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APPENDIX A

224 So.3d 539

Wayne Cnty. Sch. Dist. v. Morgan

Supreme Court of Mississippi

March 16, 2017, Decided

NO. 2015-SA-01363-SCT

Counsel: FOR APPELLANT: C. TED SANDERSON, JR., LESLIE BOUNDS.

FOR APPELLEE: JAMES L. POWELL, SYLVIE D. ROBINSON.

Judges: BEFORE RANDOLPH, P.J., KING AND BEAM, JJ. DICKINSON, P.J., KITCHENS, KING, COLEMAN, MAXWELL, BEAM AND CHAMBERLIN, JJ., CONCUR. WALLER, C.J., NOT PARTICIPATING.

Opinion by: RANDOLPH

Opinion

NATURE OF THE CASE: CIVIL – STATE
BOARDS AND AGENCIES

**RANDOLPH, PRESIDING JUSTICE, FOR THE
COURT:**

¶ 1. After this Court held in *Jones County School District v. Mississippi Department of Revenue*, 111 So.3d 588 (Miss. 2013), that a school district was not liable for oil and gas severance taxes on royalties derived from oil and gas production on sixteenth-section

land, the Chancery Court of Wayne County held that Wayne County School District (WCSD) was owed interest by the Mississippi Department of Revenue (MDOR) on its overpayment of severance taxes at the rate of one percent (1%) per month. The chancellor determined, based on Section 27-65-53 of the Mississippi Code, that the payment should start on June 5, 2013, ninety days after this Court's ruling in *Jones County*. Finding that the chancellor correctly applied the statute, we affirm the judgment of the chancery court.

STATEMENT OF FACTS AND PROCEEDINGS BELOW

¶ 2. On October 7, 2008, WCSD filed a claim for refund of severance taxes paid to MDOR on oil and gas production from sixteenth-section lands located within the county. WCSD supplemented its claim on June 7, 2011, and on April 10, 2013, for a total refund claim in the amount of \$2,345,560. MDOR denied WCSD's initial claim for a refund, arguing that no express exemption from taxation was provided for school districts and sixteenth-section lands in the oil and natural gas severance tax statutes of the Mississippi Code.

¶ 3. While WCSD's refund claim was pending, the Jones County School District (JCSD) filed suit against MDOR, after it was denied a similar refund request. On May 5, 2011, the chancery court entered its Final Judgment, reversing MDOR's denial of refund claims to JCSD. On March 7, 2013, this Court issued its opinion finding that school districts were not liable

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for oil and gas severance taxes on sixteenth-section royalty interests. *Jones County Sch. Dist. v. Dep't of Revenue*, 111 So.3d 588, 605 (Miss. 2013). This Court also held that no statutes of limitation applied to the school district's refund claims. *Id.* at 607.

¶ 4. Following this Court's holding, MDOR agreed to pay WCSD's refund claim and began making payments in January 2014. WCSD filed its Complaint for Declaratory Judgment on April 9, 2014, seeking interest on its refund claim at the rate of one percent, beginning ninety days after WCSD filed its application for refund. As of the date of this appeal, MDOR has refunded WCSD \$2,345,560 for oil and gas severance taxes and \$26,927.02 in interest.

¶ 5. On July 22, 2014, a hearing was held on WCSD's complaint. WCSD argued that Section 27-65-53 of the Mississippi Code mandated that MDOR pay interest beginning ninety days after the application for refund was filed and ending on the date full payment was made. MDOR argued that interest would not begin to accrue until MDOR finalized the amount of refund owed. However, MDOR conceded that the more accurate date would be the date that the Supreme Court made its ruling.

¶ 6. The chancellor held that:

the 90-day time for payment of the refund commenced on the date that the Supreme Court determined that the tax was unlawful. At that point in time, the Department had 90 days to refund to the Wayne County School

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District the amount of their then pending claim, which I understand was \$1,568,301.60.

On August 4, 2015, the chancery court entered its final judgment ordering MDOR to pay WCSD “interest on severance taxes paid to the State on royalty interests on oil and gas severed and produced from the County’s sixteenth-section lands.” The chancellor found that MDOR should “calculate the interest owed WCSD at the rate of one percent (1%) per month starting on June 5, 2013, allowing the Department 90 days, pursuant to Miss. Code Ann. § 27-65-53, from the date of the Mississippi Supreme Court’s opinion.” MDOR was ordered to pay additional interest in the amount of \$182,953.75, receiving credit for the \$26,927.02 in interest previously paid to WCSD. MDOR timely paid WCSD the additional interest ordered by the chancellor. Aggrieved with the chancellor’s ruling, WCSD filed this appeal.

ISSUES

¶ 7. WCSD raised the following issues (listed verbatim):

I. Whether the ruling by the chancellor that MDOR should calculate interest on WCSD’s severance tax overpayment at the rate of one percent (1%) per month starting on June 5, 2013, which was 90 days after the Supreme Court’s opinion in *Jones Cty. Sch. Dist. v. Miss. Dep’t of Revenue*, 111 So.3d 588 (Miss. 2013), was incorrect as a matter of law since it is

contrary to Miss. Code Ann. § 27-65-53, 3rd par. (1972).

II. Whether Miss. Code Ann. § 27-65-53, 3rd par., requires the payment of interest on WCSD's overpayment of severance taxes at the rate of one percent (1%) per month starting ninety (90) days after WCSD filed the subject application for refund.

III. Whether the balance owed to WCSD under Miss. Code Ann. § 27-65-53, 3rd par., should be calculated pursuant to the so-called "United States Rule" under which MDOR payments are first allocated to accrued interest and then to the principal portion of the tax overpayment debt, or by first allocating MDOR payments to the principal portion of the tax overpayment.

IV. Whether the Court should award additional interest under MRAP 37 if the overpayment interest amount is calculated by applying MDOR payments first to the underlying tax overpayment resulting in a frozen amount of interest owed as of the last refund payment by MDOR.

ANALYSIS

¶ 8. This Court applies a *de novo* standard of review when reviewing questions of law. *Natchez Equip. Co., Inc. v. Gibbs*, 623 So.2d 270, 273 (Miss. 1993). When

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engaging in statutory interpretation, this Court's duty is "to neither broaden nor restrict the legislative act." *Miss. Dep't of Transp. v. Allred*, 928 So.2d 152, 156 (Miss. 2006). Additionally, "courts cannot restrict or enlarge the meaning of an unambiguous statute." *Green v. Cleary Water, Sewer & Fire Dist.*, 910 So.2d 1022, 1027 (Miss. 2005).

[When] considering a statute passed by the Legislature, . . . the first question a court should decide is whether the statute is ambiguous. If it is not ambiguous, the court should simply apply the statute according to its plain meaning and should not use principles of statutory construction. Whether the statute is ambiguous or not, the ultimate goal of this Court is to discern and give effect to the legislative intent.

Allred, 928 So.2d at 154 (quoting *City of Natchez v. Sullivan*, 612 So.2d 1087, 1089 (Miss.1992) (citations omitted)).

¶ 9. The collective issue presented on appeal is, based on the set of facts presented in today's case, when interest begins running on the overpayment of severance tax pursuant to Mississippi Code Section 27-65-53. Section 27-65-53 reads in pertinent part that:

If any overpayment of tax as reflected in an application or amended return, or both, filed by the taxpayer, and verified by the commissioner or otherwise determined to be due by the commissioner or commission, is not refunded or credited to a taxpayer's account

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*within ninety (90) days after the application or amended return is filed **or** the date the commission or commissioner determines a refund is due, **whichever is later**, interest at the rate of one percent (1%) per month shall be allowed on such overpayment computed for the period after expiration of the ninety-day period provided herein to the date of payment.*

Miss. Code Ann. § 27-65-53 (Rev. 2010) (emphasis added). Based on a plain reading of the unambiguous statute, the chancellor correctly determined that “the 90-day time for payment of the refund commenced on the date the Supreme Court determined that the tax was unlawful,” which coincided with the date the Commission acted.¹ As argued by the Commission, “the Commission determined a tax refund was owed to WCSD upon the Court’s issuance of the *Jones County* opinion.” This statute neither contains language restricting the nature of the Commissioner’s determination regarding the refund nor does it exclude any determinations based on court rulings. To inject such restrictions would require a departure from the plain-language approach required when a statute, such as this one, is unambiguous.

¶ 10. Since the plain language of the statute requires MDOR to pay interest only if it fails to issue a complete refund within ninety days after the later of either (1) the date the application is submitted, or (2)

¹ We recognize that the date this Court rules and the date the Commission acts may not always coincide. Based upon the facts presented in today’s case, the two dates were the same.

the date the Commissioner determines a refund is due, MDOR owes interest in this matter beginning ninety days after this Court issued the *Jones County* opinion.

¶ 11. Because the chancellor's ruling was proper based on the plain language of Section 27-65-53, it is not necessary to address WCSD's remaining issues raised regarding calculation of the balance owed or additional interest.

CONCLUSION

¶ 12. Based upon the above analysis, we affirm the judgment of the chancery court.

¶ 13. **AFFIRMED.**

**DICKINSON, P.J., KITCHENS, KING, COLEMAN,
MAXWELL, BEAM AND CHAMBERLIN, JJ.,
CONCUR. WALLER, C.J., NOT PARTICIPATING.**

APPENDIX B
IN THE CHANCERY COURT OF
WAYNE COUNTY, MISSISSIPPI

WAYNE COUNTY SCHOOL DISTRICT	PLAINTIFF
VS.	ACTION NO.
J. ED MORGAN, CHAIRMAN, MISSISSIPPI DEPARTMENT OF REVENUE	2014-0099
	DEFENDANT

FINAL JUDGMENT

(Filed Aug. 4, 2015)

THIS CAUSE came on for hearing on July 22, 2015 on Wayne County School District's Complaint for Declaratory Judgment and the Court, having reviewed the pleadings, hearing argument from counsel for the parties and after due consideration, finds as follows:

(a) On October 7, 2008, Wayne County School District (hereinafter "WCSD") filed a claim for refund of severance taxes paid to the Mississippi Department of Revenue (hereinafter "Department"), formerly the Mississippi State Tax Commission, on oil and gas production from sixteenth-section lands located within the county. The claim was supplemented twice over the next five years on June 7, 2011 and on April 10, 2013, for a total refund claim of tax only in the amount of \$2,345,560.

(b) The Department denied WCSD's initial refund claim, asserting that no express exemption from

taxation is provided for school districts and sixteenth-section lands in the oil and natural gas severance tax statutes codified as Miss. Code Ann. §§ 27-25-501 through 27-25-525, and Miss. Code Ann. §§ 27-25-701 through 27-25-723,

(c) During the pendency of WCSD's refund claim, the Jones County School District (hereinafter "JCSD"), aggrieved by the Department's denial of its refund requests, filed two lawsuits against the Department in 2008, contesting the Department's position relative to the tax liability of certain operators and JCSD for oil and gas severance taxes on production from sixteenth section lands located within Jones County. The matters of Jones County Chancery Court, Civil Action No. 2008-0533 and Civil Action No. 2008-0767, (hereinafter "Jones County litigation") were thereafter consolidated for trial, and all parties requested summary judgment.

(d) WCSD's refund claim was held in abeyance pending the resolution of the Jones County Litigation.

(e) After conducting a hearing in the Jones County litigation, the Court entered its Final Judgment Pursuant to Rule 54(b) on May 5, 2011, reversing the Department's decision denying the refund claims of JCSD and the operators and ordered the Department to refund the severance taxes paid by JCSD during the three years prior to filing their Complaints.

(f) The Department, JCSD, Secretary of State and the operators appealed.

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(g) On March 7, 2013, the Mississippi Supreme Court issued its opinion finding, in a case of first impression, that school districts are not liable for oil and gas severance taxes on sixteenth-section royalty interests. The Mississippi Supreme Court further found that no statute of limitations applied to the schools district's refund claim.

(h) On April 9, 2014, WCSD filed its Complaint for Declaratory Judgment in the instant matter, seeking interest on its refund claim.

(i) On May 26, 2014, an Agreed Order was entered allowing WCSD to intervene and pursue its interest claim in the Jones County litigation.

(j) The Department has subsequently refunded WCSD the sum of \$2,345,560 for oil and gas severance taxes it paid the State and has paid interest in the amount of \$26,927.02.

(k) On July 22, 2014, a hearing was conducted on WCSD's Complaint for additional interest.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Mississippi Department of Revenue owes and shall pay to WCSD interest on severance taxes paid to the State on royalty interests on oil and gas severed and produced from the County's sixteenth-section lands.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Department shall calculate the interest owed WCSD at the rate of one percent (1%) per month starting on June 5, 2013, allowing the

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Department 90 days, pursuant to Miss. Code Ann. § 27-65-53, from the date of the Mississippi Supreme Court's opinion.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the sum of \$2,345,560, refunded to WCSD by the Department, shall be applied to oil and gas severance taxes paid to the State, that the Department shall pay WCSD additional interest in the amount of \$182,953.75 within fifteen (15) days from entry of this Order, and that the Department shall receive credit for the \$26,927.02 in interest the Department has previously paid WCSD.

SO ORDERED, ADJUDGED, AND DECREED, this the 4th day of August, 2015.

/s/ Frank McKenzie
FRANK McKENZIE,
CHANCELLOR

PREPARED BY:

/s/ J. L. Powell
JAMES L. POWELL
(MSB #10083)
Attorney for the Mississippi
Department of Revenue

APPROVED AS TO FORM ONLY:

SEE ATTACHED
C. TED SANDERSON (MSB #6453)
Attorney for the Wayne County School District

APPENDIX C
IN THE CHANCERY COURT OF
WAYNE COUNTY, MISSISSIPPI

WAYNE COUNTY SCHOOL DISTRICT	PLAINTIFF
VERSUS	
MISSISSIPPI DEPARTMENT OF REVENUE	CAUSE NO.: 2014-99 DEFENDANT

TRANSCRIPT OF THE PROCEEDINGS HAD AND
DONE IN THE ABOVE-STYLED AND NUMBERED
CAUSE BEFORE HONORABLE **FRANK McKEN-**
ZIE, CHANCELLOR, ON THE 22ND DAY OF July
2015 IN JONES COUNTY, MISSISSIPPI.

APPEARANCES:

HON. C. TED SANDERSON, JR.
COPELAND, COOK, TAYLOR & BUSH, P.A.
Post Office 6020
Ridfeland, Mississippi 39158

HON. JAMES POWELL
Department of Revenue
Post Office Box 1033
Jackson, Mississippi 39215

* * *

THE COURT: All right. I think I can give
you a ruling right now.

I find that the 90-day time for payment of the refund commenced on the date that the Supreme Court determined that the tax was unlawful. At that point in time, the Department had 90 days to refund to the Wayne County School District the amount of their then pending claim, which I understand was \$1,568,301.60.

So in other words, Mr. Powell, I agree with your position if those numbers are correct.

MR. POWELL: Thank you. And we can verify those with Mr. Sanderson, but I believe they're in his pleadings and they've been presented to us.

THE COURT: All right. Thank you, gentleman. Mr. Powell, are you going to draw the order?

MR. POWELL: Yes, I will, Your Honor.

THE COURT: All right.

(***conclusion)

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APPENDIX D

**Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
*Office of the Clerk***

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August 17, 2017

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 17th day of August, 2017.

Supreme Court Case # 2015-SA-01363-SCT
Trial Court Case # 2014-0099

Wayne County School District v. J. Ed Morgan, in his Official Capacity as the Commissioner of Revenue of the Mississippi Department of Revenue

The Motion for Rehearing filed by Appellant is denied. Coleman, J., would grant. Waller, C.J., not participating.

(Notice To Chancery/Circuit/County
Court Clerks Omitted)

APPENDIX E

List of State Statutes on Overpayment Interest

Code of Ala. § 40-1-44
Alaska Stat. § 43.05.280
A.R.S. § 42-1123
A.C.A. § 26-18-508
Cal Rev & Tax Code § 6907
C.R.S. 39-21-110
Conn. Gen. Stat. § 12-30a
30 Del. C. § 540
Fla. Stat. § 213.255
O.C.G.A. § 48-2-35
HRS § 231-23
Idaho Code § 63-3626
35 ILCS 735/3-2
Burns Ind. Code Ann. § 6-1.1-26-5
Iowa Code § 423.4
K.S.A. § 79-3609
KRS § 131.183
La. R.S. § 47:337.77
36 M.R.S. § 186
ALM GL ch. 62C, § 40
§ 143.811 R.S.Mo.
S.C. Code Ann. § 12-54-25
R.R.S. Neb. § 77-1780
72 P.S. § 806.1
Md. TAX-GENERAL Code Ann. § 13-603
Minn. Stat. § 297G.17
N.D. Cent. Code, § 57-39.2-25
N.M. Stat. Ann. § 7-1-68
NY CLS Tax § 1139
ORC Ann. 5739.132
R.I. Gen. Laws § 44-1-7.1
Utah Code Ann. § 59.1-402

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Va. Code Ann. § 58.1-1833
32 V.S.A. § 5884

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APPENDIX F

**IN THE SUPREME COURT OF MISSISSIPPI
CAUSE NO. 2015-CA-01363-SCT**

**WAYNE COUNTY
SCHOOL DISTRICT** **APPELLANT**
V.

**J. ED MORGAN, IN HIS OFFICIAL
CAPACITY AS THE COMMISSIONER
OF REVENUE OF THE MISSISSIPPI
DEPARTMENT OF REVENUE** **APPELLEE**

**APPEAL FROM THE CHANCERY COURT
OF WAYNE COUNTY, MISSISSIPPI**

Motion for Rehearing

(Filed Apr. 21, 2017)

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**ATTORNEY FOR APPELLANT
WAYNE COUNTY SCHOOL DISTRICT**

April 20, 2017

CERTIFICATE OF INTERESTED PARTIES

The undersigned attorney of record certifies that the following listed persons or entities 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 disqualifications or recusal.

1. Wayne County School District, Appellant.
2. C. Ted Sanderson, Jr., Copeland, Cook, Taylor & Bush, PA, attorney for Appellant Wayne County School District.
3. J. Ed Morgan, Commissioner, Mississippi Department of Revenue, appellee.
4. James L. Powell and Sylvie D. Robinson, Mississippi Department of Revenue, attorneys for J. Ed Morgan and the Mississippi Department of Revenue.
5. The Honorable Frank McKenzie, Chancellor.

Respectfully submitted,

s/ C. Ted Sanderson, Jr.

C. Ted Sanderson, Jr.
Attorney for Wayne County
School District

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STATEMENT OF REHEARING ISSUES

- A. The Court’s decision overlooked and misapprehended paramount and mandatory rules for interpreting a statute that are applicable in this case.
- B. The Court’s interpretation of the subject statute should avoid constitutional issues and policy concerns.
- C. The use of “whichever is later” in Miss. Code Ann. § 27-65-53 is ambiguous and confusing.
- D. Interpretation that gives the word “determine” its plain meaning would avoid the constitutional issues, etc. It would also give effect to all of the provisions and conform with Miss. Code Ann. § 27-7-315. Most important, it would be consistent with the clear legislative policy underlying Miss. Code Ann. § 27-65-53 (and § 27-7-315) that a taxpayer should receive interest on an overpayment beginning 90 days after putting MDOR on notice that the taxpayer may be due a refund by filing an application for refund.

ARGUMENT IN SUPPORT OF REHEARING

Wayne County School District (hereinafter “WCSD”) requests a rehearing on the Court’s decision that was issued on March 16, 2017. WCSD respectfully submits that the Court misapprehended or overlooked several points of law and fact as set out herein.

We also respectfully refer the Court back to the Brief of Appellant and Reply Brief of Appellant as well as to the WCSD Memorandum Brief in Support of Interest (R. 31-53) and WCSD’s Rebuttal Memorandum Brief (R. 54-59) filed in the lower court proceeding. We do not intend to merely repeat the arguments and authority set out in those filings, but we are concerned that the Court overlooked or misapprehended various points of law and fact, and authority, set out in those filings in support of the application of § 27-65-53, 3rd par. advocated by WCSD.

Miss. Code Ann. § 27-65-53, 3rd par. includes two distinct times for starting interest on a overpayment of severance tax: (i) when the taxpayer filed an application for refund or amended return putting MDOR on notice that the taxpayer has an overpayment of tax and is due a refund, and (ii) when MDOR “determined” that the taxpayer has an overpayment of tax and is due a refund. The Court’s decision infers that the Legislature intended to negate any practical application or usefulness of the first distinct part of the statute by giving MDOR the discretion, after an application for refund is filed and denied by MDOR, to later decide when a refund is owed and thus defer the start of

interest to a later date, potentially eliminating any interest. The decision further assumes that the Legislature intended to give MDOR this discretion without any “restrictions” on MDOR’s exercising of such discretion. Thus, MDOR could decide that the appropriate date for starting interest was the date of this Court’s opinion issued in another case that rejected MDOR’s legal position for denying that a refund was owed to WCSD despite the fact that WCSD filed its application for refund five (5) years earlier, or MDOR could have decided that some other date for starting interest was appropriate.¹

The Court overlooked or misapprehended controlling rules of law in reaching its decision. The decision results in an unreasonable construction of the subject statute that is in conflict with established rules for interpreting statutes set forth in multiple court opinions, including opinions of this Court and the United States Supreme Court. The Court’s construction of the statute would negate the potential application or usefulness of a distinct part of the statute and would be contrary to the intent of the Legislature as discerned from the whole statute and related statutes, *i.e.*, that a taxpayer is entitled to interest on a tax overpayment beginning 90 days after the taxpayer puts MDOR on notice that it may be due a refund by filing an application for refund.

¹ Indeed this illustrates what MDOR did in this matter by changing its position multiple times during the course of the proceedings below on when overpayment interest starting to run.

The decision also raises serious constitutional issues with the statute, as construed by the Court, and concerning MDOR's actions pursuant to the statute, as construed. The statute, as construed by the Court, would give MDOR the unfettered discretion to deprive the taxpayer of property, or "take" the taxpayer's property (*i.e.*, interest), without "due process" or "just compensation."

The decision also presents various other policy concerns including the likelihood that the Court's construction of the statute will discourage resolution of refund cases by MDOR but instead compel MDOR to litigate refund cases all the way to this Court just so interest can be avoided or limited. The decision is also likely to cause confusion in the administration of the overpayment statutes in other cases, *e.g.*, the extent of MDOR's discretion to decide when interest starts if the Board of Tax Appeals rules that a refund claim should have been allowed by MDOR *with interest*. It seems likely that this Court will have to be the final arbiter in a plethora of future tax refund cases solely due to the interest component of the refund, with no guidelines on how to judge MDOR's actions.

The application of the statute advocated by WCSD avoids all of the above troubling issues. It gives effect to ***all*** of the statute and comports with the almost identical provision on interest on income tax overpayments found in Miss. Code Ann. § 27-7-315(2). More important, it effectuates the clear legislative intent that a taxpayer should receive interest on a severance tax overpayment beginning 90 days after the taxpayer

puts MDOR on notice that it may be due a refund by filing an application for refund.

A. The Court’s decision overlooked and misapprehended paramount and mandatory rules for interpreting a statute that are applicable in this case.

The central part of the Court’s decision is set out below:

The collective issue presented on appeal is, based on the set of facts presented in today’s case, when interest begins running on the overpayment of severance tax pursuant to Mississippi Code Section 27-65-53. Section 27-65-53 reads in pertinent part that:

If any overpayment of tax as reflected in an application or amended return, or both, filed by the taxpayer, and verified by the commissioner or otherwise determined to be due by the commissioner, is not refunded or credited to a taxpayer’s account *within ninety (90) days after the application or amended return is filed or the date the commission or commissioner determines a refund is due, **whichever is later***, interest at the rate of one percent (1%) per month shall be allowed on such overpayment computed for the period after expiration of the ninety-day period provided herein to the date of payment. (Emphasis in the Court’s decision.)

Based on a plain reading of the unambiguous statute, the chancellor correctly determined that “the

90-day time for payment of the refund commenced on the date the Supreme Court determined that the tax was unlawful,” which coincided with the date the Commission acted.¹ As argued by the Commission, the Commission determined a tax refund was owed to WCSD upon the Court’s issuance of the ***Jones County*** opinion. This statute neither contains language restricting the nature of the Commissioner’s determination regarding the refund nor does it exclude any determinations based on court rulings. To inject such restrictions would require a departure from the plain-language approach required when a statute, such as this one, is unambiguous.

Since the plain language of the statute requires MDOR to pay interest only if it fails to issue a complete refund within ninety days after the later of either (1) the date the application is submitted, or (2) the date the Commissioner determines a refund is due, MDOR owes interest in this matter beginning ninety days after this Court issued the ***Jones County*** opinion. Because the chancellor’s ruling was proper based on the plain language of Section 27-65-53, it is not necessary to address WCSD’s remaining issues raised regarding calculation of interest or additional interest.

¹We recognize that the date this Court rules and the date the Commission acts may not always coincide. Based upon the facts presented in today’s case, the two dates were the same. [Footnote from the decision.]

Wayne Cnty. Sch. Dist. v. Morgan, 2017 Miss. LEXIS 104, *slip op.* at 5.

The Court obviously focused on the three word phrase “whichever is later” in reaching its conclusion that the statute was “unambiguous.” The Court referenced general and abstract statements from other cases to the effect that, if a *statute* is unambiguous, “the court should simply apply the statute according to its plain meaning and should not use principals of statutory construction.” The Court included an isolated quote from *Miss. Dep’t of Transp. v. Allred*, 928 So.2d 152, 154 (Miss. 2006) as follows:

[When] considering a statute passed by the Legislature, . . . the first question a court should decide is whether the statute is ambiguous. If it is not ambiguous, the court should simply apply the statute according to its plain meaning and should not use principles of statutory construction. Whether the statute is ambiguous or not, the ultimate goal of this Court is to discern and give effect to the legislative intent.

Wayne Cnty. Sch. Dist. v. Morgan, slip op. at 5.

The Court no doubt was influenced by the second sentence in the above quote concerning the inapplicability of “principles of statutory construction” if a statute is unambiguous. As set out in WCSD’s briefs, and in the lower court proceedings, various rules of statutory construction overwhelmingly support the application or “best reading” of the statute advocated by WCSD. With all due respect to the Court, the cases cited by the Court do not preclude application of those rules of construction in favor of the application of the statute advocated by WCSD. The cases cited by the

Court for the general propositions concerning ambiguity and rules of statutory construction actually stand for a paramount and mandatory rule of statutory interpretation² as follows: ***Whether the status is ambiguous or not, the ultimate goal*** of this Court is to discern and give effect to the legislative intent.³ This rule supports the application of the statute advocated

² As stated in the *Sutherland* treatise cited elsewhere herein, “judicial resolution of statutory issues does not appear to differ whether it is characterized as construction or interpretation.” § 45.4, p.27. The treatise uses the terms “construction” and “interpretation” interchangeably, as we do in this Motion for Rehearing. We also use the term “best reading” that has been used by this Court in tax cases including the cases cited in footnote 10 of WCSD’s Reply Brief.

³ In the *Allred* opinion, written by Justice Randolph, the issue involved the precise meaning of a term used in the statute, *i.e.*, whether it should be applied singularly or plurally. The Court looked to rules for “Construction of Statutes” found in Title 1, Chapter 3 of the Mississippi Code (§ 1-3-1 et seq.) and further applied the “common maxim. that statutes *in pari materia* are to be construed together.” The other case cited by the Court for the proposition that rules of construction do not apply when a statute is unambiguous, is *Greear v. Cleary Water Sewer & Fire Dist.*, 910 So.2d 1022 (Miss. 2005). The Court in that case considered two unrelated statutes *in pari materia*, since they both “regulate health-related matters,” and thus “any ambiguity in one provision should be resolved by applying the statute consistently with other statutes dealing with the same or similar subject matter.” *Id.* “Stated similarly, statutes on the same subject, although in apparent conflict, should, if possible, be construed in harmony with each other to give effect to each.” *Id.* The Court applied “this rule of construction” to interpret and apply the statute at issue. Thus, the cases cited by the Court actually applied rules of construction due to ambiguity in the statutes, some of the same rules that overwhelmingly support the application and “best reading” of § 27-65-53, 3rd par. advocated by WCSD.

by WCSD; with all due respect, the Court's decision is contrary to the rule.

This Court held long ago that the overriding rule of statutory interpretation is to ascertain the legislative intent underlying the subject statute, irrespective of whether or not certain words used in statute are ambiguous. This approach to statutory interpretation is in line with opinions by the United States Supreme Court in several significant cases, which are discussed below. The seminal Mississippi case on statutory interpretation is *Seal v. Andrew*; 58 So.2d 504 (Miss. 1952). The statements concerning statutory interpretation in the *Seal* case are particularly appropriate here:

Statutes must receive a reasonable construction, reference being had to their controlling purpose, ***to all their provisions, force and effect being given not narrowly to isolated and disjointed clauses, but to their plain spirit, broadly taking all their provisions together in one rational view.*** Neither grammatical construction, nor the letter of the statute, nor its rhetorical framework, should be permitted to defeat its clear and definite purpose ***to be gathered from the whole act, comparing part with part.*** And no construction is ever to be adopted which charges the legislature with absurdity, when any other reasonable view can be taken. ***“A statute must receive such construction as will, if possible, make all its parts harmonize with each other, and render them consistent with its scope and object.”*** [Citation omitted.] ***“The entire statute must be so read that the whole may have a harmonious and consistent***

operation.” [Citations omitted.] “In the construction of a statute the object is to get at its spirit and meaning, its design and scope; and that construction will be justified which evidently embraces the meaning and carries out the object of the law, although it be against the letter and the grammatical construction of the act.” [Citations omitted.] **“In determining the proper construction of a statute, the entire legislation on the same subject-matter, its policy and reason, as well as the text of the particular act, must be looked to.”** *Seal*, 528 So.2d 507, 508.

The intention and purpose of the Legislature is to be deduced from ***the whole and every part of the statute taken together – from the words and context – and such a construction adopted as will best effectuate the intention of the law-giver.*** [Citation omitted.]

Seal v. Andrews, *supra* at 508 [Emphasis added.]. See also *Hall v. Jackson Cray. Dep’t of Human Servs.*, 2016 Miss. App. LEXIS 37 at *36.

This approach to statutory interpretation has been adopted by no less an authority than the United States Supreme Court. In *United States v. American Trucking Ass’ns*, 310 U.S. 534 (1940), the Supreme Court was called on to construe what Congress intended with the term “employee” in a statute governing the regulation of the trucking industry. In language strikingly similar to this Court’s opinion in *Seal*, the Supreme Court said:

In the interpretation of statutes, the function of the courts is easily stated. It is to construe the

language so as to give effect to the intent of [the legislative body]. There is no invariable rule for the discovery of that intention. ***To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute.***

There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. ***When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one “plainly at variance with the policy of the legislation as a whole” this Court has followed that purpose, rather than the literal words. WHEN AID TO CONSTRUCTION OF THE MEANING OF WORDS, AS USED IN THE STATUTE, IS AVAILABLE, THERE CERTAINLY CAN BE NO “RULE OF LAW” WHICH FORBIDS ITS USE, HOWEVER CLEAR THE WORDS MAY APPEAR ON “SUPERFICIAL EXAMINATION.”***

The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the

meaning of what another body, the legislators, has said. Obviously there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body. ***A lively appreciation of the danger is the best assurance of escape from its threat but hardly Justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion. Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of [the legislative body] in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing In the text of statutes should not be given a wide meaning, contrary to a settled policy, "excepting as a different purpose is plainly shown."***

United States v. American Trucking Ass'ns, *supra* at 542-43. [Emphasis added.]

In *United States v. Haggard Apparel Co.*, 526 U.S. 380 (1999), the United States Supreme Court recognized that "ambiguity" in construing a statute may be presented by something other than related to the use of words. Indeed, a statute that requires an administrative agency to exercise discretion in implementing the statute is *ipso facto* an "ambiguous" statute. As the United States Supreme Court stated:

A statute may be ambiguous . . . without being inartful or deficient. The present case exemplifies the familiar proposition that [the legislative body]

need not, and likely cannot, anticipate all circumstances in which a general policy must be given specific effect . . . The statute under which respondent claims an exemption gives direction not only by stating a general policy . . . but also by determining some specifics of the policy . . . [T]he statute is ambiguous nonetheless, ***ambiguous in that the agency must use its discretion to determine how best to implement the policy in those cases not covered by the statute’s specific terms.***⁴

United States v. Haggar, *supra* at 393 [Emphasis added.].

This Court, by holding that MDOR has discretion to decide when a refund is owed for purposes of interest, has in fact recognized that the statute must be unclear and ambiguous.⁵

⁴ The issue in *Haggar* concerned the so-called “*Chevron* deference” rule having to do with the degree of deference a court should give to regulations issued by an agency charged with administering the subject statute. Generally, if a statute is ambiguous or incomplete the agency has authority to issue regulations interpreting the statute. If the regulations are challenged, the court decides if the regulations are consistent with the intent of the legislative body. In the present case, there are no MDOR regulations or rules (or anything else) concerning overpayment interest. MDOR actually changed its “position” on when interest started on more than one occasion in the proceedings below. Clearly MDOR is not entitled to any deference on its “arguments” in this case. *See Sunoco, Inc. v. United States*, 128 Fed. Cl. 345 (Cl. Ct. 2016)

⁵ As discussed below, the Court’s holding in this regard would create serious constitutional and policy issues.

The Court must discern the intent and purpose of the statute without focusing on just certain words. The United States Supreme Court has noted the particular appropriateness of this overriding rule of statutory interpretation when dealing with tax statutes:

But the true meaning of a single section of a statute in a setting as complex as that of the revenue acts, however precise its language, cannot be ascertained if it be considered apart from ***related sections***, or if the mind be isolated from the ***history of the income tax legislation of which it is an integral part***. See *Helvering v. New York Trust Co.*, 292 U.S. 455, 464.

Helvering v. Morgan's, Inc., 293 U.S. 121, 126 (1934).

In another tax case, *Helvering v. New York*, 292 U.S. 455, the United States Supreme Court considered a similar contention as set forth by MDOR in this case, *i.e.*, that no “construction” is necessary because the language of the statute is unambiguous:

The Commissioner says that the words of the definition are free from ambiguity and that the statute contains no exception. From an opinion of this court he invokes these statements:

“If the language be clear it is conclusive. There can be no construction where there is nothing to construe.” [Citation omitted.]

The United States Supreme Court responded to the IRS Commissioner’s argument as follows:

The rule that where the statute contains no ambiguity, it must be taken literally and given effect

according to its language is a sound one not to be put aside to avoid hardships that may sometimes result from giving effect to the legislative purpose. [Citation omitted.] ***But the expounding of a statutory provision strictly according to the letter without regard to other parts of the Act and legislative history would often defeat the object intended to be accomplished.*** Speaking through Chief Justice Taney in *Brown v. Duchesne*, 19 How. 183, this court said: ***“It is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature, as thus ascertained, according to its true intent and meaning.”*** . . . “It is the duty of this Court to give effect to the intent of [the legislative body]. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy ***of the legislation as a whole***, we must examine the matter further. We may then look to the reason for the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail.” [Citation omitted.] . . . “[A] thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter, and a thing which is within the

letter of the statute, is not within the statute, unless it is within the intention of the makers." [Citation omitted.]

Helvering v. New York supra (emphasis added).

Courts in other states have also followed this overriding rule of statutory interpretation. An Oklahoma case is particularly instructive in this regard. The Oklahoma Supreme Court was faced with the issue of whether it should follow the strict and literal words of one part of a statute even though it would lead to an inconsistency or incongruity between other parts of the statute. Starting with statements of law from Am. Jur., the Oklahoma Supreme Court said:

As stated in the [50 Am.Jur., Statutes, Sec. 226, p. 209], it is not necessary that uncertainty or inconsistency be apparent in the particular words, phrase or clause under consideration; it may arise from the general scope and meaning of the language of a *statute*, ***when all of its provisions are examined as a totality***. [Emphasis added.]

The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and *if the words are sufficiently flexible to admit of a construction which will effectuate the legislative intention*. The intention prevails over the letter, and the letter must if possible to read so as to conform to the spirit of the act. * * * *The particular inquiry is not what is the abstract force of the words or what they may comprehend but in what sense were they intended to be used in the act.* * * *. [Emphasis in

the case.] [*Quoting Sutherland*, Statutory Construction, 2 Vol., Sec. 4706, P. 339.]

The words, phrases and sentences of a statute are to be understood as used, *not in any abstract sense*, but with due regard to the context, and in that sense which ***best harmonizes with all other parts of the statute.*** [Citations omitted.] [Emphasis in case but the bold emphasis is ours.]

Where adherence is urged to what is asserted as the ‘strict letter’ of a statute, and the literal construction so contended for would lead to an ***inconsistency or incongruity between different parts of the enactment as they bear upon each other***, and would produce consequences clearly beyond legislative contemplation, judicial interpretation becomes necessary to avoid such incongruity and to ascertain the true meaning of the particular words in accord with the legislative intent. 82 C.J.S. Statutes § 322b(3), pp. 588, 589; *Sutherland*, Statutory Construction, Vol. 2, Secs. 4701, 4702, 4703. [Emphasis ours.]

State ex rel. Rucker v. Tapp, 380 P.2d 260 (Okl. 1963).

B. The Court’s interpretation of the subject statute should avoid constitutional issues and policy concerns.

As a companion to the rule that the goal of statutory interpretation is to ascertain legislative intent, it is well established that a court should not, if reasonably possible, choose a construction that presents constitutional issues or other policy concerns.

In the interpretation of statutes, a court should be astute in avoiding a construction which may be productive of much litigation and insecurity, or which would throw the meaning or administration of the law . . . into hopeless confusion and uncertainty. Thus, an interpretation should, if possible, be put upon the provisions of a law which will permit the officials having the responsibility for its administration to proceed in an orderly manner.

73 Am.Jur. 2d Statutes § 169

The United States Supreme Court has followed this rule when interpreting statutes:

The only way out of the muddle is by a different rule of construction. It is a hoary one that, in a case of statutory ambiguity, “where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.” [Citations omitted.] “Federal statutes are to be so construed as to avoid serious doubt of their constitutionality. ‘When the validity of an act of Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.’” [Citations omitted.] *Cf. Parsons v. Bedford*, 28 U.S. 433, 448-449, 7 L. Ed. 732 (1830) (Story, J.) (a construction that would render a statute unconstitutional should be avoided); *Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118, 2 L. Ed. 208 (1804) (Marshall, C. J.).

Concrete Pipe & Prods. v. Constr. Laborers Pension Trust, 508 U.S. 602 (1993).

This Court, in *McCaffrey's Food Market, Inc. v. Mississippi Milk Com.*, 227 So.2d 459 (1969), when confronted with words used in the statute that “tend[ed] to becloud or confuse the meaning of the code section,” followed the rule above as follows:

There is another rule of statutory construction that may be used to aid the court in its effort to ascertain the intent of the legislature and to find the meaning of a statute. This rule is expressed by the textwriter in 50 Am.Jur. Statutes § 368, p. 373 (1944), as follows:

Where the language of a statute is doubtful and the necessity for construction arises, the court may consider whether the legislature could have intended a construction that would be highly injurious, rather than one beneficial and harmless. Under such circumstances, it is presumed that undesirable consequences were not intended; to the contrary, it is presumed that the statute was intended to have the most beneficial operation that the language permits. It is accordingly a reasonable and safe rule of construction to resolve any ambiguity in a statute in favor of a beneficial operation of the law, and a construction of which the statute is fairly susceptible, is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil, and injurious consequences.

McCaffrey's Food Market, Inc. v. Miss. Milk Com., supra.

The construction of § 27-65-53, 3rd par. in the Court's decision presents serious constitutional issues and other policy concerns, as discussed below. The application of the statute set forth by WCSO would avoid these issues and, more important, would give effect to all parts of the statute consistent with the clear legislative intent and policy that a taxpayer should be paid interest on severance tax overpayments beginning 90 days after the taxpayer put MDOR on notice that there may be an overpayment by filing an application for refund.

1. Due Process Issues

The principles of "due process" under the Mississippi and United States Constitutions require at an absolute minimum "rudimentary fairness." *McGowan v. Miss. State Oil Gas Bd.*, 664 So.2d 312 (Miss. 1992). The Court's decision here gives MOOR unfettered discretion (*i.e.*, without "restrictions") to decide when a tax overpayment is owed for purposes of starting interest on the overpayment. This obviously would allow for "arbitrary and capricious" action by MDOR, since its actions would not be subject to any standards or criteria. This is at the very essence of "due process" concerns. *Id.* This Court has defined "arbitrary" and "capricious" as follows:

The terms “arbitrary” and “capricious” are open-textured and not susceptible of precise definition or mechanical application. We find helpful meanings North Carolina has assigned in a not-dissimilar context:

“Arbitrary” means fixed or done capriciously or at pleasure. An act is arbitrary when it is done without adequately determining principle; not done according to reason or judgment, but depending upon the will alone, – absolute in power, tyrannical, despotic, non-rational, – implying either a lack of understanding of or a disregard for the fundamental nature of things.

“Capricious” means freakish, fickle, or arbitrary. An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles. . . . [Citation omitted.]

[The “arbitrary and capricious” standard] condemns ad hoc decision-making and, because it is a standard of judicial review, imports an imperative that administrators say at least minimally why they do what they do so someone can see whether it be arbitrary or capricious.

This criteria imports as well substantive standards, without which the entire process would be arbitrary and capricious and alegal. We look to our legislature which has made its judgment and has declared . . . the policy of this state [in relation to the subject statute].

McGowan v. Miss. State Oil Gas Bd., *supra* at 318. See *Cantanzoro v. Weiden*, 140 F.3d 91 (2nd Cir. 1998) (“[A]n arbitrary decision depriving the residents of their homes . . . would be constitutionally oppressive, sufficient to violate the plaintiff’s substantive due process rights.”); *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, *supra*. (The Supreme Court found the subject statute “incoherent” with respect to the degree of certainty required to overturn administrator’s determination, and concerning how much deference should be given to the administrator in light of assumed bias, all of which raised “a substantial due process question.” To avoid the constitutional issues, the Supreme Court chose an alternative reasonable construction of the statutes.); *Spencer Enters v. United States*, 345 F.3d 683 (9th Cir. 2003) (only in “rare instances” limited to decisions not to take action, as opposed to taking some kind of action, is an agency granted “unfettered discretion” to make a decision).

2. Takings Clause

The constitutional issues here are heightened by the fact that the action by MDOR impacts the amount of monetary interest on the taxpayer’s overpayment of tax that will be paid to the taxpayer, indeed whether any interest at all will be paid to the taxpayer. The interest on the tax overpayment is clearly “private property” of the taxpayer protected by the Takings Clause of the Fifth Amendment made applicable to the States under the Fourteenth Amendment. See *Phillip v. Wash. Legal Fond.*, 524 U.S. 156 (1998); *Webb’s Fabulous*

Pharms. v. Beckwith, 449 U.S. 155 (1980); *Seaboard A.L.R. Co. v. United States*, 261 U.S. 299 (1923); *Gen. Mills, Inc. v. Minn.*, 226 N.W. 2d 296 (Minn. 1925). Certainly the Legislature did not intend to give MDOR authority to deny or “take” monetary interest from taxpayers with no restrictions, standards or criteria, *i.e.*, without “due process,” not to mention without “just compensation.”

3. Policy Concerns

The decision also presents various other policy concerns including the likelihood that the Court’s construction of the statute will discourage resolution of refund cases by MDOR but instead compel MDOR to litigate refund cases all the way to this Court just so interest can be avoided or limited. The decision is also likely to cause confusion in the administration of the overpayment statutes in other cases, *e.g.*, the extent of MDOR’s discretion to *decide* when interest starts if the Board of Tax Appeals rules that a refund claim should have been allowed by MDOR *with interest*. It seems likely that this Court will have to be the final arbiter in a plethora of future tax refund cases solely due to the interest component of the refund, with no guidelines on how to judge MDOR’s actions.

Thus, the Court is faced with an interpretation of the statute that (i) gives blind literal effect to “whichever is later” but would negate any practical usefulness of a distinct part of the statute and create constitutional issues and other policy concerns by

giving “unrestricted” discretion to MDOR to decide when an overpayment is owed for purposes of starting interest, or (ii) give effect to the general and technical meaning of “determined” and conclude that MDOR did not “determine” in this case that a refund was owed that would implicate the second distinct part of the statute for starting interest; instead, this Court really “determined” that a refund was owed to WCSO and there is absolutely no authority for deferring interest to the date of a court decision allowing a previously denied refund claim.

C. The use of “whichever is later” in Miss. Code Ann. § 27-65-53 is ambiguous and confusing.

With all due respect to the Court, the phrase “whichever is later” as used in § 27-65-53, 3rd par. is ambiguous. This is most pronounced in the impact that it potentially has on the first part of the provision that clearly contemplates that a taxpayer will receive interest on a refund starting 90 days after the taxpayer files an application for refund. The fact that “whichever is later” in the subject statute creates ambiguity is shown by an Arkansas case discussed below.

In *Smith v. United States Truck*, 1998 U.S. Dist. LEXIS 3455, a disgruntled employee sued his former employer for employment discrimination under Ark. Code Ann. § 16-123-107(a)(1). By statute, the limitation period for bringing such an action was “one (1) year after the alleged employment discrimination occurred, or within ninety (90) days of receipt of a ‘Right

to Sue' letter or a notice of 'Determination' from the United States Equal Opportunity Commission concerning the alleged unlawful employment practice, *whichever is later.*" *Id.* (quoting Ark. Code Ann. § 16-123-197(c)(3) (emphasis added)). The employee clearly filed suit outside the applicable one-year limitation period, but sued within the alternative (and later) period of ninety days after receipt of the EEOC's Right to Sue letter. *Id.* While conceding that plaintiff appeared to meet the statutory requirements because "the language permits suit to be brought within 90 days of one's receipt of a right to sue letter[.]" defendants argued that "literal application [of the 'whichever is later' language of the statute] would produce absurd results." *Id.* The court agreed.

In holding plaintiff's civil rights complaint untimely, even though technically filed within the later statutory period, the court explained that "[i]f the literal language of the statute [were] followed, an aggrieved employee could even fifty years after the event at issue file a charge with the EEOC and obtain a notice of right to sue and then file a claim under the Arkansas Civil Rights Act. A claim would never be barred by the passage of time. Surely the Arkansas legislature did not intend to extend the statute of limitations indefinitely." *Id.* at *10.

Here, if the "whichever is later" language of Miss. Code § 27-65-53, 3rd par. is applied literally to the whole provision, MDOR could conceivably wait until 50 years after a taxpayer files an application or amended return" to "determine that the taxpayer is

owed a refund, thereby depriving the taxpayer of fifty years' worth of interest on the overpayment, and defeating the clear purpose of the statute, *i.e.*, to compensate taxpayers who have overpaid their taxes for the time value of their money via interest. As in *Smith*, such a literal application of the "whichever is later" language in § 27-65-53, 3rd par. would lead (or has led) to an absurd result.

The legislative history of § 27-65-53 also supports that the use of "whichever is later" is ambiguous and should not be applied to override the clear legislative intent that a taxpayer should receive interest on its overpayment of tax beginning 90 days after it put MDOR on notice that it may be due a refund by filing an application for refund.

Section 27-7-315(2) provides for interest on overpayments of income tax similar to the provision for interest with overpayments of severance tax found in section 27-65-53, 3rd par. A side-by-side comparison of the provisions is set out below.

Miss. Code Ann. § 27-7-315(2)

If any overpayment of tax as reflected on a return or amended return filed, and verified by the commissioner or determined to be due by the commissioner or commission when no overpayment is shown on a

Miss. Code Ann. § 27-65-53, 3rd par.

If any overpayment of tax as reflected in an application or amended return, or both, filed by the taxpayer, and verified by the commissioner or otherwise determined to be due by the commissioner

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return or amended return, or commission, is not re-
is not refunded within funded or credited to a
ninety (90) days after the taxpayer's account within
prescribed due date of the ninety (90) days after the
return, the date the return application or amended
is filed, or the date the return is filed or the date
commissioner or commis- the commission or commis-
sion determines a refund sioner determines a
as being due when no over- refund is due, whichever
payment is shown on a re- is later, interest at the
turn or amended return, rate of one percent (1%)
whichever is later, interest per month shall be al-
at the rate of one percent lowed on such overpay-
(1%) per month shall be ment computed for the
allowed on the overpayment period after expiration
computed for the period of the ninety-day period
after expiration of the provided herein to the
ninety-day period provided date of payment.
in this subsection to the
date of payment.

Prior to 1998, there was no provision in § 27-65-53 providing for the payment of interest on a taxpayer's overpayment of severance tax. However, there had long been a provision for the payment of interest on overpayments of income tax as set out in § 27-7-315. Prior to 1998, § 27-7-315(2) read as follows:

If any overpayment of tax as reflected on a return filed, and verified by the commissioner, is not refunded within ninety (90) days after the prescribed due date of the return or the date of the return is filed, whichever is later, interest at the rate of one percent (1%) per month shall be allowed on such overpayment computed for the

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period after expiration of the ninety-day period provided herein to the date of payment.

In 1998, the Legislature amended § 27-7-315(2) as follows with the changes capitalized:

If any overpayment of tax as reflected on a return OR AMENDED RETURN filed, and verified by the commissioner OR DETERMINED TO BE DUE BY THE COMMISSIONER OR COMMISSION WHEN NO OVERPAYMENT IS SHOWN ON A RETURN OR AMENDED RETURN, is not refunded within ninety (90) days after the prescribed due date of the return, the date * * * the return is filed, OR THE DATE THE COMMISSIONER OR COMMISSION DETERMINES A REFUND AS BEING DUE WHEN NO OVERPAYMENT IS SHOWN ON A RETURN OR AMENDED RETURN, whichever is later, interest at the rate of one percent (1%) per month shall be allowed on such overpayment computed for the period after expiration of the ninety-day period provided herein to the date of payment.

At the same time, and as part of the same Bill, the Legislature added the interest provision for severance tax overpayments to § 27-65-53 as follows:

IF ANY OVERPAYMENT OF TAX AS REFLECTED IN AN APPLICATION OR AMENDED RETURN, OR BOTH, FILED BY THE TAXPAYER, AND VERIFIED BY THE COMMISSIONER OR OTHERWISE DETERMINED TO BE DUE BY THE COMMISSIONER OR COMMISSION, IS NOT REFUNDED OR CREDITED TO A TAXPAYER'S ACCOUNT WITHIN NINETY

(90) DAYS AFTER THE APPLICATION OR AMENDED RETURN IS FILED OR THE DATE THE COMMISSION OR COMMISSIONER DETERMINES A REFUND IS DUE, WHICHEVER IS LATER, INTEREST AT THE RATE OF ONE PERCENT (1%) PER MONTH SHALL BE ALLOWED ON SUCH OVERPAYMENT COMPUTED FOR THE PERIOD AFTER EXPIRATION OF THE NINETY-DAY PERIOD PROVIDED HEREIN TO THE DATE OF PAYMENT.

The phrase “whichever is later” is clearly a vestige from the pre-1998 version of § 27-7-315(2) that distinguished between the date the income tax return was due and the date that the return was filed. Those were the only dates referenced in the statute prior to the 1998 amendments. It is a common approach with tax statutes to defer the start date for overpayment interest to the date the return was actually filed if filed after the due date of the return, or to the date the return was due if the taxpayer filed the return early. *Cf.* IRC 26 6611.

In what may have been just sloppy drafting, the term “whichever is later” in the amended § 27-7-315(2) should have been placed before the added provision “or the date the Commissions or Commission determines a refund as being due when no overpayment is shown on a return or amended return.” In any event, the appearance of the phrase “whichever is later” in § 27-65-53, 3rd par. certainly did not mean that the Legislature intended that MDOR, after a taxpayer has already filed an application for refund, could simply decide to

defer the starting date for interest to some later date. If that is what the Legislature intended, it could have just said: overpayment interest starts when MDOR decides it should start.

D. Interpretation that gives the word “determine” its plain meaning would avoid the constitutional issues, etc. It would also give effect to all of the provisions and conform with Miss. Code Ann. § 27-7-315. Most important, it would be consistent with the clear legislative policy underlying Miss. Code Ann. § 27-65-53 (and § 27-7-315) that a taxpayer should receive interest on an overpayment beginning 90 days after putting MDOR on notice that the taxpayer may be due a refund by filing an application for refund.

The application of § 27-65-53, 3rd par. set forth by WCSD would utilize the plain and unambiguous use of the word “determined” to give effect to the entire statute. MDOR simply did not “determine” that a refund was due within the intent of the statutes.

The word “determine” is a verb that denotes action by the actor, in this case MDOR. The Alabama Supreme Court has explained that “[t]he word ‘determines’ presupposes that some mental operation has taken place; the reasoning faculty must be called into play.” *Howard v. State*, 85 So.3d 1054, 1062 (Ala. 2011). [Citation omitted.] A Kentucky district court ruled that “[t]he plain meaning of the word ‘determines’ is

clear and unambiguous. Merriam-Webster’s Dictionary defines ‘determine’ as ‘to come to a decision.’” *SMA Portfolio Owner, LLC v. Corporex Realty & Inv., LLC*, 112 F. Supp. 3d 555, 577-78 (E.D. Ky. 2015) [Citation omitted.]; *see also Mitchell v. Prudential Health Care Plan*, No. 01-331, 2002 U.S. Dist. LEXIS 10567, at *22 (D. Del. June 10, 2002) (noting that the usual meaning of word “determines” implies exercise of discretion by the actor, and that a determination is reached only after deliberation of some sort by the actor).

In *Williams Islands Ventures v. De La Mora*, the court was presented with the issue of interpretation of a Florida ad valorem tax statute, § 194.014, specifically: “‘If the value adjustment board *determines* that a refund is due, the overpaid amount accrues interest . . . until a refund is paid.’” 2015 Fla. Cir. LEXIS 51718, at *3 (Fla. Cir. Ct. June 1, 2015) [Citation omitted.] The court held that “[i]t is clear that a settlement between two parties, a taxpayer and the Property Appraiser, is not a determination of the VAB [Value Adjustment Board]. In cases which are settled, the VAB ‘determines’ nothing, because there is nothing left for it to determine. To argue that a settlement is a VAB ‘determination’ flies in the face of the ordinary use of the word and creates a result not intended by the plain language of the statute.” *Id.* Similarly, MDOR only “agreed” to pay a refund to WCSD after this Court ruled in the *Jones County* case. *See* par. 6 of MDOR’s Answer to Complaint for Declaratory Judgment (R. 18).

In *Scar v. Commissioner*, 814 F.2d 1363, 1367 (9th Cir. 1987), the Ninth Circuit dealt with the issue of whether a form letter asserting that a tax deficiency had been determined, where that letter plainly indicated no determination was actually made, satisfied the statutory mandate for notice of deficiency. While noting that the “Commissioner need not explain how the deficiencies were determined,” *id.* (citing *Barnes v. Commissioner*, 408 F.2d 65, 68 (7th Cir.)), the court confirmed that any such notice “must at a minimum indicate that the IRS has [actually] determined the amount of the *deficiency*.” *Id.* (quoting *Benzi v. Commissioner*, 787 F.2d 1541, 1542 (11th Cir.), *cert. denied*, 479 U.S. 883 (1986)). In holding the notice invalid under Section 6212(a) of the U.S. Tax Code, the court explained that the statute “authorize[s] the sending of deficiency notice ‘if the Secretary *determines* that there is a deficiency.’” *Id.* (quoting § 6212(a) (emphasis added by court)). Finally, the court approvingly quoted language from *Appeal of Terminal Wine Co.*, 1 B.T.A. 697, 701 (1925), which “construed the meaning of the term ‘determine’ as applied to deficiency determinations: ‘By its very definition and etymology the word determination irresistibly connotes consideration, resolution, conclusion, and judgment.’” *Id.*

As indicated, the word “determine” has a technical meaning in the tax world. The word “determine” as used in the tax provisions of the Miss. Code clearly denotes “consideration, resolution, conclusion, and judgment” after a “deliberation” process. *See Miss. Code Ann. § 27-7-51(1) (1972)* (upon examination of a return,

MDOR can “determine” an overpayment), and § 27-65-37(1)&(1)(a) (MDOR authorized to make “determinations” after deliberative processes involving sales taxes).

MDOR has admitted that this Court made the “determination” that no severance tax was owed by a school district and thus WCSD and other school districts were due a refund. (Tr. 43.) The lower court ruled that this Court, not MDOR, “determined that the tax was unlawful.” (Tr. 46.)

As MDOR itself pointed out at page 11 of its brief: “Any sales tax overpayment discovered by the Commission would generally be through audit and the refund would not be determined to be due until the completion of an audit.” MDOR did not conduct an audit of WCSD and “discover” that WCSD had made a severance tax overpayment as a result of the audit by MDOR.⁶ Instead, WCSD filed an application for refund and put MDOR on notice that it was due a refund. MDOR denied the refund for over five years, and paid the refund only after the Supreme Court made the “determination” that the tax was not owed, and thus a refund was due, in its opinion in the *Jones County* case. The governing statutes do not defer overpayment interest to the date of the Supreme Court’s opinion that

⁶ The scenario under which MDOR would make its *own* “determination” that a taxpayer has an overpayment of tax and is due a refund is similar to an “IRS initiated adjustment” under I.R.C. § 6611(e)(3), in contrast to the taxpayer initiating the adjustment by filing a claim for refund.

“determined” a refund was due after the taxpayer had already filed an application for refund.

CONCLUSION

For the reasons stated herein and in the previous filings, the Court should withdraw its decision and issue a decision adopting the application of § 27-65-53, 3rd par. as advocated by WCSD. The Court should also grant the other relief requested by WCSD in its appeal.

This the 20th day of April, 2017.

Respectfully submitted,

WAYNE COUNTY SCHOOL DISTRICT

By: *s/ C. Ted Sanderson, Jr.*

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[Certificate Of Service Omitted]

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May 3, 2017

COPY

Muriel B. Ellis, Clerk
Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
450 High Street
Jackson, MS 39201-1082

**RE: Citation of Supplemental Authority
under MRAP 28(k)
*Wayne County School District v. J.
Ed Morgan, Mississippi Department
of Revenue, Supreme Court Case
No. 2015-CA-01363***

Dear Clerk:

This letter is to advise of pertinent and significant authorities that have come to the attention of Appellant's counsel since the Court issued its decision on March 16, 2017, and the filing of Appellant's Motion for

Rehearing on April 20, 2017. This letter is being provided before Appellee's extended deadline of May 12, 2017, to file a Response to the Motion for Rehearing. WCSD respectfully requests that the Court consider these additional authorities in making its decision on the Motion for Rehearing.

1. Court's Construction of Miss. Code Ann. § 27-65-53, 3rd par. would be an Unconstitutional Delegation of Legislative Power to the State's Executive Branch of Government, *i.e.*, to the Mississippi Department of Revenue ("MDOR").

Wayne County School District ("WCSD") pointed out in its Motion for Rehearing [pp. 11-15] that the Court's construction of the subject statute raised significant constitutional issues and other policy concerns. The constitutional issues identified by WCSD involve the deprivation of property (*i.e.*, interest on a tax refund) without "due process" in violation of the Fourteenth Amendment. The deprivation of property may also implicate the Fifth Amendment's protection against the "taking" of property without "just compensation" which is also applicable to state action by virtue of the Fourteenth Amendment.

A separate constitutional issue raised by the Court's construction of the statute is the constitutional prohibition on the delegation of a legislative function to the executive branch of government. The issue raised in this case is illustrated by the case of *Broadhead v. Monaghan*, 117 So.2d 881, 238 Miss. 239 (Miss. 1960), which concerned the following issue:

[Whether] the provisions of the statute (Code Section 9220-24, *supra*) authorizing the commission in his discretion to impose a penalty of not less than ten per cent and not more than 25 per cent, in case of default in the payment of any [tax] installment, are invalid in that they represent an unconstitutional attempt on the part of the Legislature to delegate to an executive officer a power of government that is *peculiarly legislative*. [Emphasis added.]

Like the imposition of penalties related to taxes, the decision to pay taxpayers interest on tax overpayments is “peculiarly legislative” in relation to the executive branch of government. The following analysis of this constitutional issue in *Broadhead v. Monaghan* is pertinent and significant to the present case:

In construing a statute the court must seek to ascertain the legislative intent from the statute as a whole, and not from a segregated portion, considered apart from the rest of the statute. Each provision or section of the statute must be considered with respect to, or in the light of all the other provisions or sections. [Citation omitted.]

* * *

The most serious question presented for our decision on this appeal arises under the third assignment of error as shown above, in which the appellant challenges the constitutionality of that part of Code Section 9220-24, *supra*, which provides that the commissioner may in his discretion impose a penalty of not less than 10 per cent and

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not more than 25 per cent for delinquency in the payment of any installment of the tax.

* * *

It is argued that the above mentioned provision of the statute is invalid for the reason that it represents an unconstitutional attempt on the part of the Legislature to delegate to an executive officer a power of government that is ***peculiarly legislative***; that the power to determine the amount of a penalty to be imposed for noncompliance with a requirement of law is a legislative function; and that the attempt to delegate that power to the chairman of the State Tax Commission, as provided in Code Section 9220-24, *supra*, is nothing less than an attempt to vest in the commissioner lawmaking power in violation of Section 33 of the State Constitution and the due process clauses of the State and Federal constitutions. The appellant does not contend that the Legislature had no authority to impose penalties for delinquency in the payment of installments of the income tax. But the appellant contends that the penalty clause of the statute is invalid for the reason that it imposes no penalty directly but attempts to vest in the commissioner power to impose such penalty in such amount, within broad limits, as he may see fit to impose, or to refrain from imposing a penalty in any amount, if he sees fit to do so, ***with no legislative standard prescribed for fixing the amount of the penalty to be imposed and no definition of the conditions which the commissioner must find to exist before imposing such penalty***. [Emphasis added.]

It is well-settled by the decisions of this Court that a constitutional question will not be passed on where the issues involved in the particular case are such that the case may be decided on other grounds. [Citations omitted.] But whenever a constitutional question is presented and the issues involved in the case cannot be decided on other grounds, or where the right of a party is founded solely on a statute, the validity of which is attacked, as in the case that we have here, the Court cannot decline to pass on the constitutional question. *16 C. J. S. 320, Constitutional Law, par. 94.*

After a careful study of the reported cases, both state and federal, we have concluded that the penalty clause of Code Section 9220-24, *supra*, is invalid under the state and federal constitutions, and that we must so hold in this case.

It has been generally held that the determination of the amount of a penalty to be imposed for non-compliance with the requirements of law is a legislative function, which may not be delegated to an administrative officer or agency, with power, in his discretion, to impose such penalties, within broad limits, as he may see fit to impose. The Legislature, in the enactment of a revenue law, may provide for the imposition of penalties for delinquencies in the payment of the tax; and the Legislature may fix the amount of such penalty at a fixed percentage of the amount of the delinquent tax. The Legislature may confer upon an administrative officer power to enforce such penalties. But the Legislature has not been given the power, under the Constitution, to delegate to such administrative officer *an uncontrolled discretionary*

power to determine, within broad limits, the amount of the penalty to be imposed in each case. [Emphasis added.]

* * *

It has been generally held . . . that the power to prescribe penalties to be incurred for breaches of public duty appertains to the legislative department, to be exercised by the enactment of laws; and that the determination of the amount of the penalty to be imposed for noncompliance with the requirement of law is a legislative function, which may not be delegated to an administrative officer or agency, ***with unrestricted power, in his discretion, to impose such penalties, within broad limits, as he may see fit to impose.*** As stated by the textwriter in 73 C. J. S., 323, *Public Administrative Bodies and Procedure*, par 29, "The law-making power may not be granted to an administrative body to be exercised under the guise of administrative discretion." Accordingly, in delegating powers to an administrative body with respect to the administration of statutes, ***the legislature must ordinarily prescribe a policy, standard, or rule for their guidance and must not vest them with an arbitrary and uncontrolled discretion with regard thereto.*** [Emphasis added.]

* * *

In the case that we have here the Legislature, in Code Section 9220-24, gave the Commissioner not only power to hear and determine whether a delinquency existed and a penalty should attach, but also the power, ***in his discretion, within broad***

limits, to fix the amount of the penalty and to determine in each case whether the conditions were such as to justify the imposition of a penalty in any amount. ***Yet the Legislature prescribed no rule of law and fixed no standard or guide by which the action of the Commissioner in fixing the amount of the penalty or in determining whether the delinquency was deserving of a penalty should be governed.*** The question which is therefore presented for our decision is whether the Legislature could delegate to the Commissioner such power without prescribing some rule of law or fixing some definite standard by which his action should be governed. We think that the Legislature could not delegate such ***uncontrolled and arbitrary power*** to the Commissioner; and that the attempt to do was violative of Section 33 of the State Constitution and the due process clauses of the State Constitution and the Fourteenth Amendment to the Federal Constitution. [Emphasis added.]

Due process of law with respect to the imposition of penalties by an administrative officer, as we have seen above, requires that the Legislature shall prescribe the amount of the penalty or some definite standard for fixing the amount. The vice in the penal provision of Code Section 9220-24 lies in the fact that ***it neither prescribes the amount of the penalty nor a definite standard for fixing that amount. Nor does it define the conditions which the Commissioner must find to exist to justify the imposition of penalties in excess of the minimum amount allowed by the statute. The Commissioner, under the provisions of the statute as written,***

may impose a different penalty in each case, subject only to the condition that the penalty imposed shall not be less than 10 per cent and not more than 25 per cent of the unpaid installment; or he may in his discretion dispense with the imposition of a penalty entirely. . . . [Emphasis added.]

The fact that Commissioner, or his deputy, in this case, with no statutory rule to guide him, was impartial in fixing the amounts of the penalties for delinquencies in the payment of the installments of taxes falling due on December 15, 1957, according to a classification of his own making, did not relieve the statute of the constitutional infirmity pointed out above. As stated by this Court in *Clark v. State*, 169 Miss. 369, 152 So. 820, “***The validity of a law is to be decided by its terms and provisions, and not by the manner in which it might be administered, operated, or enforced.***”

Broadhead v. Monaghan, *supra*. See also *State v. Allstate Insurance Company*, 97 So.2d 372 (Miss. 1957) (Court invalidated statute that gave Commissioner of Insurance authority to fix rates for fire insurance.)

2. Rule of *Strict Construction* in Favor of Taxpayer Applies with a Tax Refund Statute *even if the Statute is Unambiguous*.

As pointed out in the Motion for Rehearing [pp. 5-6], the Court’s decision was obviously influenced by one statement in a quote from *Miss. Dep’t of Transp. v.*

Allred, 928 So.2d 152, 154 (Miss. 2006) that, if a statute is unambiguous, “the court should simply apply the statute according to its plain meaning and ***should not use principles of statutory construction.***” [Emphasis added.] The most obvious “principle” avoided by the Court in its decision is the rule most favorable to WCSD: Tax laws are to be strictly construed against the taxing power and any doubt should be resolved in favor of the taxpayer. However, this Court in the context of a tax refund statute has actually applied this rule in favor of taxpayers even when the statute was “unambiguous” as follows:

When the language used by the legislature is ***plain and unambiguous, such as the language here***, and where the statute conveys a ***clear and definite meaning, as here***, the Court will have no occasion to resort to the rules of statutory interpretation. [Citation omitted.] The courts cannot restrict or enlarge the meaning of an ***unambiguous statute.*** [Citations omitted.] [Emphasis added.]

Courts have a duty to give statutes a practical application consistent with their wording, unless such application is inconsistent with the obvious intent of the legislature. [Citation omitted.] Moreover, it is the well settled rule that ***“tax laws are to be strictly construed against the taxing powers and all doubt resolved in favor of the taxpayer.”*** [Emphasis added.] [Citations omitted.]

Marx v. Broom, 632 So.2d 1315, 1318 (Miss. 1994).

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This letter is being submitted pursuant to Mississippi Rules of Appellate Procedure 28(k). WCSD respectfully requests that the Court consider these additional authorities in making its decision on the Motion for Rehearing.

Respectfully submitted,

WAYNE COUNTY SCHOOL DISTRICT

By: s/ C. Ted Sanderson, Jr.

C. Ted Sanderson, Jr. (MSB # 6453)

[Certificate Of Service Omitted]

APPENDIX G

JONES COUNTY SCHOOL DISTRICT AND
JONES COUNTY SCHOOL BOARD V.
MISSISSIPPI DEPARTMENT OF REVENUE
f/k/a MISSISSIPPI STATE TAX COMMISSION;
MISSISSIPPI STATE OIL & GAS BOARD; BEAN
RESOURCES, INC.; DENBURY RESOURCES,
INC.; AND VENTURE OIL & GAS, INC. AND
MISSISSIPPI DEPARTMENT OF REVENUE
f/k/a MISSISSIPPI STATE TAX COMMISSION v.
JONES COUNTY SCHOOL DISTRICT; JONES
COUNTY SCHOOL BOARD; BEAN RESOURCES,
INC.; DENBURY RESOURCES, INC.; VENTURE
OIL & GAS, INC.; AND THE SECRETARY OF
STATE OF THE STATE OF MISSISSIPPI AND
THE SECRETARY OF STATE OF THE STATE
OF MISSISSIPPI v. MISSISSIPPI DEPARTMENT
OF REVENUE f/k/a MISSISSIPPI STATE
TAX COMMISSION AND BEAN RESOURCES,
INC.; DENBURY RESOURCES, INC.; AND
VENTURE OIL & GAS, INC. v. MISSISSIPPI
DEPARTMENT OF REVENUE f/k/a
MISSISSIPPI STATE TAX COMMISSION AND
MISSISSIPPI STATE OIL & GAS BOARD

NO. 2011-CA-00712-SCT

SUPREME COURT OF MISSISSIPPI

111 So. 3d 588; 2013 Miss LEXIS 71

March 7, 2013, Decided

COUNSEL: FOR APPELLANTS: TERRY L. CAVES,
JERRY DEAN SHARP, WILLIAM GARNER CHENEY,

JR., OFFICE OF THE ATTORNEY GENERAL, BY:
ROGER GOOGE, JR., NANCY MORSE PARKES.

FOR APPELLEES: JAMES L. POWELL, BRIDGETTE
TRENETTE THOMAS, STEPHANIE V. ROGERS,
HOWARD O. LEACH, JOHN JEFFREY TROTTER,
GLENN GATES TAYLOR, C. TED SANDERSON, JR.

JUDGES: PIERCE, JUSTICE, FOR THE COURT.
DICKINSON AND RANDOLPH, P.JJ., LAMAR,
KITCHENS, CHANDLER, KING AND COLEMAN,
JJ., CONCUR. WALLER, C.J., NOT PARTICIPATING.

OPINION BY: PIERCE

OPINION

NATURE OF THE CASE: CIVIL – STATE BOARDS
AND AGENCIES

EN BANC.

PIERCE, JUSTICE, FOR THE COURT:

¶ 1. This case concerns three main issues. The first issue is whether a school district is liable for oil and gas severance taxes on its royalty interests derived from oil and gas production on sixteenth-section land. The chancellor ruled that it is not. He found that sixteenth-section lands are held in trust for the benefit of local township schools and that payment of severance taxes diverts money from the purposes of that trust. The second issue is whether the statute of limitations restricts the time period in which a school district can seek a refund of severance taxes that it had

paid erroneously. The chancellor ruled that a three-year statute of limitations applied to any refund claims. The final issue is whether a school district is liable for administrative expense taxes on its royalty interests derived from oil and gas production on sixteenth-section land. The chancellor ruled that it is. He characterized these assessments as fees, not taxes, and reasoned that trustees are allowed to pay reasonable expenses associated with administering trust property.

¶ 2. This Court finds that the judgment should be affirmed in part and reversed in part. First, we acknowledge that school districts are not liable for oil and gas severance taxes on sixteenth-section royalty interests, but for different reasons than those cited by the chancellor. School districts, as political subdivisions of the state, are not included within the definition of “persons” made subject to these taxes. Second, pursuant to Article 4, Section 104 of the Mississippi Constitution, statutes of limitation in civil causes do not run against the state or its subdivisions. The chancery court, however, should make a determination as to whether the doctrines of waiver and/or estoppel apply in this case. Finally, school districts are liable for administrative expense taxes on sixteenth-section royalty interests. These assessments are “fees,” not “taxes”; the Legislature has expressly made the state and its subdivisions subject to these fees; and no constitutional provision or other law is violated by requiring school districts to pay them.

FACTS

¶ 3. The Jones County School Board, which governs the Jones County School District, leased sixteenth-section property to Venture Oil & Gas, Inc., for oil, gas, and mineral exploration. The School District reserved a one-eighth royalty interest. From November 1, 1997, to September 30, 2006, Venture withheld the School District's proportionate share of oil and gas severance taxes from the School District's royalty interest and remitted those taxes on behalf of the School District.

¶ 4. In 2006, Venture and the School District learned of three Attorney General opinions that had concluded that school districts' royalty interests from oil and gas production on sixteenth-section lands are not subject to any severance tax. These opinions are discussed *infra* in Issue I.B.2. Based on those opinions, Venture and the School District requested a refund of \$248,277 from the Mississippi Department of Revenue.¹ Months later, they also requested a refund from the Mississippi State Oil and Gas Board of administrative-expense taxes that Venture had paid to the Oil and Gas Board on the School District's behalf.

¶ 5. The Department of Revenue denied Venture's and the School District's request for a severance-tax refund. It found that Venture was "liable for the full

¹ In 2009, as this litigation was pending, the Legislature eliminated the Mississippi State Tax Commission and created the Mississippi Department of Revenue and the Mississippi Board of Tax Appeals in its stead. 2009 Miss. Laws 1228-1379; *see* Miss. Code Ann. § 27-3-1 (Rev. 2010).

amount of the severance tax,” and it rejected the argument that no severance tax was owed just because oil and gas production had occurred on state-owned land. Thereafter, Venture continued to withhold the School District’s portion of the severance taxes, but it did not remit those taxes to the Department of Revenue.

¶ 6. The Oil and Gas Board, in contrast, initially granted a maintenance-tax refund of \$8,338. But, more than one year later, the Oil and Gas Board changed its stance. It took the position that school districts are required to pay administrative-expense taxes on royalty interests derived from oil and gas production on sixteenth-section lands.

¶ 7. Aggrieved by the Department of Revenue’s decision, Venture and the School District filed suit in the Chancery Court of the Second Judicial District of Jones County. Venture and the School District requested that the Department of Revenue be ordered to refund severance taxes paid from November 1, 1997, to September 30, 2006, and sought “temporary, preliminary, and permanent injunctive and declaratory relief” against further imposition of any severance taxes.

¶ 8. Just before filing suit, the School District had written a letter to the Department of Revenue and to the Oil and Gas Board. In its letter to the Department of Revenue, the School District requested additional refunds for severance taxes that Eagle Oil and Gas Co.; Denbury Energy Services, Inc.; and Bean Resources, Inc., had paid on its behalf. The total refund request exceeded \$2 million. The Department of Revenue

responded that, according to its records, the School District itself had never filed an “Oil and Gas Severance tax return.” Thus, it denied the School District’s refund request because “only [a] taxpayer can seek refund of an overpayment of taxes.” In its letter to the Oil and Gas Board, the School District likewise sought a refund for maintenance taxes that Eagle and Denbury had paid on its behalf.

¶ 9. More than two months after its initial suit, the School District filed a second suit. It and the School Board filed suit against Venture, Eagle, Denbury, and Bean (collectively “the Oil Companies”). The Department of Revenue and the Oil and Gas Board later were added as defendants, and the Secretary of State² was allowed to intervene as a party plaintiff. The School District, the School Board, and the Secretary of State (collectively “the Plaintiffs”) requested: (1) an accounting of all severance and administrative-expense taxes that had been paid to the Department of Revenue and to the Oil and Gas Board; (2) a declaratory judgment that the School District was not obligated to pay severance or administrative-expense taxes on royalties derived from oil and gas production on sixteenth-section land; (3) a preliminary injunction to prohibit the Oil Companies from remitting any future severance or administrative-expense tax payments to the Department of Revenue or to the Oil and Gas Board on the School District’s behalf; and (4) an order directing the

² The Order on Motion for Intervention states the Attorney General authorized the Secretary of State to intervene in this case. *See* Miss. Code Ann. § 7-5-1 (Rev. 2002).

Department of Revenue and the Oil and Gas Board to refund any severance or administrative expense taxes that the Oil Companies had paid on the School District's behalf. The Plaintiffs further asserted that the Oil Companies had breached a fiduciary duty by wrongfully paying severance and administrative-expense taxes on the School District's behalf.

¶ 10. The Oil Companies, in response, asserted cross-claims against the Department of Revenue and the Oil and Gas Board to recover any severance or administrative-expense taxes that they had paid erroneously. Bean and Venture, furthermore, asked the chancellor to enjoin the Department of Revenue and the Oil and Gas Board from attempting to collect severance and administrative-expense taxes on the School District's royalty interests.

¶ 11. The two suits were consolidated, and all the parties requested summary judgment.

¶ 12. After conducting a hearing, the chancellor issued his findings of fact and conclusions of law. The chancellor first found that the State holds title to sixteenth-section property in trust for the benefit of schools within the local township; that all revenue derived from sixteenth-section property must be used exclusively for the benefit of those schools; and that the Department of Revenue had misappropriated trust funds by collecting severance taxes on the School District's royalty interests and distributing those moneys to general-revenue funds and to other school districts. Accordingly, the chancellor reversed and rendered the

Department of Revenue's denial of Venture's and the School District's request for a refund. The chancellor further enjoined the Department of Revenue from levying and collecting severance taxes from the Oil Companies on the School District's royalty interests.³ Second, the chancellor labeled the assessments levied by the Oil and Gas Board as fees, not taxes. The chancellor stated that these assessments fund the regulatory and enforcement functions of the Oil and Gas Board and that the Plaintiffs had benefitted from the Oil and Gas Board's services. The chancellor reasoned that such fees were reasonable expenses associated with the administration of trust property, and therefore, no fiduciary duties had been violated. Accordingly, the chancellor granted the Oil and Gas Board's Motion for Summary Judgment.

¶ 13. After the chancellor had issued his findings of fact and conclusions of law, the parties entered an agreed order for the chancellor to amend his findings of fact and conclusions of law to address whether any or all of the School District's refund claims were barred by the statute of limitations or the doctrines of laches, estoppel, or waiver.

¶ 14. Following the parties' agreed order, the chancellor entered supplemental findings of fact and

³ In its motion for summary judgment, Eagle included an affidavit by its vice president, who represented that Eagle did not hold leases on sixteenth-section lands in Jones County. None of the parties disputed this assertion. Thus, the chancellor granted summary judgment for Eagle and dismissed all claims against it with prejudice. Eagle is not a party to this appeal.

conclusions of law. He found that the three-year statute of limitations under Section 27-73-5 of the Mississippi Code allowed the School District to seek a refund only for taxes it had paid since July 2, 2005; this was three years prior to the date that Venture and the School District had filed their initial suit. The chancellor distinguished other cases that had held that statutes of limitation do not run against the state or its political subdivisions. Those cases, he said, had involved litigation between the state and a private party; this case, in contrast, featured one political subdivision of the state suing another. The chancellor also reasoned that, since the state has the sovereign power to create or abolish local units of government, it has the power to establish and impose statutes of limitation upon its creations.

¶ 15. The chancellor entered a Rule 54(b) Final Judgment⁴ that incorporated by reference his initial and supplemental findings of fact and conclusions of law.

¶ 16. The Mississippi Department of Revenue now appeals and raises one issue:

Whether the [c]hancellor erred in finding that the severance taxes imposed by §§ 27-25-501 *et seq.* and 27-25-701 *et seq.*, Miss. Code Ann., are not owed on production of oil and gas that is allocable to a public school district's royalty

⁴ See Miss. R. Civ. P. 54(b).

interest that is owned by a public school district.

¶ 17. The School District and the School Board appeal and raise three issues:

I. Whether the [c]hancellor erred in finding that the statute of limitations provided by Miss. Code Ann. § 27-73-5 limits the Jones County School District's claim for [a] refund of severance taxes.

II. Whether the [c]hancellor erred in granting the Oil and Gas Board's Motion for Summary Judgment finding that the Oil and Gas Board is authorized by law to charge an administrative expense tax against the Jones County School District's royalty interest.

III. Whether the [c]hancellor erred in his finding that the time period for requesting a refund or filing a contest of the severance tax is three years prior to the date of the filing of the [c]omplaint.

¶ 18. The Secretary of State also appeals and raises the following issue:

Whether the [c]hancellor erred in finding that the statute of limitations provided by Miss. Code Ann. § 27-73-5 limits a political subdivision's claim for [a] refund of severance taxes to three years prior to the date of filing the [c]omplaint.

Bean, Denbury, and Venture appeal as well and join the briefs filed by the School District, the School Board, and the Secretary of State. The Secretary of State, notably, did not oppose the Oil and Gas Board's Motion for Summary Judgment and does not appeal the chancellor's ruling in favor of the Oil and Gas Board.

DISCUSSION

¶ 19. Before addressing the issues on appeal, an overview of both the nature and ownership of sixteenth-section lands is set out below. The basic structure of the oil-and-gas-severance-tax laws is provided as well. The administrative-expense tax scheme is discussed later, in Issue III.

Sixteenth-Section Lands

¶ 20. The origins of public-school lands predate Mississippi's statehood. *Papasan v. Allain*, 478 U.S. 265, 270-71, 106 S. Ct. 2932, 2936-37, 92 L. Ed. 2d 209 (1986). In 1803, the United States Congress set aside "the section number sixteen" of every township in the Mississippi Territory to be reserved "for the support of schools within the same." *Papasan*, 478 U.S. at 271 (quoting 2 Stat. 233-34). And in 1815, Congress authorized the leasing of sixteenth-section lands to raise financial support for schools within the Territory. *Lipscomb v. Columbus Mun. Separate Sch. Dist.*, 269 F.3d 494, 498 (5th Cir. 2001) (citing Act of Jan. 9, 1815, 3 Stat. 163).

¶ 21. When Mississippi became a state in 1817, Congress directed that “the section No. 16 in each township . . . shall be reserved for the support of schools therein.” *Papasan*, 478 U.S. at 271, 106 S. Ct. 2932 (quoting 3 Stat. 375 (1817)).⁵ Accordingly, Article 6, Section 20 of the Mississippi Constitution of 1817 directed the Legislature to “take measures to preserve from unnecessary waste or damage such lands as are or may hereafter be granted by the United States for the use of schools, within each township in this State, and apply the funds which may be raised from such lands, by rent or lease, in strict conformity to the object of such grant. . . .” Miss. Const. art. 6, § 20 (1817). Mississippi’s current Constitution provides that: “The Legislature shall enact such laws as may be necessary to ascertain the true condition of the title to the sixteenth section lands in this state . . . and shall provide that the sixteenth section lands reserved for the support of township schools . . . shall not be sold nor shall they be leased” except as provided under the terms of Article 8, Section 211. Miss. Const. art. 8, § 211 (1890).

¶ 22. From their beginnings, sixteenth-section lands have been held to be trust lands for the benefit of public schools. *Hill v. Thompson*, 564 So. 2d 1, 5-6 (Miss. 1989) (citations omitted). These lands are held in two trusts: one federal and one state. *Lipscomb*, 269 F.3d at 510. The federal trust is purely honorary; Mississippi holds absolute title to sixteenth-section lands without federal restriction. *Id.* at 507 (citing *Madison*

⁵ The creation of sixteenth-section lands and “lieu lands” is discussed in detail in *Papasan*, 478 U.S. at 268-73.

County Bd. of Educ. v. Illinois Cent. R.R. Co., 939 F.2d 292, 305 (5th Cir. 1991), *abrogation on other grounds recognized by Lipscomb*, 269 F.3d at 508 n.72). In some cases, this Court has suggested that the trust is federally enforceable. *Hill*, 564 So. 2d at 6 (stating that “[t]he school lands trust was federally created and is federally enforceable”) citing *Papasan*, 478 U.S. at 268-72)); *Turney v. Marion County Bd. of Educ.*, 481 So. 2d 770, 776 (Miss. 1985) (stating that the Attorney General of the United States may enforce the trust) (citing *Lassen v. Arizona*, 385 U.S. 458, 460, 87 S. Ct. 584, 585, 17 L. Ed. 2d 515 (1967)). But the United States Court of Appeals for the Fifth Circuit has explained that early sixteenth-section land grants, which included Mississippi’s, conveyed title in fee simple and that the federal trust is purely honorary as to those grants. *Id.* at 507 (citing *Cooper v. Roberts*, 59 U.S. 173, 181-82, 18 How. 173, 15 L. Ed. 338 (1855); *Alabama v. Schmidt*, 232 U.S. 168, 173-74, 34 S. Ct. 301, 58 L. Ed. 555 (1914)). Regardless, it is clear that, under Mississippi state law, sixteenth-section lands are held in a binding trust. *Lipscomb*, 269 F.3d at 507-08 (citing, *e.g.*, *Morrow v. Vinson*, 666 So. 2d 802, 805-06 (Miss. 1995)).

¶ 23. The State is the titleholder of sixteenth-section lands, *Hill* 564 So. 2d at 6 (citing *Turney*, 481 So. 2d at 776), which it holds “in trust for the benefit of the public schools.” Miss. Code Ann. § 29-3-1(1) (Rev. 2010). The beneficiaries, more specifically, are “the inhabitants of the respective townships.” *Turney*, 481 So. 2d at 777 (citing *Jones v. Madison County*, 72 Miss. 777, 18 So. 87 (1895)); *see also* Miss. Const. art. 8, § 211

(identifying sixteenth-section lands as having been “reserved for the support of township schools”).

¶ 24. The State, as titleholder, has delegated general supervisory authority over sixteenth-section lands to the Secretary of State. *Turney*, 481 So. 2d at 777; Miss. Code Ann. § 29-3-1(1) (Rev. 2010).⁶ As a matter of practical necessity, these lands are managed through local county boards of education. *Turney*, 481 So. 2d at 777. Section 29-3-1(1) states that: “The board of education under the general supervision of the [Secretary of State], shall have control and jurisdiction of [sixteenth-section] lands and of all funds arising from any disposition thereof heretofore or hereafter made.” Miss. Code Ann. § 29-3-1(1) (Rev. 2010). School boards are directed to manage these lands, and all funds derived therefrom, as trust property and to ensure that adequate compensation is received for all usage. Miss. Code Ann. § 29-3-1(1) (Rev. 2010). School boards thus stand as “trustee[s] and as trust supervisors or managers” of sixteenth-section lands. *Hill*, 564 So. 2d at 7.

¶ 25. In their role as trustees, school boards are authorized and empowered to lease sixteenth-section lands for oil, gas, and mineral exploration. Miss. Code Ann. § 37-7-305 (Rev. 2007); *see also* Miss. Code Ann. § 29-3-99 (Rev. 2010). Royalties received from the sale

⁶ Section 29-3-1 gives general supervisory authority to the “state land commissioner.” Miss. Code Ann. § 29-3-1(1) (Rev. 2010). The office of state land commissioner, however, was abolished in 1980 and all of its duties and responsibilities were transferred to the office of the Secretary of State. *Turney*, 481 So. 2d at 776 (citing Miss. Code Ann. § 7-11-2 (Supp. 1984)).

of oil and gas are deposited into the local school board's principal fund, which Section 29-3-113 says "shall be a permanent township fund." Miss. Code Ann. § 29-3-113 (Rev. 2010). Further, Section 29-3-109 directs that "[a]ll expendable funds derived from sixteenth section or lieu lands shall be credited to the school districts of the township in which such sixteenth section lands may be located." Miss. Code. Ann. § 29-3-109 (Rev. 2010). That statute also states that "[s]uch funds shall not be expended except for the purpose of education of the educable children of the school district to which they belong, or as otherwise may be provided by law." Miss. Code. Ann. § 29-3-109 (Rev. 2010).

Oil and Gas Severance Taxes

¶ 26. Mississippi imposes annual severance taxes on oil and gas production within the state. Miss. Code Ann. §§ 27-25-503(1), 27-25-703(1) (Rev. 2010). The oil severance tax statutes are in Chapter 25, Article 5 of the Mississippi Code, and the natural-gas severance tax statutes are in Article 7 of that same chapter. Miss. Code Ann. §§ 27-25-501 to 27-25-525, 27-25-701 to 27-25-723 (Miss. 2010). Article 5 and Article 7 are very similar and often use identical language.

¶ 27. Oil and gas severance taxes are levied "upon the entire production in this state" and accrue at the time the oil or gas is severed from the soil or water. Miss. Code Ann. §§ 27-25-503(2); 27-25-703(2) (Rev. 2010). These taxes are levied "upon every person engaging or continuing within this state in the business

of producing, or severing [oil or gas], as defined herein, from the soil or water for sale, transport, storage, profit or for commercial use.” Miss. Code Ann. §§ 27-25-503(1), 27-25-703(1) (Rev. 2010). Exemptions and reduced assessments are provided in certain instances. Miss. Code Ann. §§ 27-25-503(1)-(5), 27-25-703(2)-(7) (Rev. 2010).

¶ 28. Oil and gas severance taxes, more specifically, are “levied upon the producers of such [oil or gas] in the proportion of their ownership at the time of severance. . . .” Miss. Code Ann. §§ 27-25-509(1), 27-25-707(1) (Rev. 2010). The term “producer” is defined broadly as:

[A]ny person owning, controlling, managing or leasing any [oil or gas] property, or [oil or gas] well, and any person who produces in any manner any [oil or gas] by taking it from the earth or water in this state, and shall include any person owning any royalty or other interest in any [oil or gas] or its value, whether produced by him, or by some other person on his behalf, either by lease contract or otherwise.

Miss. Code Ann. §§ 27-25-501(i), 27-25-701(j) (Rev. 2010). A “person,” in turn, is defined as “any natural person, firm, copartnership, joint venture, association, corporation, estate, trust[,] or any other group, or combination acting as a unit, and the plural as well as the singular number.” Miss. Code Ann. §§ 27-25-501(h), 27-25-701(i) (Rev. 2010).

¶ 29. Though oil and gas severance taxes are levied upon “producers” in proportion to their ownership interest, Sections 27-25-509(1) and 27-25-707(1) direct that these taxes “shall be paid by the person in charge of the production operations, who is hereby authorized, empowered and required to deduct from any amount due to producers of such production at the time of severance the proportionate amount of the tax herein levied before making payments to such producer.” Miss. Code Ann. §§ 27-25-509(1), 27-25-707(1) (Rev. 2010). And, if “the person in charge of production operations fails to pay the tax, then [the Department of Revenue] shall proceed against the producer to collect the tax in accordance with the provisions made for the collection of delinquent taxes.” Miss. Code Ann. §§ 27-25-509(1), 27-25-707(1) (Rev. 2010).

¶ 30. Article 8, Section 206A of the Mississippi Constitution and Section 27-25-506 of the Mississippi Code provide that “[t]he state’s share of all oil and gas severance taxes derived from oil and gas resources under state-owned lands” is to be deposited into an “education improvement trust fund” in the State Treasury. Miss. Const. art. 8, § 206A; Miss. Code Ann. § 27-25-506 (Rev. 2010).

I. Whether the School District is required to pay oil and gas severance taxes on its royalty interests derived from oil and gas production on sixteenth-section land.

¶ 31. The Department of Revenue argues that the chancellor erred in reversing and rendering its denial of Venture's and the School District's request for a refund of oil and gas severance taxes.

¶ 32. This Court will reverse the decision of an administrative agency “‘only if the decision (1) was unsupported by substantial evidence; (2) was arbitrary and capricious; (3) was beyond the power of the administrative agency to make; or (4) violated the complaining party's statutory or constitutional right.’” *Buffington v. Miss. State Tax Comm'n*, 43 So. 3d 450, 453-54 (Miss. 2010) (footnote omitted) (quoting *Miss. Methodist Hosp. and Rehab. Ctr., Inc. v. Miss. Div. of Medicaid*, 21 So. 3d 600, 606-07 (Miss. 2009)).

¶ 33. “‘An agency's interpretation of a rule or statute governing the agency's operation is a matter of law that is reviewed de novo, but with great deference to the agency's interpretation.’” *Buffington*, 43 So. 3d at 454 (quoting *Miss. Methodist Hosp. and Rehab. Ctr., Inc.*, 21 So. 3d at 606-07). Recently, this Court clarified what “deference” means in this context. *Queen City Nursing Ctr., Inc. v. Miss. State Dep't of Health*, 80 So. 3d 73, 84 (Miss. 2011). The Court emphasized that it has the ultimate authority and responsibility for interpreting laws. *Id.* So, even though an “agency's interpretation is an important factor that usually warrants

strong consideration,” the Court does not defer to an agency’s interpretation in the sense that it yields judgment or opinion. *Id.* Further, no deference is due if the “‘agency’s interpretation is contrary to the unambiguous terms or best reading of a statute.’” *Buffington*, 43 So. 3d at 454 (quoting *Miss. Methodist Hosp. and Rehab. Ctr., Inc.*, 21 So. 3d at 606-07).

A. Whether oil and gas severance taxes are levied upon the Oil Companies or the School District.

¶ 34. The threshold question that must be addressed is who is responsible for the tax. The Department of Revenue asserts that the Oil Companies – not the School District – are the actual taxpayers. It argues that the Oil Companies are the parties liable for the severance taxes. The chancellor rejected this argument based on this Court’s decision in *California Co. v. State of Mississippi*, 221 Miss. 766, 74 So. 2d 856 (1954).

¶ 35. As discussed above, oil and gas severance taxes are “levied upon the *producers* of . . . [oil or gas] in the proportion of their ownership at the time of severance. . . .” Miss. Code Ann. §§ 27-25-509(1), 27-25-707(1) (Rev. 2010) (emphasis added). And a “producer” is:

[A]ny person owning, controlling, managing or leasing any [oil or gas] property, or [oil or gas] well, and any person who produces in any manner any [oil or gas] by taking it from

the earth or water in this state, and shall include any person owning any royalty or other interest in any [oil or gas] or its value, whether produced by him, or by some other person on his behalf, either by lease contract or otherwise.

Miss. Code Ann. §§ 27-25-501(i), 27-25-701(j) (Rev. 2010). Even though the taxes are levied upon “producers,” the “person in charge of the production operations” is required to deduct the producer’s share of the taxes from the producer’s interest and to remit the taxes on the producer’s behalf. Miss. Code Ann. §§ 27-25-509(1), 27-25-707(1) (Rev. 2010). The Court explained this procedure in *California Co.*

¶ 36. In *California Co.*, this Court recognized that Mississippi’s oil severance tax is levied upon royalty interest owners. *California Co.*, 74 So. 2d at 857. There, the United States government, acting through the Bureau of Land Management, had leased lands to a certain individual; in doing so, it had reserved a one-eighth royalty interest in all oil produced on such lands. *Id.* at 856. That individual, in turn, contracted with The California Company for oil exploration. *Id.* The California Company paid the oil severance tax on the total production for almost three years. *Id.* During that time, the United States refused to allow The California Company to deduct any oil severance taxes from the United States’ royalty interest. *Id.* The California Company paid the taxes on the United States’ behalf anyway but eventually sought a refund from the Auditor of Public Accounts. *Id.* The California

Company argued that states cannot tax the federal government; therefore, it was entitled to a refund for any oil severance taxes that it had paid on the United States's behalf. *Id.* at 857. The Auditor refused The California Company's request, and the chancery court affirmed the Auditor's decision. *Id.* at 856. This Court held that the oil severance tax was levied on the United States as a royalty interest owner. *Id.* at 857. The oil severance tax, it explained, "is levied upon the *producers* of such oil in the proportion of their ownership at the time of severance . . . ," *Id.* at 857 (quoting 1944 Miss. Laws 148) (emphasis added); Miss. Code Ann. § 27-25-509(1) (Rev. 2010); and the term "producer" includes "any person owning any royalty or other interest in any oil or its value." *California Co.*, 74 So. 2d at 857 (quoting 1944 Miss. Laws 146); Miss. Code Ann. § 27-25-501(i) (Rev. 2010)). Thus, even though the "person in charge of the production operations," i.e., The California Company, had paid the tax on the United States' behalf, the tax was not levied directly upon The California Company but was "levied in the first instance on the owners of the oil in proportion to their interest." *California Co.*, 74 So. 2d at 858. The Court ultimately held that, because of the supremacy of the federal government, the oil severance tax was unconstitutional to the extent that it attempted to tax the United States. *Id.* The California Company, therefore, was deemed to be entitled to a credit for the portion of the tax that otherwise would have been charged to the United States as a royalty owner. *Id.*

¶ 37. Though *California Co.* involved only oil severance taxes, the gas severance statutes are identical on this point. Both taxes are levied upon “producers,” which includes royalty owners and actual operators. Miss. Code Ann. §§ 27-25-509(1), 27-25-501(i), 27-25-707(1), 27-25-701(j) (Rev. 2010). The Oil Companies, as the “person[s] in charge of the production operations,” deduct the School District’s proportionate share of the oil and gas severance taxes from any payment owed to the School District and remit those taxes to the Department of Revenue on the School District’s behalf. *See California Co.*, 74 So. 2d at 857-58; Miss. Code Ann. §§ 27-25-509(1), 27-25-707(1) (Rev. 2010). Though the Oil Companies remit the taxes, *California Co.* is clear that the taxes are “levied in the first instance on the owners of the oil in proportion to their interest.” *California Co.*, 74 So. 2d at 858.

¶ 38. The last sentences of Section 27-25-509(1) and Section 27-25-707(1) further support that oil and gas severance taxes are levied upon the School District. Miss. Code Ann. §§ 27-25-509(1), 27-25-707(1) (Rev. 2010). Both statutes state that: “In the event the person in charge of production operations fails to pay the [oil or gas severance] tax, then the [Department of Revenue] shall proceed against the producer to collect the tax in accordance with the provisions made for the collection of delinquent taxes. . . .” Miss. Code Ann. §§ 27-25-509(1), 27-25-707(1) (Rev. 2010). In other words, if the Oil Companies fail to remit the taxes, the Department of Revenue is directed to proceed against

the producer, i.e. the School District – not the Oil Companies – to collect delinquent taxes.

¶ 39. Accordingly, we find that oil and gas severance taxes are levied upon the School District as a royalty owner.

B. Whether the School District is excepted from paying oil and gas severance taxes on its sixteenth-section royalty interests.

¶ 40. From the outset here, it is important to note that school districts are considered political subdivisions of the state. *Gressett By & Through Gressett v. Newton Separate Mun. Sch. Dist.*, 697 So. 2d 444, 446 (Miss. 1997) (citing Miss. Code Ann. § 11-46-1(i) (Rev. 2004)).

¶ 41. The Department of Revenue argues that neither the oil severance tax statutes in Sections 27-25-501 to 27-25-525, nor the natural gas severance tax statutes in Sections 27-25-701 to 27-25-723, expressly exempt school districts or sixteenth-section lands from taxation. It argues that taxation is the rule unless an exemption is stated expressly and that no taxpayer has a vested right to an exemption. It offers several examples in which the state has expressly exempted itself from taxation. *See* Miss. Code Ann. § 27-31-1(b) (Rev. 2010) (exempting all real or personal property “belonging to the State of Mississippi or any of its political subdivisions” from ad valorem taxes); Miss. Code Ann. § 27-19-27 (Rev. 2010) (exempting state and local government vehicles from motor vehicle privilege taxes);

Miss. Code Ann. § 27-65-105 (Rev. 2010) (providing governmental exemptions from sales taxes); Miss. Code Ann. § 27-55-12(1) (Rev. 2010) (exempting “the State of Mississippi, counties, municipalities, school districts and all other political subdivisions of the state” from gasoline, special fuel, and compressed gas excise taxes); Miss. Code Ann. § 27-15-103(1) (Rev. 2010) (providing that foreign insurance carriers that furnish service under the State Employees Life and Health Insurance Plan are not required to pay the annual license or privilege tax on premiums collected)).

¶ 42. The Plaintiffs, on the other hand, assert that neither the state nor its political subdivisions are subject to a tax unless the law clearly says they are.

¶ 43. In determining whether a person or entity is subject to a tax, different standards apply, depending upon whether the object of the tax is of public or private nature. Generally, “he who claims exemption must show affirmatively an exemption expressly declared, and that the claimant is clearly embraced within the terms of the exemption.” *Morris Ice Co. v. Adams*, 75 Miss. 410, 22 So. 944, 945 (1898); *see also Barnes v. Jones*, 139 Miss. 675, 103 So. 773, 776 (1925) (stating that a tax exemption is never presumed and that a claimant has the burden to establish clearly his right to an exemption); *Bridges v. Barr*, 245 Miss. 137, 143, 146 So. 2d 544, 546 (1962) (stating that tax exemptions are strictly construed against the exemptionist and that one who asserts the exemption must establish it clearly). This is consistent with the Department of Revenue’s position. But taxation of public property is

treated differently. As a general rule, the state does not tax its own property. *State v. Bd. of Miss. Levee Comm'rs*, 75 Miss. 132, 21 So. 661 (1897). Further, this Court has said that where a statute attempts to impose liabilities upon the state or its political subdivisions, the statute is “inapplicable to them, unless they are included expressly or by necessary implication.” *Coleman v. Whipple*, 191 Miss. 287, 2 So. 2d 566, 568 (1941) (quoting *City of Jackson v. State*, 156 Miss. 306, 126 So. 2, 4 (1930)).

¶ 44. Here, the Plaintiffs are correct: Neither the state nor its political subdivisions are subject to a tax unless the law includes them expressly or by necessary implication. True, the Legislature has chosen in several instances expressly to exempt the state or its political subdivisions from certain taxes. But that does not alter the general, common-law rule concerning taxation of public property.

¶ 45. The Court, therefore, must consider whether the School District is included expressly or by necessary implication within the oil-and-gas-severance-tax laws.

1. Whether the School District is included expressly or by necessary implication within the oil-and-gas-severance-tax laws.

¶ 46. The School District and the School Board argue that they are not required to pay oil and gas severance taxes because they are not a “person,” as

defined in Sections 27-25-501(h) or 27-25-701(i), made subject to such taxes.

¶ 47. As discussed above, Sections 27-25-503(1) and 27-25-703(1) levy “annual privilege taxes upon every *person* engaging or continuing within this state in the business of producing, or severing [oil and gas]. . . .” Miss. Code Ann. §§ 27-25-503(1), 27-25-703(1) (Rev. 2010) (emphasis added). These taxes, more specifically, are “levied upon the producers of such [oil and gas] in the proportion of their ownership at the time of severance. . . .” Miss. Code Ann. §§ 27-25-509(1), 27-25-707(1) (Rev. 2010). A “producer,” in turn, is:

[A]ny *person* owning, controlling, managing or leasing any [oil or gas] property, or [oil or gas] well, and any *person* who produces in any manner any [oil or gas] by taking it from the earth or water in this state, and shall include any *person* owning any royalty or other interest in any [oil or gas] or its value, whether produced by him, or by some other person on his behalf, either by lease contract or otherwise.

Miss. Code Ann. §§ 27-25-501(i), 27-25-701(j) (Rev. 2010) (emphasis added). Thus, oil and gas severance taxes are levied upon “producers” who, based on the definition of that specific term, must be “persons.”

¶ 48. Sections 27-25-501(h) and 27-25-701(i) both define a “person” as “any natural person, firm, co-partnership, joint venture, association, corporation, estate, trust or any other group, or combination acting as a unit, and the plural as well as the singular number.”

Miss. Code Ann. §§ 27-25-501(h), 27-25-701(i) (Rev. 2010). Neither the state nor its political subdivisions are included within this definition.

¶ 49. This Court has stated that, where “‘a statute enumerates and specifies the subject or things upon which it is to operate, it is to be construed as excluding from its effect all those not expressly mentioned or under a general clause, those not of like kind or classification as those enumerated. . . .’” *Lee v. Alexander*, 607 So. 2d 30, 36 (Miss. 1992) (quoting *Southwest Drug Co. v. Howard Bros. Pharmacy of Jackson, Inc.*, 320 So. 2d 776, 779 (Miss. 1975)).

¶ 50. Title 1, Chapter 3 of the Mississippi Code sets forth some general rules for construing statutes. Miss. Code Ann. §§ 1-3-1 (Rev. 2005). Notably, Section 1-3-39 states that:

The term “person,” when used in any statute, shall apply to artificial as well as natural persons; and when used to designate the party whose property may be the subject of offense, shall include the United States, this state, or any other state, territory, or country, and any county, city, town or village which may lawfully own property in this state; also all public and private corporations, as well as individuals.

Miss. Code Ann. § 1-3-39 (Rev. 2005). Section 1-3-1, however, states that “[t]his chapter is applicable to every statute unless its general object, or the context of language construed, or other provisions of law indicate that a different meaning or application was

intended from that required by this chapter.” Miss. Code Ann. § 1-3-1 (Rev. 2005). Accordingly, the definitions and constructs within that chapter do not apply if another provision of law indicates that a different meaning is intended.

¶ 51. This Court cannot apply the general statutory definition of “person” here because the oil-and-gas-severance-tax statutes provide a specific, distinct definition of “person.” Sections 27-25-501(h) and 27-25-701(i) show that a different meaning of “person” than that contained in Section 1-3-39 was intended for the purposes of oil and gas severance taxation.

¶ 52. The oil and gas severance taxes levied under Sections 27-25-501 to 27-25-525 and 27-25-701 to 27-25-723 are levied upon “persons” only. Such taxes do not apply to the School District because it does not meet the definition of “person” set forth within those provisions. Further we find nothing in these sections that indicates the School District is subject to oil and gas severance taxes by necessary implication.

¶ 53. Three Attorney General opinions support our conclusion. In November 1979, the Attorney General was asked to determine whether the state, as a royalty owner, was liable for oil and gas severance taxes on its royalty. *Haddock*, Op. Att’y Gen. # 80-0552 (March 21, 1980). The Attorney General found that the state was considered a “producer,” but that oil and gas severance taxes could not be levied upon it because there was no “manifest declaration” in Sections

27-25-501 to 27-25-525 or 27-25-701 to 27-25-723 to indicate that it was subject to such taxes. *Id.*

¶ 54. An Attorney General opinion issued in December 1995 addresses the “person” issue more specifically. *Kuehnle*, Op. Att’y Gen. # 95-0772 (December 6, 1995). There, the Attorney General had been asked to determine “whether school districts are exempt from the imposition of a tax on royalties they receive from the production of oil or gas from sixteenth section lands.” *Id.* The Attorney General found that school districts are not subject to oil and gas severance taxes on such royalties because “a ‘governmental entity’ such as a school district does not fall within any of the categories that would expressly classify the school as a person to subject it to” such taxes. *Id.* Months later, the Chief Attorney for the Mississippi Tax Commission requested that the Attorney General reconsider the December 1995 opinion. *Long*, Op. Att’y Gen. # 96-0258 (May 10, 1996). The Attorney General once again affirmed the position that school districts’ sixteenth-section royalty interests are not subject to severance taxes. *Id.*

¶ 55. Attorney General opinions are not binding, but they certainly are useful in offering guidance to the Court. *Shelter Mut. Ins. Co. v. Dale*, 914 So. 2d 698, 703 (Miss. 2005) (quoting *In re Assessment of Ad Valorem Taxes on Leasehold Interest Held by Reed Mfg., Inc. ex rel. Itawamba County Bd. of Supervisors*, 854 So. 2d 1066, 1071 (Miss. 2003)).

¶ 56. The Department of Revenue, however, argues that, because the definition of “person” under Sections 27-25-501(h) and 27-25-701(i) includes “trusts,” the severance tax should apply, because the royalty owner here is the sixteenth-section land trust. This argument is strained. Sixteenth-section lands are indeed public-trust lands. *E.g., Bayview Land, Ltd. v. State ex rel. Clark*, 950 So. 2d 966, 972 (Miss. 2006) (citations omitted). Yet, the taxpayer here is the School District and not a “trust” per se. And it is difficult to read “public trust” into “trust,” given that nothing else in the statute implicates any type of public or governmental entity.

2. Whether the state or its political subdivisions can be required to pay oil and gas severance taxes on its sixteenth-section royalty interests under the Mississippi Constitution.

¶ 57. The Department of Revenue argues that Article 8, Section 206A of the Mississippi Constitution shows that the state is obligated to pay oil and gas severance taxes on state-owned lands. And the Department of Revenue contends that Section 27-25-506 of the Mississippi Code further recognizes that the state pays severance taxes. The School Board and the School District disagree. They insist that Section 206A requires that *all* moneys derived from oil and gas production on sixteenth-section lands be used only for the benefit of the schools within the local township.

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¶ 58. We find, however, that Section 206A does not require the state or its political subdivisions to pay oil and gas severance taxes on its sixteenth-section royalty interests, nor does it exempt them from such taxes.

¶ 59. Section 206A of the Mississippi Constitution established an “education improvement trust fund” to be used for improving education in Mississippi. Miss. Const. art. 8, § 206A. It states, in pertinent part, that

There is hereby created and established in the State Treasury a trust fund which may be used, as hereinafter provided, for the improvement of education within the State of Mississippi. There shall be deposited in such trust fund:

(a) The state’s share of all oil severance taxes and gas severance taxes derived from oil and gas resources under state-owned lands or from severed state-owned minerals;

(b) Any and all monies received by the state from the development, production and utilization of oil and gas resources under state-owned lands or from severed state-owned minerals, except for the following portions of such monies:

...

(ii) Monies derived from sixteenth section lands and

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lands held in lieu thereof or
from minerals severed from
sixteenth section lands and
lands held in lieu thereof;
and

. . .

(c) Any gift, donation, bequest,
trust, grant, endowment or transfer
of money or securities designated for
said trust fund; and

(d) All such monies from any
other source whatsoever as the Leg-
islature shall, in its discretion, so ap-
propriate or shall, by general law, so
direct.

Miss. Const. art. 8, § 206A. Consistent with this constitutional provision, Section 27-25-506 provides that “[t]he state’s share of all oil and gas severance taxes derived from oil and gas resources under state-owned lands or from severed state-owned minerals shall be deposited into the State Treasury to the credit of the trust fund created in Section 206A. . . .” Miss. Code Ann. § 27-25-506 (Rev. 2010).

¶ 60. Section 206A thus delineates four categories of moneys that are to be deposited into the education improvement trust fund; this case concerns subsections (a) and (b)(ii) specifically.

¶ 61. Subsection (a) directs that “[t]he state’s share of all oil severance taxes and gas severance taxes derived from oil and gas resources under state-owned

lands or from severed state-owned minerals” shall be deposited into the Section 206A trust fund. Miss. Const. art. 8, § 206A(a). The Department of Revenue argues that this means that state-owned lands, which includes sixteenth-section lands, are taxable and that the state is required to pay severance taxes on oil and gas derived from those lands. The School District and School Board contend that subsection (a) must be read together with subsection (b)(ii).

¶ 62. Subsection (b)(ii) states that “[a]ny and all monies received by the state from the development, production and utilization of oil and gas resources under state-owned lands or from severed state-owned minerals” are to be deposited into the Section 206A trust fund *except* for “[m]onies derived from sixteenth section lands and lands held in lieu thereof or from minerals severed from sixteenth section lands. . . .” Miss. Const. art. 8, § 206A(b)(ii). The School District and the School Board argue that subsection (b)(ii) means that *all* moneys derived from sixteenth-section lands are excepted from being deposited into the Section 206A trust fund; they insist that all such moneys must go into the local township fund instead. They maintain that their interpretation is consistent with Section 29-3-113, which states that “[a]ll expendable funds derived from sixteenth section or lieu lands shall be credited to the school districts of the township in which such sixteenth section lands may be located” and that “[s]uch funds shall not be expended except for the purpose of education of the educable children of the school district to which they belong, or as otherwise

may be provided by law.” (citing Miss. Code Ann. 29-3-109 (Rev. 2010)).

¶ 63. The Department of Revenue interprets subsection (b)(ii) differently. It argues that subsection (b)(ii) excepts the income or revenue derived from oil and gas production on sixteenth-section lands from being deposited into Section 206A trust fund but does not exempt severance taxes from being deposited into that fund.

¶ 64. We disagree with the Department of Revenue to the extent that it interprets subsection (a) as proving that the state pays severance taxes on state-owned lands. Subsection (a) says only that all severance taxes received from oil and gas resources on state-owned lands must go into the Section 206A trust fund. Miss. Const. art. 8, § 206A(b). It says nothing, however, about who is or is not required to pay those taxes. Section 206A’s only concern is that the state’s share of the severance taxes be deposited into the trust fund; it is not concerned with who the taxpayer might be. Accordingly, subsection (a) neither subjects the state to nor excludes the state from paying oil and gas severance-taxes: It is silent on that issue.

¶ 65. We also disagree with the School District’s and School Board’s position that Section 206A excepts all moneys derived from oil and gas production on state-owned lands from being deposited into the Section 206A trust fund. Subsection (a) addresses oil and gas severance taxes, while Subsection (b) refers specifically to “[a]ny and all monies received by the state”

from oil and gas production on state-owned lands. Miss. Const. art. 8, § 206A(a), (b). The fact that Section 206A treats severance taxes separately from “[a]ny and all monies received” indicates that these two categories are distinct. Thus, contrary to the School District’s and the School Board’s assertions, “[a]ny and all monies received” cannot be interpreted as encompassing severance-tax moneys. If “[a]ny and all monies received” under subsection (b) encompassed severance taxes, then subsection (a) would be rendered meaningless. The most reasonable interpretation then is that subsection (b) refers only to net income, i.e., “monies received,” and not severance taxes. Thus, under subsection (b)(ii), only the net income derived from sixteenth-section lands is excepted from being deposited into the Section 206A trust fund.

¶ 66. The Court finds that, read together, the most reasonable interpretation of Section 206A(a) and (b)(ii) is as follows: The state’s share of all oil and gas severance taxes derived from state-owned lands – regardless of who the taxpayer may be – is to be deposited into the Section 206A trust fund; additionally, any and all net income received by the state from oil and gas production on state-owned lands is to go into the Section 206A trust fund as well, *except* for any and all net income derived from sixteenth-section lands.

¶ 67. The above construction of Section 206A is not contrary to Section 211 of the Mississippi Constitution or to Sections 29-3-109 or 29-3-113 of the Mississippi Code. Section 211 of the Mississippi Constitution affirms that sixteenth-section lands are

reserved for the support or benefit of township schools. Miss. Const. art. 8, § 211. That section, however, does not necessarily prohibit taxes or fees from being assessed on such lands. Section 29-3-109 states that “[a]ll expendable funds derived from sixteenth section or lieu lands shall be credited to the school districts of the township in which such sixteenth section lands may be located. . . . [and] [s]uch funds shall not be expended except for the purpose of education of the educable children of the school district to which they belong, or as otherwise may be provided by law.” Miss. Code Ann. § 29-3-109 (Rev. 2010). And Section 29-3-113(d) directs that “royalties received from the sale of . . . oil and gas” are to be deposited into the school board’s principal fund. Miss. Code Ann. § 29-3-113(d) (Rev. 2010). These two code sections, however, cannot mean that every cent derived from sixteenth-section lands must be used only for the education of the children within the township. Other statutes show that this position is untenable. Section 29-3-73, for example, provides that sixteenth-section lands that lie within, and are benefitted by, a drainage district are liable for their “pro rata share of the costs, expenses, taxes, and assessments relating to said district.” Miss. Code Ann. § 29-3-73 (Rev. 2010). If the land is held by a lessee, the lease contract is to fix whether the lessee or the school board is liable for these taxes and assessments. *Id.* And if the land is not leased, the school board is obligated to pay all drainage taxes and assessments and can do so “out of any sixteenth section funds belonging to the township in which such lands are located.” *Id.* Drainage taxes and assessments are thus payable out of

funds that otherwise would be used for the local schools. Additionally, Section 29-3-99 states that school districts' royalty interests from oil and gas production on sixteenth-section lands are computed after deducting any use by the lessee. Miss. Code Ann. § 29-3-99 (Rev. 2010). Such deduction reduces the amount of money that otherwise would be paid as part of the school district's royalty interest. Sections 29-3-73 and 29-3-99 thus indicate that local schools are not always entitled to every cent derived from sixteenth-section lands.

¶ 68. Here, though, we conclude that Section 206A neither requires the state or its political subdivisions to pay oil and gas severance taxes on its sixteenth-section royalty interests nor exempts them from such taxes.

II. Whether the statute of limitations restricts the period of time in which the School District can seek a refund of severance taxes that it has paid erroneously.

¶ 69. After finding that the School District was not required to pay severance taxes, the chancellor found that the three-year statute of limitations in Section 27-73-5 barred the School District and the Oil Companies from claiming a refund for any taxes paid before July 2, 2005 – three years prior to the date that Venture and the School District had filed their initial complaint. The chancellor found that the cases in which this Court had held that the statute of

limitations and laches do not run against the state or its subdivisions had involved litigation between the state, or one of its subdivisions, and a private party. He could not find any case that had addressed whether the statute of limitations applied in a dispute between a political subdivision of the state and a state agency. The chancellor thus reasoned that, since the state had created the School District, it had the power to set statutes of limitations for any claims that the School District made against its creator. The state, he said, has “‘authority to control its political subdivisions.’” (citing *State v. Hinds County Board of Supervisors*, 635 So. 2d 839, 843 (Miss. 1994)).

A. Whether the statute of limitations applies.

¶ 70. The Plaintiffs assert that Article 4, Section 104 of the Mississippi Constitution and Section 15-1-51 of the Mississippi Code are clear that the statutes of limitation do not run against the state or any of its subdivisions. They argue that the Constitution governs this issue. *Newell v. State*, 308 So. 2d 71, 77 (Miss. 1975); *Chevron U.S.A., Inc. v. State*, 578 So. 2d 644, 648 (Miss. 1991); *Town of Crenshaw v. Panola County*, 115 Miss. 891, 76 So. 741 (1917). Further, they contend that the chancellor erred in relying upon *Hinds County Board of Supervisors* in reaching his decision, as the statutes of limitations were not at issue in that case.

¶ 71. The Department of Revenue, on the other hand, asserts that the Oil Companies – not the School

District – are the taxpayers; therefore, the statute of limitations is not being applied to the State or its subdivisions. It argues further that the state and its subdivisions, on occasion, have been deemed subject to statutes of limitation. It cites three cases as support: *Town of Tutwiler v. Gibson*, 117 Miss. 879, 78 So. 926 (1918); *Tallahatchie County v. Little*, 93 Miss. 88, 46 So. 257 (1908); and *Gully v. Bew*, 170 Miss. 427, 154 So. 284 (1934). The Department of Revenue also warns that failure to apply a statute of limitations could result in “a severe blow to the state’s coffers.” Additionally, it asserts that records dating back beyond three years have been destroyed under the “State Document Retention Policy.”

¶ 72. We already have addressed the Department of Revenue’s contention that the Oil Companies – not the School District – are the taxpayers and found that argument to be without merit. *See, supra* Issue I.A. *California Co.* is clear that the severance taxes are levied upon the School District in the first instance. *California Co.*, 74 So. 2d at 858. Even though the Oil Companies may remit these taxes, the taxes are deducted from the School District’s ownership share; any refund, therefore, would belong to the School District.

¶ 73. Article 4, Section 104 of the Mississippi Constitution states that: “[s]tatutes of limitation in civil causes shall not run against the state, or any subdivision or municipal corporation thereof.” Miss. Const. art. IV, § 104. Section 15-1-51 repeats this same language. Miss. Code Ann. § 15-1-51 (Rev. 2012).

¶ 74. This Court has said that the purpose of Sections 104 and 15-1-51 “is that the body politic should not suffer because of the neglect or procrastination of its public servants in promptly asserting and protecting rights of the general public in civil matters.” *Miss. State Highway Comm’n v. New Albany Gas Sys.*, 534 So. 2d 204, 207 (Miss. 1988). Since Section 104 was enacted, this Court consistently has upheld the “immunity” a governmental entity enjoys from these provisions. *Enroth v. Mem’l Hosp. at Gulfport*, 566 So. 2d 202, 206 (Miss. 1990); *see also Murphree v. Aberdeen-Monroe County Hosp.*, 671 So. 2d 1300 (Miss. 1996); *State Highway Comm’n v. New Albany Gas Sys.*, 534 So. 2d 204, 207 (Miss. 1988); *Board of Educ. of Itawamba County v. Loague*, 405 So. 2d 122, 124-25 (Miss. 1981); *Nugent & Pullen v. Robertson*, 126 Miss. 419, 88 So. 895, 897-98 (1921); *Grenada Lumber Co. v. State*, 98 Miss. 536, 54 So. 8, 9 (1911); *Adams v. Illinois Cent. R. Co.*, 71 Miss. 752, 15 So. 640 (1894).

¶ 75. None of the cases cited by the Department of Revenue is persuasive to the contrary. In *Gibson*, the Court held that a municipality was subject to the time limitations for filing an appeal. *Gibson*, 78 So. at 926-27. The Court said that “the time within which appeals to the Supreme Court must be taken is not a statute of limitation in the ordinary sense.” *Id.* at 926. Therefore, it found that Article 4, Section 104 of the Constitution had no bearing upon that case. *Id.* In *Little*, the Court held only that the two-year period allowed for redemption from a tax sale did not constitute a “statute of limitations” under Article 4, Section 104. *Little*, 46 So. at

258. Finally, in *Gully*, the Court held that the state tax collector was subject to a six-year statutory limitations period for filing suit to foreclose two mortgages securing illegal loans made by a county. *Gully*, 154 So. at 288. The Court said that the county's cause of action had accrued as soon as the loans had been made, and it noted that, under Article 4, Section 104 of the Mississippi Constitution, the statute of limitations did not run against the county. *Id.* But, it found that the six-year statute of limitations applied in that case, because that particular statute of limitations was "not a limitation on the cause of action but a limitation on the right of the [state tax collector] to sue on an existing cause of action in favor of the county." *Id.*

¶ 76. All of the above-mentioned cases, however, involved suits between governmental and private entities. Here we have a suit between governmental entities. The only case that appears to address the question before us is *Town of Crenshaw v. Panola County*, 115 Miss. 891, 76 So. 741 (1917).

¶ 77. There, the Town of Crenshaw had presented a claim to the Panola County Board of Supervisors in 1915 for its share of the ad valorem taxes Panola County had collected for the years 1907 and 1908. *Id.* After the board of supervisors rejected the claim, the Town sued in justice court, which rendered judgment in favor of the Town. *Id.* Panola County appealed to the circuit court, asserting that the Town's suit was barred by a six-year statute of limitations. *Id.* 741-42. The circuit court agreed with Panola County. *Id.* at 742. Like the chancery court here, the court took

the position that Section 104 prohibited the Legislature only from authorizing a statute of limitations against the state, its subdivisions, and municipal corporations when private parties are involved. *Id.* This Court rejected the circuit court's interpretation of Section 104 and held that the statute of limitations did not apply against the town:

Section 104 of our Constitution expressly provides that the statutes of limitation shall not run against municipal corporations. The plaintiff in this case is a municipal corporation, and we can find nothing in the Constitution to warrant the exception sought to be made in this case. The county could, of course, invoke the statute against a natural person or private corporation, but the Constitution closes the door when the plaintiff is a municipal corporation.

Town of Crenshaw, 76 So. at 743. *Town of Crenshaw* thus supports that Section 104 applies even when the state, or any of its subdivisions, is either plaintiff or defendant.

¶ 78. That said, because the chancellor based his decision on the statute of limitations, he did not reach the question of whether the doctrines of waiver and/or estoppel should apply in this case.⁷ We believe they

⁷ We acknowledge that the doctrine of laches was raised below, but the well-settled law in Mississippi is that neither the state nor its entities is subject to the statutes of limitations or chargeable with the laches of its officials. *Board of Education of Lamar County v. Hudson*, 585 So. 2d 683, 688 (Miss. 1991); *Hill v. Thompson*, 564 So. 2d 1, 14 (Miss. 1989).

warrant consideration in this instance. Accordingly, we remand this issue to the chancery court to allow these doctrines to be considered fully.

III. Whether the School District is liable for administrative expense taxes on its royalty interests derived from oil and gas production on sixteenth-section land.

¶ 79. A trial court's grant of summary judgment is reviewed de novo. *Hooker v. Greer*, 81 So. 3d 1103, 1108 (Miss. 2012) (citing *Waggoner v. Williamson*, 8 So. 3d 147, 152 (Miss. 2009)). Summary judgment is proper when "the pleadings, depositions, answers to interrogatories and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Miss. R. Civ. P. 56(c). The evidence is considered in the light most favorable to the nonmoving party. *Hooker*, So. 3d at 1108 (citing *Waggoner*, 8 So. 3d at 152). The movant has the burden of showing that no genuine issue of material fact exists, and the nonmoving party is given the benefit of the doubt as to the existence of a material fact. *Hooker*, 81 So. 3d at 1108 (citing *Waggoner*, 8 So. 3d at 152-53).

¶ 80. The chancellor found that the School District was required to pay administrative expense taxes on its sixteenth-section royalty interests. The chancellor relied on *Bidart Brothers v. California Apple Commission*, 73 F.3d 925, 927 (9th Cir. 1996), to determine that these assessments are fees, not taxes. The

chancellor said that these fees fund the regulatory and enforcement functions of the Oil and Gas Board and that the Plaintiffs benefitted directly from the Oil and Gas Board's services. He noted that the Oil and Gas Board ensures that the School District is paid its fair royalty share.

¶ 81. Once again, we note that the Secretary of State does not appeal the chancellor's grant of summary judgment for the Oil and Gas Board. The School District and School Board, however, assert that the chancellor's tax-fee distinction is inconsequential: All monies, whether taxes or fees, must go to the School District. Alternatively, the School District and School Board challenge that these fees are not reasonably related to sixteenth-section lands. The operations of the Oil and Gas Board, they argue, are expansive and serve the broad interests of the public, not just sixteenth-section lands.

¶ 82. Section 53-1-73 of the Mississippi Code levies an administrative expense tax on each barrel of oil produced in the state. Miss. Code Ann. § 53-1-73 (Rev. 2003). The moneys collected are to be "used exclusively to pay the expenses and other costs in connection with the functioning of the State Oil and Gas Board and the administration of the oil and gas conservation laws of the State of Mississippi now in force or hereafter enacted and the rules, regulations and orders of said board." Miss. Code Ann. § 53-1-73 (Rev. 2003). The Oil and Gas Board has the power to increase or reduce the amount charged within the limits set forth in Section 53-1-73. *Id.*

¶ 83. All “persons” owning a royalty interest are liable for administrative expense taxes in proportion to their ownership at the time of production. Miss. Code Ann. § 53-1-75 (Rev. 2003). Unlike the definition of “person” under the oil-and-gas-severance-tax statutes, the definition of “person” for the purposes of administrative expense taxes does include the state and its political subdivisions. Miss. Code Ann. § 53-1-71 (Rev. 2003). Section 53-1-71 states, in pertinent part, that the term “person,” as used in Section 53-1-73, “shall mean any individual, corporation, partnership, association, or any state, municipality, political subdivision of any state. . . .” Miss. Code Ann. § 53-1-71 (Rev. 2003). The Legislature first included individuals, partnerships, associations, states, municipalities, political subdivisions of a state, and any agency, in the statute in 2009 Miss. Code.

¶ 84. The School District is required to pay administrative expense taxes to the Oil and Gas Board. The assessments levied under Section 53-1-73 are labeled more appropriately as fees rather than taxes.

¶ 85. In *San Juan Cellular Telephone Co. v. Public Service Commission of Puerto Rico*, 967 F.2d 683 (1st Cir. 1992), then-Chief Judge Breyer discussed the general approach that courts have used to distinguish taxes from fees:

Courts have had to distinguish “taxes” from regulatory “fees” in a variety of statutory contexts. Yet, in doing so, they have analyzed the legal issues in similar ways. They have sketched a spectrum with a paradigmatic tax

at one end and a paradigmatic fee at the other. The classic “tax” is imposed by a legislature upon many, or all, citizens. It raises money, contributed to a general fund, and spent for the benefit of the entire community. The classic “regulatory fee” is imposed by an agency upon those subject to its regulation. It may serve regulatory purposes directly by, for example, deliberately discouraging particular conduct by making it more expensive. Or, it may serve such purposes indirectly by, for example, raising money placed in a special fund to help defray the agency’s regulation-related expenses.

Courts facing cases that lie near the middle of this spectrum have tended (sometimes with minor differences reflecting the different statutes at issue) to emphasize the revenue’s ultimate use, asking whether it provides a general benefit to the public, of a sort often financed by a general tax, or whether it provides more narrow benefits to regulated companies or defrays the agency’s costs of regulation.

San Juan Cellular Tel. Co., 967 F.2d at 685 (1st Cir. 1992) (citations omitted). The United States Court of Appeals for the First Circuit held that the “period rate” or “periodic fee” in that particular case was a fee, and not a tax, because: (1) a regulatory agency assessed the fee; (2) the agency placed the money in a special fund; and (3) the money was used to defray the expenses of agency rather than for a general purpose. *Id.* at 686.

¶ 86. The administrative expense tax levied under Section 53-1-73 is more a fee than a tax. The Oil and Gas Board fixes the actual charge and collects the assessments. Miss. Code Ann. § 53-1-73 (Rev. 2003). The money is then deposited into a special fund known as the “Oil and Gas Conservation Fund.” Miss. Code Ann. § 53-1-77(1) (Rev. 2003). That money is “held in trust for the use of the board to pay the expenses and costs incurred in connection with the administration and enforcement of the oil and gas conservation laws of the State of Mississippi and the rules, regulations and orders” of the Oil and Gas Board. Miss. Code Ann. § 53-1-77(2) (Rev. 2003). The Oil and Gas Board is self-funded and relies heavily on these assessments. These assessments accounted for \$2.88 million of the Oil and Gas Board’s \$3.62 million budget for fiscal year 2009, and \$1.96 million of its \$2.24 million budget for fiscal year 2010. Excess money within the Oil and Gas Conservation Fund is used to plug oil or gas “orphan” wells that present imminent threats to the environment. Miss. Code Ann. § 53-1-77(4)-(7) (Rev. 2003).

¶ 87. The assessments under Section 53-1-73 satisfy all the criteria of a fee: The Oil and Gas Board assesses the fee, the money goes into a special fund, and the money is used to defray the Oil and Gas Board’s costs of operation.

¶ 88. If the assessments under Section 53-1-73 are fees, no constitutional provision or law would preclude the School District from having to pay these fees. Section 206A of the Mississippi Constitution, discussed *supra*, Issue I.B.1., does not require that every

cent derived from sixteenth-section property be used for the local schools. Other statutes support this as well. *See supra*, Issue I.B.1.

¶ 89. In the absence of any constitutional or other lawful barrier, the School District can be required to pay the administrative expense tax because it is expressly included within the statute. The School District fits within the definition of “person” owing administrative expense taxes. Unlike the oil-and-gas-severance-tax statutes, the Legislature has expressly made the state and its political subdivisions subject to this assessment.

¶ 90. For these reasons, the chancellor did not err in granting summary judgment for the Oil and Gas Board.

CONCLUSION

¶ 91. We find that the School District is not required to pay oil and gas severance taxes on its sixteenth-section royalty interests. But the School District is required to pay administrative expense taxes on its sixteenth-section royalty interests. On remand, the chancery court shall determine whether the doctrines of waiver and/or estoppel should apply to the Plaintiffs’ refund claims. Accordingly, the judgment of the Jones County Chancery Court is affirmed in part and reversed in part and remanded for further proceedings consistent with this opinion.

¶ 92. **AFFIRMED IN PART; REVERSED IN PART AND REMANDED.**

DICKINSON AND RANDOLPH, P.JJ., LAMAR, KITCHENS, CHANDLER, KING AND COLEMAN, JJ., CONCUR. WALLER, C.J., NOT PARTICIPATING.
