-3-21(1) (Supp. 2019). Section 61-3-21(3) requires that

> [a]ll airport-related 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 airport-related contracts, leases, and other arrangements . . . *shall be* free and exempt from all state, county and municipal ad valorem taxes on real property and personal property . . . .

Miss. Code Ann. § 61-3-21(3) (Rev. 2013) (emphasis added). Although the statutes at issue in this case and in ***Lakeland*** are located in two different chapters of Title 61 of the Mississippi Code, they are nearly identical.

¶16. The statute at issue here, Section 61-5-11, is contained in the Municipal Airport Law and provides that

> (1) In operating an airport or air navigation facility owned, leased or controlled by a municipality, such municipality may, except as may be limited by the terms and conditions of any grant, loan or agreement pursuant to Section 61-5-15, enter into contracts, leases and other arrangements for a term not exceeding fifty (50) years with any persons:
>
> > (a) Granting the privilege of using or improving such airport or air navigation facility or any portion or facility thereof, or space therein for commercial purposes; or
> >
> > (b) Conferring the privilege of supplying goods, commodities, things, services or facilities at such airport or air navigation facility; or
> >
> > (c) Making available services to be furnished by the municipality or its agents at such airport or air navigation facility.

Miss. Code. Ann. § 61-5-11(1) (Rev. 2013). As does Section 61-3-21(3), Section 61-5-11(3) provides that

> [a]ll contracts, leases and other arrangements entered into pursuant to this subsection are deemed to serve a public and governmental purpose as a matter of public necessity; therefore, all such contracts, leases and other arrangement . . . *shall be* free and exempt from all state, county, and municipal ad valorem taxes on real property and personal property . . . .

Miss. Code Ann. § 61-5-11(3) (Rev. 2013) (emphasis added).

¶17. In ***Lakeland***, the Court held that an airport authority can lease property only if the lease serves the purposes listed in Section 61-3-21(1). ***Lakeland***, 241 So. 3d at 1289. In that case, the lease served a commercial purpose. ***Id.*** The Court held that "when the Airport leases land for a commercial purpose and the rents exchange hands, the exemption applies. In other

words, at the time of the lease, the purpose of the property is known because the Airport cannot enter into a lease like the one at issue unless it has a commercial purpose." ***Id.*** at 1290. The Court concluded that because the exemption in Section 61-3-21(3) was automatic and self-operating, it applied from the inception of the lease. ***Id.*** G4 argues that because Section 61-3-21 and Section 61-5-11 are almost identical statutes governing virtually identical subject matter, the interpretation given to Section 61-3-21 in ***Lakeland*** applies to the tax exemption in Section 61-5-11.

¶18. "It is a well-settled rule of statutory construction that when two statutes pertain to the same subject, they must be read together in light of legislative intent." ***Lewis v. Hinds Cty. Circuit Court***, 158 So. 3d. 1117, 1123 (Miss. 2015) (internal quotation marks omitted) (quoting ***Tunica Cty. v. Hampton Co. Nat'l Sur., LLC***, 27 So. 3d 1128, 1133 (Miss. 2009)). Additionally, under the doctrine of *in pari materia*,[2] when two statutes speak to the same or similar subject matter the Court should resolve the ambiguity by applying the statute at issue with other like statutes. ***Tellus Operating Grp., LLC v. Maxwell Energy, Inc.***, 156 So. 3d 255, 261 (Miss. 2015) (quoting ***State ex rel. Hood v. Madison Cty. ex rel. Madison Cty. Bd. of Supervisors***, 873 So. 2d 85, 91 (Miss. 2004)).

¶19. The two statutes govern very similar subject matter. At the crux of both statutes are *ad valorem* tax exemptions applicable to airport leases. Section 61-3-21 governs tax exempt leases of airport property entered into by airport authorities, while Section 61-5-11 governs tax exempt leases entered into by municipalities. The statutes contain identically worded tax

[2] *In pari materia* is Latin for "in the same matter"or "on the same subject." *In pari Materia*, Black's Law Dictionary (11th ed. 2019).

exemptions. Also, both statutes have identical requirements for what qualifies as a tax exempt lease. Specifically, under both statutes, leases will be tax exempt when the lessee uses the property for commercial purposes, or supplies goods, commodities, things, services, or facilities at the airport or makes available services to be furnished by the authority or municipality.[3] Due to this similarity, we find that the interpretation given to Section 61-3-21 in ***Lakeland*** governs Section 61-5-11. ***Lakeland***, 241 So. 3d at 1290. Therefore, under Section 61-5-11, a municipality may lease airport property only for the statutorily listed purposes and the attendant tax exemption is automatic from the inception of the lease.

¶20. The Board contends that Section 61-5-11 does not apply to the lease. It argues that G4 "obfuscates the fact that on September 7, 2010, the Picayune City Council . . . denied that the lease to G4, LLC was executed under these stated statutory provisions, but rather was made under Miss. Code Ann. § 61-5-9, which does not provide for any exemption." Relying on the attorney general opinion it had obtained in 2010, the Board claims that, without language in the lease specifying the applicable statute, it was the city council's option to declare that the lease was made under Section 61-5-9, not Section 61-5-11, and there was no automatic exemption.

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[3] We recognize that the attorney general addressed these statutes together in 2012. This Court has said that "Attorney General opinions are not binding, but they certainly are useful in offering guidance to the Court." ***Jones Cty. Sch. Dist. v. Miss. Dep't of Revenue***, 111 So. 3d 588, 602 (Miss. 2013) (quoting ***Shelter Mut. Ins. Co. v. Dale***, 914 So. 2d 698, 703 (Miss. 2005)). The attorney general considered Section 63-3-21 and Section 61-5-11 and opined that both statutes reflect a legislative intent to exempt all leases from *ad valorem* taxes if the leases were entered into for one of the statutory purposes. Miss. Att'y Gen. Op., No. 2012-00024, 2012 WL 1071307, *Akins*, at *3-4 (Feb. 21, 2012). We cited this opinion with approval in ***Lakeland***. ***Lakeland***, 241 So. 3d at 1288.

¶21. We review the language of Section 61-5-9. The statute provides, in its entirety, that

> Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to Section 61-5-15, every municipality may by sale, lease or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to the Municipal Airport Law. Such disposal by sale, lease, or otherwise, shall be in accordance with the laws of this state, or provisions of the charter of the municipality, governing the disposition of other property of the municipality, except that in the case of disposal to another municipality or agency of the state or federal government for aeronautical purposes incident thereto, the sale, lease, or other disposal may be effected in such manner and upon such terms as the governing body of the municipality may deem in the best interest of the municipality.

Miss. Code Ann. § 61-5-9 (Rev. 2013). Under its plain language, Section 61-5-9 enables a municipality to lease airport property in accordance with other applicable laws. Section 61-5-11 is the law that specifically delineates the parameters of a municipality's statutorily permissible airport land lease. Reading the statutes together, Section 61-5-9 enables a municipality to lease airport property, and Section 61-5-11 provides the mechanism for doing so. Nothing suggests that a municipality can lease airport land outside the parameters established by Section 61-5-11. Therefore, the Board's contention that Section 61-5-9 allows a municipality to lease airport land outside the strictures of Section 61-5-11 is without merit.

¶22. As in ***Lakeland***, under Section 61-5-11, a municipality may lease property only for those purposes listed in Section 61-5-11 and the statutory tax exemption is self operating and automatic. ***Lakeland***, 241 So. 3d at 1290. Therefore, G4's lease had the benefit of the tax exemption. Moreover, copious evidence existed that G4's lease was for commercial purposes. In ***Lakeland***, this Court, examining the identically worded Section 61-3-21, determined that "'commercial purposes[]' . . . includes the sale or exchange of goods."

Lakeland, 241 So. 3d at 1288. In that case, the lease provided that the land would be used for "the development and operation of a shopping center and related improvements." ***Id.*** (internal quotation marks omitted). The lessee presented an affidavit averring that, since the lease began, the property had been used for commercial purposes. ***Id.*** The Court held that the use of the property at issue fell within the definition of "commercial purposes," adding that "the lease could not have been extended . . . if the proposed development did not serve any of the purposes detailed in Section 61-3-21(1)." ***Id.*** at 1289.

¶23. G4 appended to its petition to the Board the minutes of the 2014 city council meeting at which the council had heard evidence pertaining to the exemption. At the meeting, Gill testified that he had purchased Top Flight Aviation of Mississippi, a wholesale aircraft company that bought and sold aircraft and operated on the leased property. He explained that business had been slow due to a decline in the market for aircraft. Gill testified that the business had bought and serviced aircraft during the lease term. Gill said he had provided services to the city by pouring concrete to improve the hangar, spraying weeds, and using his helicopter for the city's egg drops[4] and also to help locate escaped prisoners and citizens stranded during floods.

¶24. G4 gave to the Board documents pertaining to the purchase of Top Flight. Also, G4 submitted Top Flight's Mississippi sales tax license and documentation of purchases and sales of aircraft that had occurred during the lease term. G4 presented a marketing agreement

[4] At oral argument, G4's attorney explained that an egg drop is a charity fundraiser during which eggs are cast out of a helicopter and aimed at a target on the ground. The Board does not dispute that G4's provision of the helicopter for this endeavor was a valuable service.

with CB Aviation, which had hired Top Flight to sell two airplanes. Gill's personal tax returns from 2007 through 2013 claimed income from a single source identified as Top Flight Aviation. Thus, not only was G4 automatically entitled to the tax exemption because it had entered into a lease under Section 61-5-11, but G4 provided unrebutted evidence to the Board that, during the period of the lease, the property was being used for commercial purposes.

¶25. Finally, the Board argues the Legislature has "repudiated and vitiated the Court's reasoning in ***Lakeland***, *supra*, by substantially amending [Section] 61-3-3 and [Section] 61-3-21 to remove any *ad valorem* tax exemption for contracts, leases, etc. unrelated to certain significant specified airport related activities." While the Legislature did amend Section 61-3-21 after ***Lakeland***, the amendments do not change the Court's holding that the statutory exemption is automatic for leased property used for commercial purposes. The amendments merely narrowed what constitutes "airport related activity" going forward. *See* S.B. 2802, Reg. Sess., 2019 Miss. Laws ch. 302. ***Lakeland***'s holding that the statute creates an automatic exemption was undisturbed by the amendment.

¶26. We hold that G4 was entitled to the automatic tax exemption in Section 61-5-11. The Board argues that, if this Court finds that the exemption applies, G4's refund claim is time barred. But the Board affords little briefing on this argument, merely listing various statutes of limitations that might apply. Regarding this issue, the Board provides no argument applying any law to the facts of this case. Under Mississippi Rule of Appellate Procedure 28(a)(7), which applies to briefing, "[t]he argument shall contain the contentions of appellant with respect to the issues presented, and the reasons for those contentions . . . ." Because the

Board provides no reasons for its contention that G4's refund claim is time barred, we do not address this argument.

II. Whether the Pearl River County Board of Supervisors "arbitrarily and capriciously" denied G4's petition regarding the Tin Hill Subdivision lots.

A. Erroneous Assessments

¶27. G4 argues that the Pearl River County Tax Assessor overvalued its Tin Hill Subdivision lots. G4 argues that the assessor incorrectly assessed taxes on the lots beginning in 2011 but that the assessor later "reassessed the lots at the lower corrected value in 2014." G4 contends that the assessor failed to apply this reassessment to previously paid taxes and did not provide a refund. G4 argues that the Board erred by denying a refund because G4 is "entitled to have the correct formula . . . applied retroactively after the tax assessor determined that [its] method was flawed."

¶28. Mississippi Code Section 27-35-49 provides that a tax assessor is required to assess all lands within the county, and that all lands "be appraised according to [their] true value and assessed in proportion thereto . . . ." Miss. Code Ann. § 27-35-49 (Rev. 2017). The assessor is required to appraise such lands "at a valuation equal to the assessment of other like lands similarly situated . . . ." *Id.* Section 27-73-7 provides,

> The tax collector is authorized and empowered to refund any individual, firm or corporation any *ad valorem*, privilege or excise tax which has been paid or collected through error or otherwise when such person, individual, firm or corporation has paid any such tax in excess of the sum properly due whether paid under protest or not. Taxes erroneously paid within the meaning of this section shall include, but not be limited to, double payment, or overpayment, or payment on state, United States, vacant and exempt land, and the purchase paid for the redemption of lands erroneously sold for taxes.

Miss. Code Ann. § 27-73-7 (Rev. 2017).

¶29. G4 cites several cases for the proposition that this Court may order reimbursement for erroneous assessments. *See* ***Willow Bend Estates, LLC v. Humphreys Cty. Bd. of Supervisors***, 166 So. 3d 494, 499 (Miss. 2013) ("[T]he case is remanded . . . with instructions to refund all taxes erroneously collected under the cost methodology since 2006."); ***Bd. of Supervisors of Lauderdale Cty. v. Citizens' Nat'l Bank of Meridian***, 119 Miss. 165, 80 So. 530, 531 (1919) ("If any money has been improperly collected from the appellee under the erroneous assessment, it is entitled to a refund thereof . . . ."). Accordingly, G4 argues "the Court in this case should recognize the proper valuations and reimburse G4 for the overpayment of *ad valorem* taxes on its lots in the Tin Hill Subdivision for the years 2011, 2012, and 2013."

¶30. G4 avers that the tax assessor consented to reassessment in 2014. But we find no evidence in the record that G4 reached an agreement with any Pearl River County entity regarding reassessment.[5] The Board of Supervisors' April 22, 2015, Order to Deny Request of G4, LLC, on Tin Hill[] Subdivision Lots contains no information regarding any error in assessment and only memorializes that the Board denied G4's petition requesting

[5] In its original petition, G4 "request[ed] a refund of tax money from Pearl River County in the amount of overpayment on those PIN numbers in Exhibit 'H' based on corrected tax assessments." Exhibit H lists certain subdivision lots, their PIN numbers, and a corresponding monetary value. In its Amended Petition, G4 pled that, "having properly raised this issue with the Tax Assessor's office, a proper recalculation of the taxes has been made on the attached spreadsheet. (Exhibit A to this Amended Petit[i]on)." But that attachment is not part of the record. G4's Second Amended Petition also requested that the Board order the tax assessor to provide a "refund based on recalculation of values as shown on Exhibit 'A' hereto." But this document contains the same information as Exhibit H, submitted with G4's Original Petition.

reimbursement "based upon information and testimony submitted and upon recommendation from the Tax Assessor and Legal Coun[sel]."

¶31. The Board contends that nothing in the record shows that G4 ever paid taxes for any Tin Hill Subdivision lot and "only came before the Board of Supervisors as tax sales [for the lots] were maturing asking for relief from tax sales . . . after no action whatsoever had been taken by [the] LLC to protect its right to contest any of its assessments." The Board also argues that "G4, LLC never appeared before the Board of Supervisors and contested its assessment of the Tin Hill lots in the statutory equalization process under Miss. Code. Ann. § 27-35-131 in any year for the years 2011-2014." Further, it claims that G4 "never appealed any annual equalization or assessment of the lots in Tin Hill Subdivision by the Board of Supervisors to the Circuit Court under Miss. Code Ann. § 11-51-77 as required by law in order to take advantage of its arguments herein."

¶32. The Board also points to evidence presented by Gary Beech at the 2015 Board of Supervisors hearing. Beech testified and produced documentation comparing the values submitted by the developer to prices later marketed for Tin Hill Subdivision lots. The Board notes that, in comparing the "prices submitted by developer for assessment purposes to the actual prices at which the lots had been listed by G4, LLC with Realtors, [the lots] were being offered for sale at prices five or six times the requested assessment G4, LLC demanded." Accordingly, the Board argues that its decision to deny the petition was not unsupported or without right.

¶33. We observe that G4 cites no authority for its position that the assessor erred as a matter of law by assessing the lots. G4 tenuously asserts that the assessor erred because the originally submitted "price list stated that the lots were not held for sale because the plat was not approved yet," and "he listed the lots with a realtor for more than the actual market price." But the Board reasonably could have found that the assessor determined that G4 had intended to place the lots for sale.[6] Further, the record reflects that the assessor testified at the hearing and produced evidence on how the properties were assessed and valued. Moreover, no record evidence shows that G4 objected to assessment until years after such assessments were finalized or that G4 had contested the Pearl River County tax roll equalization. *See* Miss. Code. Ann. § 27-35-131 (Rev. 2017).

¶34. Accordingly, regarding the claimed erroneous assessments, G4 has not shown that the Board's decision to deny its petition was arbitrary and capricious. ***Baker v. Bd. of Supervisors of Panola Cty.***, 113 So. 3d 1266, 1270 (Miss. Ct. App. 2013). We find this issue to be without merit.

B. Developer's Discount

¶35. G4 also claims that Pearl River County provided a "Developer's Discount" for tax assessments on unsold lots within a subdivision.[7] According to G4, this regulation was

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[6] G4 concedes in its appellate brief that "[t]he lots were then listed with a realtor for more than actual market price, but that should not have affected the actual value nor the credit required."

[7] According to G4's circuit court appeal, Pearl River County Subdivision Regulation Section 603 provided that

> The [Pearl River] County Tax Assessor's Office will provide a developer's

applied to other developers but not to G4. The county later found the regulation to be unconstitutional.[8] Accordingly, G4 contends that the County should have provided it reimbursement, "[h]aving erroneously embarked on a discount scheme . . . [which] violated the Equal Protection rights of G4[,] [and that] G4 must now be included in the discount, or those who received the benefit of the policy should be required to pay without the discount."

¶36. Mississippi Constitution Article 4, Section 112, provides that all "[t]axation shall be uniform and equal throughout the state. All property not exempt from ad valorem taxation shall be taxed at its assessed value." Further, the Constitution requires that all "[p]roperty shall be assessed for taxes under general laws, and by uniform rules, and in proportion to its true value . . . ." Miss. Const. Art. 4, § 112. Taxable property is then assessed in proportion to such true value by class, with an assessment ratio applied to each class "uniform throughout the state upon the same class of property . . . ." *Id.*; *see also* ***Am. Nat'l Ins. Co. v. Bd. of Supervisors of Harrison Cty.***, 303 So. 2d 457, 459 (Miss. 1974) ("[I]n order to assure uniformity and equality so that every taxpayer shall bear his fair share of the tax burden, the Constitution provides that property shall be assessed by uniform rules and in

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> discount for property assessment on all unsold lots within the subdivision for a period of no more than six (6) years. The discount will be calculated at seventy-five (75%) percent of the asking price of each lot. The asking price of each lot will be furnished to the Tax Assessor's Office upon final plat approval. Once a lot has been sold the property will be assessed [at its] full value.

The Board provided that those seeking the discount present "a list of all properties . . . to [the] Tax Assessor on or before May 1 of each year."

[8]According to the Board, Pearl River County notified G4 that the discount was unconstitutional in 2014.

proportion to its value. The equal protection clause of the Fourteenth Amendment to the Constitution of the United States also requires uniformity and equality in taxation." (citing ***Knox v. S. Paper Co.***, 143 Miss. 870, 108 So. 288 (1926))). Neither G4 nor the Board disputes the unconstitutionality of the developer's discount.

¶37. G4 cites ***Gammill Lumber Co. v. Board of Supervisors of Rankin County***, 274 F. 630 (S.D. Miss. 1921), for the proposition that equitable relief may remedy an invalid tax assessment. In ***Gammill***, a property owner alleged in a federal district court that a county Board of Supervisors had "discriminat[ed] against the plaintiff by assessing its property at more than 100 [percent] of its actual value, while the property of other persons is customarily and intentionally assessed at not exceeding 60 [percent]." ***Id.*** at 633. The district court considered the relief it could order in equity concerning the assessments that statutory relief would not otherwise allow. ***Id.*** at 632-35 ("Here, then, is a plain violation of the Constitution of the state, which requires the property of all private corporations for pecuniary gain to be taxed in the same way . . . and to be taxed at its true value."). The district court granted a preliminary injunction as an equitable remedy to enjoin the Board's action, explaining that "the blending in a state statute of legal and equitable remedies will not affect the ancient equitable jurisdiction of this court." ***Id.*** at 638.

¶38. Accordingly, G4 asks this Court to consider that "[t]he 603 provision turned out to be unconstitutional, but while it was in force, it had to be applied equally to everyone, including G4." G4 contends that, "[i]f by written policy the county fails to collect taxes it was

constitutionally required to collect, then it must allow that advantage to all, or be required by law to re-assess and collect from everyone, which is impracticable."

¶39. We reject G4's argument. First, as the circuit court found, "[s]ince the Developer's Discount would violate Section 112's requirement that each class of property be assessed by a uniform ration," a county determination that it could not apply the regulation to property owners could not be "arbitrary and capricious," because the Board, as both parties aver, could not have granted G4's request lawfully. G4 argues that it was disadvantaged because others allegedly received the credit; however, G4 could have sought the benefit before, and it reasonably cannot contend that its application was unfair when it could have applied for its benefit previously when it was "applied to everyone."

¶40. G4 requests that the County should pay *something* for its failure to collect taxes properly. It argues that the County is entitled to some reimbursement from other developers who did not pay what was properly owed. G4, in effect, is asking for payment for not receiving the advantage of an unconstitutional law, but it does not follow that G4 should be reimbursed because others received this same benefit. G4 cites no authority to support such a compelled reimbursement. Nor does G4 cite authority for the proposition that it somehow was denied equal protection for the county's failure to apply an unconstitutional law. For these reasons, G4's argument fails. The Board's decision to deny G4's petition was neither "arbitrary and capricious" nor without authority or right.

CONCLUSION

¶41. We affirm in part and reverse and render in part. Because, by operation of Section 61-5-11, G4 was exempt automatically from paying *ad valorem* taxes on the leased airport property, we reverse and render the portion of the circuit court's decision pertaining to the airport property taxes. We affirm the circuit court's decision that affirmed the denial of G4's petition regarding taxes on the Tin Hill Subdivision lots.

¶42. **AFFIRMED IN PART; REVERSED AND RENDERED IN PART.**

KING, P.J., COLEMAN, MAXWELL, BEAM, CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR. RANDOLPH, C.J., NOT PARTICIPATING.