ELECTRONICALLY FILED OCT 09, 2019 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA
No. 19-0674
EMMET COUNTY CASE NO. CVCV019170

STATELINE COOPERATIVE,
Petitioner-Appellant,
vs.
IOWA PROPERTY ASSESSMENT APPEAL BOARD
Respondent-Appellee.

EMMET COUNTY BOARD OF REVIEW,
Cross Appellant-Cross Appellant
vs.
STATELINE COOPERATIVE and IOWA PROPERTY ASSESSMENT APPEAL BOARD,
Cross Appellees-Cross Appellees.

APPEAL FROM THE IOWA DISTRICT COURT IN AND FOR EMMET COUNTY
THE HONORABLE DON E. COURTNEY
DISTRICT COURT JUDGE

EMMET COUNTY BOARD OF REVIEW FINAL REPLY BRIEF

BRETT RYAN
WATSON & RYAN, PLC
535 West Broadway, Ste. 200
Council Bluffs, IA 51503
Telephone: (712) 322-0448
Telefax: (712) 256-1545

PROOF OF SERVICE

I hereby certify that on October 9, 2019, a copy of the Defendant-Appellee's Reply Brief and Request for Oral Argument was served upon the following persons and upon the Clerk of the Supreme Court through the electronic filing of the same with the Iowa Judicial Brank Appellant Courts' EDMS system

/s/ Brett Ryan

SIGNATURE

CERTIFICATE OF FILING

I hereby certify that on the October 9, 2019, I filed Emmet County Board of Review's Reply Brief and Request for Oral Argument with the Clerk of the Supreme Court through electronic filing the same with the Iowa Judicial Branch Appellate Courts' EDMS system.

/s/ Brett Ryan

BRETT RYAN, #AT0006799
WATSON & RYAN, PLC
535 West Broadway, Ste. 200
Council Bluffs, IA 51503
Telephone: (712) 322-0448
Telefax: (712) 256-1545
E-mail: bryan@watsonryan.com
ATTORNEYS FOR EMMET COUNTY BOARD OF REVIEW

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

Other Authorities

ARGUMENT

I. THE REQUIREMENT OF STRICT SCRUTINY OF EXEMPTION CLAIMS REQUIRES A FINDING OF TAXABILITY ABSENT A CLEAR SHOWING OF EXEMPT STATUS, WHICH DOES NOT EXIST FOR THE PROPERTY FOUND TO BE EXEMPT BY THE PAAB.

In an exemption appeal the burden is upon the one claiming tax exemption to show that the property falls squarely within the exemption statute. *Stateline v. Board of Review of Union County, Iowa*, 500 N.W.2d 14 (Iowa 1993); *Bethesda Foundation v. Board of Review of Madison County*, 453 N.W.2d 224 (Iowa App. 1990); *Mayflower Homes v. Wapello County Bd. of Review*, 472 N.W.2d 632, 634 (Iowa App. 1991). Statutes exempting property from taxation must be strictly construed, and if there is any doubt upon the question, it must be resolved against exemption and in favor of taxation. *Dow City Senior Citizens Housing, Inc. v. Board of Review of Crawford County*, 230 N.W.2d 497 (Iowa 1975).

The majority of this property is already exempt from taxation. The total cost of the improvements on the property was over $10 million dollars, and the assessed value is $4.2 million dollars. In other words, the majority of this property has already been exempted from taxation. Stateline

urges the Court to take a broad view and apply it everything they consider machinery. This is directly contradictory to established Iowa law, and is asking the Court to overrule precedent established over multiple cases over several decades.

The PAAB claims that the Iowa Real Property Appraisal Manual (the "Manual") is not authority, because it doesn't determine what is or is not exempt. This is not a true statement. The Manual provides what is to be assessed (and of equal importance, what is not to be assessed) when valuing feed mills for assessment purposes. Specifically, the Manual drafted by the Iowa Department of Revenue discusses what is included in valuing a feed mill (unquestionably a manufacturing facility). The undisputed evidence is that there was property present on the property that was not included in the assessment, because it was not listed in the manual. (App.pp. 1103-1104). This is the Manual identifying what is or is not equipment in a feed mill.

The PAAB points to the inclusion of car wash equipment as evidence that the Manual doesn't provide authority as to what is taxable, as car wash equipment is exempt under Iowa Code §427A.1(16). It should be

noted that the statute that exempted car wash equipment was not passed until June, 2006. 2006 Ia. Legis. Serv. Ch. 1158 (WEST) (H.F. 2794).

The Manual was issued in 2008 following revisions that lasted several years. Manual, pg. 1-4, (available at https://tax.iowa.gov/sites/default /files/idr/documents/1INTRODUCTIONSECTION.pdf). The Manual no longer contains methodology for valuing tools, computer equipment, or dies, jigs, etc., even though those were previously taxable under Iowa law. *See, e.g., Deere Manufacturing Co. v. Zeiner*, 78 N.W. 2d 527 (Iowa 1956). It is far more likely that car wash equipment was included as an oversight by Vanguard Appraisals, who drafted the Manual but was not included in the legislative process. *Id.* Iowa Code §421.17(17) requires that the assessor follow the Manual in determining what is or isn't exempt property when assessing a feed mill. There is no dispute that the assessment did not include significant amounts of equipment because said equipment was not listed as taxable property of a feed mill in the Manual. The inclusion of this property in the Manual is the Department of Revenue stating its position of what it considers non-exempt real property.

The undisputed evidence at trial was that the assessment contains only property the Manual indicated should be assessed. (App.pp.

1103-1104), and excludes property not included in the Manual. Under the circumstances, there is no precedent that supports the 'expansive' interpretation of what should be exempt, but there is clear and unambiguous authority supporting valuing the property as urged by the Board of Review. Under the clear requirements of Iowa law, all doubt should be resolved in favor of taxation.

II. STATELINE DID NOT CARRY ITS BURDEN OF PROVING THE PROPERTY'S VALUE ABSENT THE EXEMPT EQUIPMENT.

Iowa law requires a taxpayer claiming its assessed value includes value of property that is not taxable, must show the value of the property independent of the exempt property. *See, e.g. White v. Board of Review of Polk County* 244 N.W. 2d 765 (Iowa 1976) (taxpayer's argument that assessment includes buildings and other property that no longer exist insufficient evidence to establish value of property); *Deere Manufacturing Co. v. Zeiner*, 78 N.W. 2d 527 (Iowa 1956)(taxpayer claiming a portion of its value is too high, but "accepting" other portions of the assessment).

The above-listed authorities all contain a situation where a taxpayer is asking to have a portion of assessed value removed because it is not taxable (or, in the case of *White*, no longer exists). The Courts in these

cases have refused to deviate from the position set forth in *White* (the taxpayer was seeking to have $25,000 removed from its assessment, which was the value assigned to a building that had been torn down prior to the assessment date and was no longer present on the property). The *White* court refused to let the taxpayer simply "accept the assessor's value" and remove the value on the property card assigned to that component, instead ruling that the taxpayer must prove the value of the property independently. *Id.*

This PAAB claims that these cases are not relevant, stating that they are appeals where the taxpayer was claiming that the property was over-assessed. This is a red herring. In *White,* the taxpayer's claim was based upon an argument that the assessor should remove the value on the property card because the property was no longer taxable, but "accepted" the remainder of the assessment. In *Deere,* the taxpayer claimed taxable property then assessed for property tax purposes was too high, but "accepted" the remaining values from the assessor. These taxpayers advocated *exactly* the same approach to valuation that Stateline advocated ("accepting" the value of the components of the assessment that they liked) and that the PAAB used, and both were rejected by the Court.

The PAAB cites to *Rose Acres Farms, Inc. v. Bd. Of Review of Madison Cnty*, 479 N.W.2d 261,263 (Iowa 1991) to support their position. In the *Rose Acres* case cited by the PAAB, it is not known how the lower court addressed the removal of the value of the equipment found to be exempt on remand. As such, it is of little guidance in addressing this issue.

The PAAB also argues that it's determination of value on remand by simply removing the assessed value in *Wendling Quarries v. Property Assessment Appeal Board*, 865 N.W. 2d 635 (Iowa 2015) somehow supports their position. In *Wendling*, the Court found that part of the quarry scale was exempt, but the taxpayer had to present evidence that demonstrated the value of the portion of the scale claimed to be exempt as "equipment removed upon relocation", and the value of the non-exempt structure that made up the remainder of the scale. *Id.* at 640. The taxpayer couldn't remove the entire value the assessor had assigned to the scale, but had to provide independent evidence of the value of the equipment vs. the taxable property. The PAAB, on remand, apparently ignored the direction of the *Wendling* Court and just removed the entire value. The PAAB now cites to this failure to comply with the ruling as proof their actions here are correct. Such an analysis is not proper, and should be ignored. Further, the

scales exempted by the PAAB in the present case contain a concrete foundation exactly like those in *Wendling*, and no evidence was provided for the value of the clearly taxable components. These scales very much into the same situation that Stateline faced on remand, where they were charged with showing the value of the overhead bins, should they be found to be exempt.

Stateline's evidence of value fails to meet Iowa law requirements. It is the result of simply taking the assessed value, and either subtracting the assessed value for that component of the overall property, or calculating a value based upon the percentage of the assessed value for a component of the subject property. There was no independent evidence of any of the value of the equipment, no evidence of the value for the underlying ground, or any adjustment for differences between the cost of construction and the replacement cost new calculated by the assessor. Stateline's analysis doesn't reflect actual value of the property, and their approach of attacking only components of the assessment, while offering no evidence of overall value is contrary to Iowa law.

Stateline is, in essence, trying to use the assessor's numbers to prove the assessor's numbers are wrong, "accepting" parts of the assessment (that don't reflect actual replacement costs) and asking that other parts be

removed, without providing any independent evidence of the value of the property. This is circular reasoning, and was expressly rejected by the Court in *White,* which, although a case where the taxpayer had alleged overassessment, their argument was that they were entitled to removal of the value the assessor assigned to the building that was torn down and no longer existed (which is the exact same situation as the present case, only exchange "exempt property" for "property that no longer exists". The Court rejected this argument, noting that the other components of the property may be valued too low, and a showing of value is required for a taxpayer to succeed. There has been no such evidence, and as such, Stateline has failed their burden of proof.

CONCLUSION

Based on the foregoing arguments and authorities, this Court should affirm the decision of Emmet County Board of Review, and restore the value of the subject property to its original assessed value.

/s/ Brett Ryan

BRETT RYAN, #AT0006799
WATSON & RYAN, PLC
535 West Broadway, Ste. 200
Council Bluffs, IA 51503
Telephone: (712) 322-0448
Telefax: (712) 256-1545
E-mail: bryan@watsonryan.com
ATTORNEY FOR EMMET COUNTY
BOARD OF REVIEW

STATEMENT OF DESIRE TO BE HEARD IN ORAL ARGUMENT

Appellee hereby states that it desires to be heard in oral argument upon submission to the Supreme Court of Iowa.

/s/ Brett Ryan
BRETT RYAN, #AT0006799
WATSON & RYAN, PLC
535 West Broadway, Ste. 200
Council Bluffs, IA 51503
Telephone: (712) 322-0448
Telefax: (712) 256-1545
E-mail: bryan@watsonryan.com
ATTORNEY FOR EMMET
COUNTY BOARD OF REVIEW

ATTORNEY'S COST CERTIFICATE

I hereby certify that the actual cost of printing the foregoing Appellee's Proof Reply Brief and Request for Oral Argument was the sum of $60.00.

/s/ Brett Ryan
BRETT RYAN, #AT0006799
WATSON & RYAN, PLC
535 West Broadway, Ste. 200
Council Bluffs, IA 51503
Telephone: (712) 322-0448
Telefax: (712) 256-1545
E-mail: bryan@watsonryan.com
ATTORNEY FOR EMMET
COUNTY BOARD OF REVIEW

-CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

   [X] this brief contains 1637 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

   [ ] this brief uses a monospaced typeface and contains [state the number of] lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

   [X) this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 14 point Times New Roman, or

   [ ] this brief has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

10-9-19 /s/ Brett Ryan

DATE

BRETT RYAN, #AT0006799
WATSON & RYAN, PLC
535 West Broadway, Ste. 200
Council Bluffs, IA 51503
Telephone: (712) 322-0448
Telefax: (712) 256-1545
E-mail: bryan@watsonryan.com
ATTORNEY FOR EMMET
COUNTY BOARD OF REVIEW