THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2009-CP-21-1902

James W. Peterson, Jr., as Receiver for Pee Dee Land Company, LLC, and on behalf of its wholly-owned subsidiary Waverly Woods at Claussen, LLC,	Plaintiff–Respondent,
v.	
Florence County,	Defendant–Respondent,
and	
Dean C. Fowler, Jr., in his official capacity as Florence County Treasurer, and H. Wayne Joye, in his official capacity as Florence County Auditor,	Proposed Interveners–Appellants.

INITIAL BRIEF OF APPELLANTS

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Columbia, South Carolina
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QUESTIONS PRESENTED

1. The South Carolina Revenue Procedures Act directs circuit courts to dismiss without prejudice any tax-related dispute that is presented to them. The Pee Dee Land Company filed this case in the circuit court and requested that the circuit court allow the Company to receive a discounted property tax rate and to relieve the Company of all late-payment penalties associated with its property taxes. Did the circuit court have subject matter jurisdiction over this case?

2. The South Carolina Code provides that a taxpayer seeking a tax discount for a subdivided parcel must apply for that discount no later than May 1st of the year in which the discount is sought. The Pee Dee Land Company concedes that it did not file such an application. Should the Company be allowed to receive the multiple-lot tax discount?

3. The South Carolina Code prescribes certain criteria for a developer to qualify for a multiple-lot tax discount. The Pee Dee Land Company did not proffer any evidence that it meets these criteria. Did the circuit court err when it held that the Company is entitled to receive the tax discount?

4. The State Tax Code vests certain statutory duties in county auditors and county treasurers with respect to the tax-collection process. The circuit court did not permit either of these county officials to intervene in this case despite the fact that this case directly impacts their statutory duties. Did the circuit court err in denying their respective motions to intervene?

STATEMENT OF THE CASE

This dispute has a winding procedural history. In fact, this is the second time that it has been before this Court. The case finds its roots in the Respondent Pee Dee Land Company's failure to timely apply for a multiple-lot discount on certain real property taxes in Florence County and its subsequent request that the circuit court—which lacked jurisdiction over these issues—undo the Company's oversight.

For ease of understanding, Appellants—the Florence County Treasurer and Auditor—have organized this Statement of the Case based on each court to which these issues have been presented.

I. Initial Proceedings Before the Circuit Court

On August 25, 2009, Respondent James W. Peterson, Jr., as receiver for the Pee Dee Land Company, LLC, and its wholly-owned subsidiary Waverly Woods at Claussen, LLC (hereinafter "Pee Dee Land Company"), filed a Petition for Rule to Show Cause in the circuit court in Florence County. The Petition requested that the circuit court permit the Company to receive a property tax discount available for multiple lots even though the statutorily-prescribed time for seeking the tax break had passed. (Pet. for Rule to Show Cause ¶ "Wherefore" (Aug. 25, 2009).)

The very next day, Respondent Florence County filed a responsive pleading. (*See generally* Def.'s Resp. to Pet. of Pl. (Aug. 26, 2009).) In its response, Florence County admitted every substantive allegation in the pleading and—despite the unambiguous deadline set forth in South Carolina Code § 12-43-225(B) to apply for the tax break—requested that the circuit court issue an order directing the County to collect whatever

taxes "the Court deems appropriate after analyzing the positions of the parties in this matter." (*Id.* ¶ "Wherefore"(b).)

On September 30, 2009, the circuit court issued an order granting the Pee Dee Land Company's request and directing Florence County to "apply the multiple lot discount to the lots in question," to "reduce the taxes owed," and to "remove any levies or delinquency penalties placed on any of the lots owned by Pee Dee Land Company, LLC or Waverly Woods at Claussen, LLC." (Order at 2 (Sept. 30, 2009).) By consent of the Pee Dee Land Company and Florence County, that order was issued without a hearing before the circuit court. (*Id.* at 1.)

II. Initial Proceedings Before the Court of Appeals

On behalf of the Florence County Treasurer, the below-signed counsel filed a Notice of Appeal of the circuit court's September 30, 2009 order on October 29, 2009. (Notice of Appeal (Oct. 29, 2009).) On November 30, 2009, the Treasurer filed an initial brief with this Court identifying the errors in the circuit court's ruling, including its improper exercise of subject matter jurisdiction and disregard of unambiguous statutory language.

The following day, the then-acting Florence County Attorney wrote the below-signed counsel a letter indicating that the Florence County Council did not wish to appeal the circuit court's decision and suggesting that the Treasurer be substituted in as the real party in interest for the appellate proceedings. (Letter from James C. Rushton, III, to Kevin A. Hall, at 1 (Dec. 1, 2009).) Pursuant to the County Attorney's suggestion, the below-signed counsel filed a motion to substitute the Treasurer in place of the generically-named "Florence County" as the real party in interest before this Court.

(Motion to Substitute Party (Dec. 21, 2009).) No objection was made by any party. On February 16, 2010, this Court granted that motion and substituted in the Florence County Treasurer as the Appellant. (Order from the Court of Appeals (Feb. 16, 2010).)

Two and a half months after this Court substituted the Treasurer in for Florence County as the real party in interest, the Pee Dee Land Company filed a motion to dismiss the appeal. Competing affidavits were submitted from the then-County Attorney and the Treasurer regarding the appeal. (*See generally* Aff. James C. Rushton, III; Aff. Dean Fowler, Jr.) On July 26, 2010, this Court granted the motion to dismiss the appeal for procedural reasons, but it also advised that the Treasurer may be "entitled" to "collaterally attack order of the circuit court." (Order from the Court of Appeals at 1–2 (July 26, 2010).) It issued a remittitur on August 17, 2010.

III. Proceedings Before the Supreme Court in its Original Jurisdiction

Based on this Court's suggestion of a "collateral attack" on the circuit court's order, the Treasurer filed a Petition for a Writ of Prohibition with the South Carolina Supreme Court in its original jurisdiction on August 2, 2010. Both the Pee Dee Land Company and Florence County opposed the Treasurer's Petition. On October 6, 2010, the Supreme Court declined to accept the Petition without any discussion or analysis. (Order from the Supreme Court (Oct. 6, 2010).)

IV. Subsequent Proceedings Before the Circuit Court

In order to ensure that the interests of Florence County's taxpayers were protected at all possible levels, the Treasurer filed with the circuit court a motion to intervene and for relief from its earlier judgment. (Treasurer's Motion to Intervene and for Relief from Judgment (Sept. 30, 2010).) Because of his involvement in the tax-collection process, the

Florence County Auditor also moved to intervene and for relief from the circuit court's earlier ruling. (Auditor's Motion to Intervene and for Relief from Judgment (Nov. 24, 2010).) Both the Pee Dee Land Company and Florence County opposed these motions.

The circuit court held a hearing on April 25, 2011, during which all parties and proposed interveners appeared and presented arguments to the court regarding the Treasurer's and the Auditor's respective motions. On May 23, 2011, the circuit court denied all motions to intervene and for relief from judgment.

V. Return to the Court of Appeals

On June 17, 2011, the Treasurer and Auditor filed and served their Notice of Appeal. At the Clerk of Court's request, they amended the caption to identify the posture of certain parties. An Amended Notice of Appeal reflecting this updated caption was subsequently filed and served on July 6, 2011.

STATEMENT OF FACTS

The facts of this case are straightforward and undisputed. In a previous, unrelated action in Florence County, the circuit court appointed James W. Peterson, Jr., as the receiver for the Pee Dee Land Company, LLC. (Pet. for Rule to Show Cause ¶ 1 (Aug. 25, 2009).) That order was dated March 3, 2008, and was delivered to Mr. Peterson on April 21, 2008. (*Id.*) A motion to reconsider the appointment was filed, and it was denied on May 23, 2008. (*Id.*) The record does not indicate any ruling that stayed the March 3, 2008 order pending resolution of the motion to reconsider in that action.

After Mr. Peterson had been appointed the receiver for the Pee Dee Land Company, but before the circuit court denied the motion to reconsider that ruling, the Florence County Tax Assessor sent a notice of the multiple-lot tax discount to the Pee

Dee Land Company. (*Id.* ¶ 2.) That mailing notified the Company that the deadline for seeking the tax discount was May 1, 2008, as directed by statute. (*Id.*) No one, however, applied for the tax break on the Company's behalf. (*Id.* ¶ 4.)

Because the Pee Dee Land Company failed to apply for the multiple-lot tax discount, it was taxed at a rate that does not reflect the statutory discount. (*Id.* ¶ 6.) Additionally, it was assessed certain penalties for failing to pay the regular tax amount, and the County has issued a levy on the relevant lots. (*Id.* ¶¶ 6, 8.)

The Pee Dee Land Company commenced the instant case in order to undo its failure to timely file for the statutory tax discount. But instead of following the procedure for appealing adverse tax decisions prescribed by the Revenue Procedures Act, the Company sought relief in the circuit court. That court granted the Company's requested relief despite lacking subject matter jurisdiction over this dispute. The Court should correct this error and vacate the circuit court's improper rulings in order to cure the myriad jurisdictional, statutory, and separation-of-powers problems they create.

STANDARD OF REVIEW

This case involves review (a) of the circuit court's subject matter jurisdiction over a tax dispute and (b) of the circuit court's interpretation of a statute. Both of these issues are examined *de novo* by this Court without any particular deference to the circuit court's ruling. *See Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) ("Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo."); *Lake v. Reeder Constr. Co.*, 330 S.C. 242, 247, 498 S.E.2d 650, 653 (Ct. App. 1998) ("The question of subject matter jurisdiction is a question of law.").

With respect to the circuit court's resolution of intervention issues, this Court reviews that ruling for an abuse of discretion in light of the "pragmatic consequences" of the circuit court's decision. *Berkeley Electric Coop., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). Likewise, this Court reviews the circuit court's resolution of a motion under Rule 60(b) for an abuse of discretion, which necessarily exists when the circuit court commits an error of law or makes a factual finding that lacks evidentiary support. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502–03 (2006).

ARGUMENTS AND AUTHORITIES

The circuit court's orders of September 30, 2009, and May 23, 2011, should not be allowed to stand, as they are replete with errors of law:

First: The circuit court did not have subject matter jurisdiction over this case. The Revenue Procedures Act specifically carves questions related to tax disputes out of the circuit court's jurisdiction and, instead, assigns them to the executive branch of government.

Second: Even if subject matter jurisdiction existed, the circuit court's ruling was contrary to the plain language of the statutory scheme governing this dispute. The Tax Code requires any taxpayer seeking a multiple-lot discount to apply for the discount no later than May 1st of the year for which the tax break is sought. Because there is no dispute that the Pee Dee Land Company did not file an application by that deadline, the circuit court improperly set aside the statute's clear, express terms.

Third: There is no evidence in the record to support the circuit court's factual finding that the Pee Dee Land Company would have been given the tax discount if it had timely submitted an application.

Fourth: After issuing a ruling that improperly encroached on their statutory duties, the circuit court excluded Florence County's Treasurer and Auditor from this litigation without any legitimate basis for doing so.

Each basis for reversal is discussed below in turn.

I. The circuit court improperly asserted subject matter jurisdiction over this tax dispute.

A. The Revenue Procedures Act bars circuit courts from considering tax disputes and, instead, commits them to the executive branch.

The Court should vacate the ruling below because the circuit court did not have subject matter jurisdiction to adjudicate a dispute over tax assessments in Florence County. Subject matter jurisdiction is the power of a court to hear and determine a case. *Hamilton v. Fulgham*, 385 S.C. 632, 637, 686 S.E.2d 683, 685 (2009). As is well-established, "'[s]ubject matter jurisdiction of a court depends upon the authority granted to the court by the constitution and laws of the state.' It is axiomatic that subject matter jurisdiction cannot be waived or conferred by consent." *Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners*, 320 S.C. 113, 121, 463 S.E.2d 600, 605 (1995) (quoting *Paschal v. Causey*, 309 S.C. 206, 209, 420 S.E.2d 863, 865 (Ct. App. 1992)). Additionally, a challenge to a court's subject matter jurisdiction can be raised at any point, including for the first time on appeal. *All Saints Parish v. Protestant Episcopal Church*, 358 S.C. 209, 238, 595 S.E.2d 253, 269 (Ct. App. 2004).

Here, the General Assembly established a statutory scheme "to provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue and a dispute concerning property taxes." S.C. Code Ann. § 12-60-20. This process does not vest the circuit court with any jurisdiction over disputes regarding taxes, either in its original jurisdiction or on appeal. To the contrary, if such a dispute is presented to the circuit court, the legislature has expressly directed it to dismiss the case:

> Dismissal of action covered by chapter brought in circuit court. If a taxpayer brings an action covered by this chapter in circuit court, ***the circuit court shall dismiss the case without prejudice***.

Id. § 12-60-3390 (emphasis added).

This unambiguous directive is reiterated throughout the remainder of the South Carolina Revenue Procedures Act, which provides a comprehensive set of avenues for a taxpayer to challenge determinations made by a state or local agency:

- Sections 12-60-410 through -920 explain how a taxpayer should challenge a determination by the State Department of Revenue.
- Sections 12-60-2510 through -2560 explain how a taxpayer, such as the Pee Dee Land Company here, should challenge an assessor's determination regarding taxes on real property.
- Sections 12-60-2910 through -2940 prescribe the process for challenging a county auditor's determination regarding personal property taxes.

In all instances, though, the General Assembly has excluded these issues from the circuit court's subject matter jurisdiction, vesting jurisdiction instead with the executive branch of government before review by this Court.

Initial Level of Review for Tax Disputes is to Levying Agency

In each type of tax dispute, the Code directs a dissatisfied taxpayer to take its dispute to the levying agency, ***not to the circuit court***. *See, e.g., id.* § 12-60-450(A) ("A taxpayer can appeal a division decision or a proposed assessment by filing a written protest with the [D]epartment [of Revenue] within ninety days of the date of the division decision or the proposed assessment."); *id.* § 12-60-2520(A) ("A property taxpayer may object to a property tax assessment made by a county assessor by requesting in writing to meet with the assessor within the time limits provided in Section 12-60-2510."); *id.* § 12-60-2910(A) (providing that "a property taxpayer may object to a personal property tax assessment or a denial of a homestead exemption made by the county auditor by requesting, in writing, to meet with the auditor" within a defined period of time).

Intermediate Level of Review is to Local Board or Administrative Law Court

If the levying agency issues an adverse ruling on the taxpayer's complaint, the taxpayer may then seek relief before another reviewing body, ***but never the circuit court***. Appeals of a decision by the Department of Revenue or a county auditor, for instance, are initially taken to the Administrative Law Court, which is part of the ***executive*** branch of state government. *See id.* § 12-60-460 ("Upon exhaustion of his prehearing remedy, a taxpayer may seek relief from the department's determination by requesting a contested case hearing before the Administrative Law Judge Division."); *id.* § 12-60-2920(A) ("Within thirty days after the date of the county auditor's response provided in Section 12-60-2910, a taxpayer may appeal a personal property tax assessment, or denial of a homestead exemption, by requesting a contested case hearing before the Administrative Law Judge Division in accordance with its rules."). Similarly, challenges to a determination made by an assessor must be appealed to a board of assessment appeals, *id.* § 12-60-2530(A), and then to the Administrative Law Court, *id.* § 12-60-2540(A).

Final Appeals are to the Court of Appeals and the Supreme Court

Once a case has been reviewed by the Administrative Law Court, any further appeal is to the Court of Appeals, ***not the circuit court***. *See id.* § 12-60-3380 (providing that "a party may appeal a decision of the Administrative Law Court to the court of appeals"). From there, any remaining review is only available through certiorari to the Supreme Court. *See* Rule 242(a), SCACR ("The Supreme Court, or any two (2) justices thereof, may in its discretion, on motion of any party to the case or on its own motion, issue a writ of certiorari to review a final decision of the Court of Appeals.").

* * * * *

Importantly, prior to 2006, Section 12-60-3390 vested circuit courts with appellate jurisdiction over tax disputes after review by the Administrative Law Court. *See* S.C. Code Ann. § 12-60-3390 (2004) ("If a taxpayer brings an action covered by this chapter in circuit court, ***other than an appeal of an administrative law judge decision***, the circuit court shall dismiss the case without prejudice.") (emphasis added), *available at* http://www.scstatehouse.gov/archives/CodeOfLaws2004/t12c060.htm. Act 387 of 2006, however, deleted the phrase "other than an appeal of an administrative law judge decision," rendering the legislature's intent to carve tax disputes out of the circuit court's jurisdiction unmistakable. Act 387, § 14, 116th Session of the General Assembly (2005–2006), *available at* http://www.scstatehouse.gov/sess116_2005-2006/bills/3285.htm.[1]

Consistent with Section 12-60-3390's unambiguous language, the Supreme Court has held repeatedly that circuit courts do not have jurisdiction to resolve tax disputes. *See, e.g.*, *B&A Dev., Inc. v. Georgetown County*, 372 S.C. 261, 266–67, 641 S.E.2d 888, 891–92 (2007) (affirming dismissal of an action initially brought in circuit court to challenge allegedly excessive taxes (citing S.C. Code Ann. § 12-60-3390)); *Brackenbrook N. Charleston, LP v. County of Charleston*, 360 S.C. 390, 396, 602 S.E.2d 39, 43 (2004) ("If a taxpayer brings a circuit court action when she should have pursued administrative remedies under the Act, the circuit court 'shall dismiss the case without prejudice.'" (quoting S.C. Code Ann. § 12-60-3390)).

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[1] Under the Revenue Procedures Act, the only exception to the circuit court's lack of subject matter jurisdiction is where a taxpayer brings "an action for a declaratory judgment where the sole issue is whether a statute is constitutional." S.C. Code Ann. § 12-60-80(B). This is consistent with the separation-of-powers norm that the executive branch may not pass on the constitutionality of a statute. *Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000). No constitutional issues are presented in the Pee Dee Land Company's pleadings, however, and this exception is inapplicable in this case.

Likewise, this Court has specifically observed that the legislature purposefully excluded tax disputes from the circuit court's subject matter jurisdiction: "Had the Legislature intended to allow for direct action in circuit court—in contravention of the broadly defined scope of the RPA—it could have expressly provided for such immediate judicial review." *B&A Dev., Inc. v. Georgetown County*, 361 S.C. 453, 460, 605 S.E.2d 551, 554 (Ct. App. 2004), *aff'd as modified in unrelated part*, 372 S.C. 261, 641 S.E.2d 888 (2007).

This case falls squarely within Section 12-60-3390's prohibition on a circuit court's assertion of jurisdiction. The only issues the Pee Dee Land Company presented to the circuit court were whether the Company (a) should be allowed to pay a tax rate lower than the one levied by the County and (b) should have its tax-related penalties eliminated. (Pet. for Rule to Show Cause ¶ "Wherefore" (Aug. 25, 2009).) Because the Revenue Procedures Act contains a comprehensive review process for the Company's complaint that specifically bypasses the circuit court, the circuit court's decision should be vacated for lack of jurisdiction.

B. Because its earlier ruling was void for want of subject matter jurisdiction, the circuit court erred when it denied the Treasurer's and the Auditor's motions for relief under Rule 60(b)(4).

Because the circuit court lacked subject matter jurisdiction over this case, it also erred when it denied the Treasurer's and the Auditor's respective motions for relief under Rule 60(b)(4) of the South Carolina Rules of Civil Procedure. That rule states in pertinent part:

> (b) On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
> * * *

> (4) the judgment is void;
>
> * * *
>
> The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. . . . During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. . . .

Rule 60(b)(4), SCRCP.

In his treatise, Professor Flanagan explains how this rule is designed to operate:

> A judgment is void if made by a court without subject matter jurisdiction, that is, a court without power to adjudicate the matters before it or without personal jurisdiction over the parties. . . . Relief under this section is a matter of right rather than discretionary with the court because the adverse party failed to comply with the requirements of the law. The factors of promptness, reasons for failure to act, a meritorious defense and lack of prejudice to the other party need not be shown.

James F. Flanagan, *South Carolina Civil Procedure* 511–12 (3d ed. 2010). Based on the circuit court's unmistakable lack of jurisdiction under the Revenue Procedures Act, it is straightforward that the circuit court's September 30, 2009 order is void and that the court erred in denying the Treasurer's and the Auditor's motions for relief under Rule 60(b)(4).

Without addressing its own fatal jurisdictional defects, the circuit court provided three reasons for denying those Rule 60(b)(4) motions. None, however, are consistent with controlling law.

1. The Treasurer filed his Rule 60(b) motion with the proper court.

The circuit court's first basis for denial was that the Treasurer's motion "was filed in the wrong court" because the Treasurer's separate Petition for a Writ of Prohibition was still pending before the Supreme Court, but "[t]he Treasurer did not seek leave from

the Supreme Court to file this motion." (Order at 8 (May 23, 2011).)[2] This ruling misunderstands Rule 60(b)'s directive that a party with a case currently on appeal must seek leave from the appellate court in order to file a Rule 60 motion with the circuit court.

As the Advisory Committee's Notes make clear, for purposes of Rule 60(b), "[a]n appeal is pending from the time the notice of appeal is served until the issuance of the remittitur." Rule 60, SCRCP advisory committee's notes to 1994 Amendments. No such appeal was pending when the Treasurer filed his motion. As explained above in the Statement of the Case, this Court initially dismissed the Treasurer's appeal effective August 17, 2010. Though the Treasurer presented the circuit court's lack of jurisdiction to the Supreme Court, it was not by way of an "appeal"—as envisioned by Rule 60(b)—but through a "collateral attack" in the Supreme Court's original jurisdiction, as suggested by Chief Judge Few's earlier dismissal order. The circuit court's first basis for denying the Treasurer's motion, therefore, is incorrect as a matter of law.

2. The motions for relief from judgment were timely filed.

The circuit court's second basis for denying the Rule 60(b) motions was that, in its view, they were "untimely" due to "the one year time limit" imposed by Rule 60(b). (Order at 8 (May 23, 2011).) This conclusion is not supported by either the rule itself or cases interpreting it.

Rule 60(b) states that a motion for relief from a judgment "shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken." However, the Treasurer's and

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[2] The Treasurer's proceedings before the Supreme Court in its original jurisdiction were resolved on October 6, 2010, one week after he filed his Rule 60(b) motion with the circuit court in this case.

Auditor's respective requests for relief are under Subsection (4), which is ***not*** subject to the one-year filing deadline that the circuit court incorrectly applied. *See Mr. T. v. Mrs. T. (In re: S.N.T.)*, 378 S.C. 127, 134, 662 S.E.2d 413, 417 (Ct. App. 2008) ("The language of Rule 60 specifically excludes motions under Rule 60(b)(4) and (5) from the one year limitation within which prior judgments may be attacked and indicates these motions must be brought within a reasonable time.").

Additionally, there cannot be any legitimate dispute that these motions were made within a "reasonable time." The Treasurer's motion for relief from judgment was filed on September 30, 2010, barely one month after this Court issued its remittitur to the circuit court, and while his Petition for a Writ of Prohibition was still pending before the Supreme Court. The Auditor filed his companion motion for relief less than two months later, while the Treasurer's motion was still pending before the circuit court.

This expedited timeline is wholly consistent with the view of "reasonableness" established by this Court's prior decisions. *Compare Se. Hous. Found. v. Smith*, 380 S.C. 621, 640–41, 670 S.E.2d 680, 690–91 (Ct. App. 2008) (finding that a Rule 60(b) motion was timely when it was filed approximately three weeks after receiving leave from the appellate court to do so), *with Perry v. Heirs at Law & Distributees of Gadsden*, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct. App. 2003) (finding that a four-year delay in filing a Rule 60(b) motion rendered it untimely, but rejecting the position that such delay was "per se unreasonable"), *and McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996) (finding that a four-year delay in filing a Rule 60(b) motion was unreasonable). The circuit court's ruling on this issue, therefore, is also incorrect as a matter of law.

3. The circuit court's lack of subject matter jurisdiction has not yet been addressed by any court.

As its final basis for denying the Treasurer's and the Auditor's motions for relief from judgment, the circuit court stated that granting those motions "would have the effect of overruling the decision of the South Carolina Court of Appeals and the decision of the South Carolina Supreme Court." (Order at 9 (May 23, 2011).) This statement is simply not true.

As detailed above in the Statement of the Case, this marks the second time that this case has been presented to this Court. The first time, the Court did not issue any ruling on the merits or opine about the circuit court's lack of jurisdiction; instead, it simply ruled that the Treasurer could not yet present this issue on appeal, but should collaterally attack the circuit court's ruling. Likewise, when the Supreme Court declined to issue the requested extraordinary writ, its entire order consisted of two words: "Petition denied." (Order from the Supreme Court (Oct. 6, 2010).) Like this Court's earlier dismissal order, the Supreme Court did not address the merits of this case in any way.

Accordingly, no court has yet addressed whether the circuit court has subject matter jurisdiction over this property tax dispute or, if it does, whether the circuit court rightly interpreted and applied the South Carolina statute that governs when an application for a multiple-lot tax discount must be submitted. Just as with its prior two bases, the circuit court's final reason for denying relief under Rule 60(b)(4) is wrong as a matter of law and should be reversed. In short, the circuit court's earlier ruling is void for want of subject matter jurisdiction, and the Treasurer and the Auditor properly sought relief under Rule 60(b)(4).

II. The circuit court improperly set aside an unambiguous statutory deadline when it excused the Pee Dee Land Company's failure to file its application for a multiple-lot discount in accordance with the State Tax Code.

Even if the circuit court had subject matter jurisdiction over this case—which it did not—its ruling should still be reversed because that decision is contrary to the plain language of the statute that governs whether the Pee Dee Land Company can obtain a discount on its property taxes. The circuit court's ruling on this point violates two cardinal rules of judicial restraint: (1) statutes must be enforced according to their plain language, and (2) a court may not substitute its judgment in place of the legislature's. Each defect is discussed below.

A. The General Assembly unambiguously prescribed May 1st as the deadline for filing for the multiple-lot tax discount, a deadline that the Pee Dee Land Company missed.

The State Tax Code permits developers of multiple lots to obtain a discount on their real property taxes for certain parcels. S.C. Code Ann. §§ 12-43-224 through -225. However, it requires developers to submit an application for this discount by a date certain each year:

> The owner shall apply for the discount by means of a written application to the assessor ***on or before May first of the year for which the discount is claimed***.

Id. § 12-43-225(B) (emphasis added). A failure to meet this statutory deadline "shall constitute a waiver of the discounted value for that year." *Id.* § 12-43-224 This result is expressly directed by the governing regulation as well:

> In order for the provisions of Sections 12-43-224 and 12-43-225 of the Code to apply, the owners of such real property or their agents must make written application before May 1st of the tax year in which the multiple lot ownership discount value is claimed. The application shall be made to the County Assessor upon forms provided by

> the county and approved by the Department. The failure to apply is treated as a waiver of the discount for that year.

S.C. Code Ann. Regs. 117-1840.3.

Importantly, the statute does not vest anyone with the discretion to modify this unambiguous deadline, which must be enforced according to its plain terms. *See Howell v. U.S. Fid. & Guar. Ins. Co.*, 370 S.C. 505, 509, 636 S.E.2d 626, 628 (2006) ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning."); *Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 624, 611 S.E.2d 297, 303 (Ct. App. 2005) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute."). Likewise, statutes that provide a tax break are to be narrowly construed against the taxpayer. *See, e.g., C.W. Matthews Contracting Co. v. S.C. Tax Comm'n*, 267 S.C. 548, 557, 230 S.E.2d 223, 227 (1976) (holding that "a statute allowing a deduction, if ambiguous, is construed strictly against the taxpayer").

Not surprisingly, this is precisely how the Administrative Law Court—the executive body to which the General Assembly ***has*** given subject matter jurisdiction over this type of dispute—has consistently interpreted these statutory provisions. *See, e.g., MS Grande Oaks, LLC v. Charleston County Assessor*, Case No. 09-ALJ-17-493-CC, 2010 WL 6782571, at *2 (S.C. Admin. Law Ct. July 23, 2010) ("The plain language of S.C. Code Ann. § 12-43-225 requires an application for the multiple lot discount to be made by May 1st of the year for which it is claimed. If the discount is to be claimed for each year, an application must be made by May 1st 'of the year' for which the discount is claimed."); *Olson v. Aiken County Assessor*, Case No. 09-ALJ-17-369-CC, 2010 WL

6782557, at *3 (S.C. Admin. Law Ct. Apr. 30, 2010) ("Although there were extenuating circumstances that contributed to Petitioner's failure to make written application by May 1st as mandated by the statute, the Court must nevertheless find that the plain language of the statute provides no exception, and Petitioner's failure to apply by the deadline constitutes a waiver of the discount for the 2008 tax year.").

Here, there is no dispute that the Pee Dee Land Company did not submit an application required by Section 12-43-225 to the Florence County Assessor by the statutorily-prescribed deadline; the Company even conceded the point in its pleadings to the circuit court. (Pet. for Rule to Show Cause ¶ 4 (Aug. 25, 2009).) Thus, as a matter of law, it is ineligible to receive the multiple-lot tax discount. The circuit court's failure to enforce the State Tax Code as it is written should be reversed.

B. Because the General Assembly provided a clear deadline by which a taxpayer had to apply for the tax break, the circuit court improperly substituted its "equitable" judgment in place of a legislative directive.

Even though the Pee Dee Land Company indisputably missed the unambiguous May 1st deadline created by South Carolina Code § 12-43-225(B), the circuit court held that "equity and fairness" dictate that the Company should receive the tax discount because, in the circuit court's view, there was some alleged confusion as to who was acting as the Company's receiver at the time the application should have been filed. (Order at 1–2 (Sept. 30, 2009).)[3] But because the General Assembly prescribed a date

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[3] In its orders, the circuit court indicated that "[f]rom March 3, 2008, until May 23, 2008, it was not clear who was authorized to act as an agent for the Pee Dee Land Company." (Order at 1 (Sept. 30, 2009); Order at 2 (May 23, 2011).) But any confusion on this issue was the Pee Dee Land Company's own fault.

There is no dispute that the circuit court appointed a receiver for the Pee Dee Land Company in March 2008, and that he received notice of the appointment in April 2008.

certain for applying for the tax discount—that is, "on or before May first of the year for which the discount is claimed," S.C. Code Ann. § 12-43-225(B)—the circuit court was barred from substituting its own judgment of "equity and fairness" in place of the statute's straightforward terms. *See, e.g.*, *Wigfall v. Tideland Utils., Inc.*, 354 S.C. 100, 116, 580 S.E.2d 100, 108 (2003) ("This Court may only take such equitable arguments into account where legislative intent and statutory language are not clear.").

No doubt, taxpayers who miss the filing deadline for the discount often have "equitable" excuses for their oversight. However, as the Administrative Law Court has explained, the law does not allow those explanations to displace clear statutory language:

> While the Court is sympathetic to Petitioner's plight, in this instance, the language of the act is clear and explicit, and there is no need to look beyond the borders of the statute. Failure to apply by the statutory deadline "shall constitute a waiver of the discounted value for that year." The language of the statute does not grant discretion to the ALC to consider the mitigating equitable circumstances.

Olson, 2010 WL 6782557, at *3 (quoting S.C. Code Ann. § 12-43-224).

Not only did the circuit court usurp authority from the executive branch when it asserted jurisdiction over this case, but it also breached the separation-of-powers wall between the judiciary and the legislature when it set aside an unambiguous statutory directive based on its own sense of equity. Its ruling should be reversed accordingly.

(Pet. for Rule to Show Cause ¶ 1 (Aug. 25, 2009).) The fact that another party filed a motion to reconsider that ruling did not automatically stay or otherwise impair the court's order of appointment. *See* Rule 62(b), SCRCP (providing that a stay pending a motion to reconsider is within the trial court's discretion, but does not automatically occur upon filing of such a motion). There is nothing in the record here to indicate that the earlier decision appointing a receiver for the Pee Dee Land Company was stayed or that a motion to stay that ruling was ever made. Thus, to the extent that a lack of clarity as to who was serving as the Pee Dee Land Company's receiver caused its failure to properly file an application for the multiple-lot discount, the Pee Dee Land Company can only look to itself as the source of that confusion.

III. There is no evidence in the record to suggest that the Pee Dee Land Company would have been entitled to the multiple-lot tax discount even if it had complied with the statutory filing deadline.

In addition to improperly exercising subject matter jurisdiction over a tax dispute and then ignoring the plain language of the controlling statute, the circuit court authorized the Pee Dee Land Company to take the tax discount without any evidence that the Company was even entitled to the discount. The General Assembly and the State Department of Revenue have established specific criteria for developers to qualify for the multiple-lot discount, including owning a minimum number of undeveloped lots at a certain point in time. *See* S.C. Code Ann. §§ 12-43-224 through -225 (outlining the qualifications for the multiple-lot tax discount and how properties should be assessed under the discount); S.C. Code Ann. Regs. 117-1840.3 (identifying who qualifies for the tax discount and explaining how qualifying properties should be assessed).

In both of its orders, the circuit court stated that the Pee Dee Land Company would have received the tax break "but for the timeliness of this application." (Order at 2 (Sept. 30, 2009); Order at 2 (May 23, 2011).) But nothing in the record supports this factual finding, nor did the circuit court identify any evidence to corroborate this statement.

There is certainly no testimony—live, via deposition, or via affidavit—from the Florence County Assessor that his office ***ever*** received an application from the Pee Dee Land Company for the discount, much less that the discount would have been granted "but for the timeliness" of the application.[4] Nor are there any letters, memoranda, or

[4] To the contrary, the only "evidence" on this point is in Paragraph 4 from the Pee Dee Land Company's initial pleading to the circuit court, which concedes that "no one applied to the Florence County Tax Assessor for the discount for the ownership of multiple lots."

other written materials from anyone suggesting that the Company was entitled to or would have received the discount. In short, the Court's factual conclusion is not supported by ***any*** evidence in the record. It should be reversed accordingly.

IV. The circuit court improperly denied the Treasurer's and the Auditor's motions to intervene.

Finally, the circuit court erred when it denied the Florence County Treasurer and Auditor—both of whom fulfill defined statutory roles in the tax-collection process—their right to become involved in this litigation as parties. Rule 24(a) of the South Carolina Rules of Civil Procedure provides the following standard for intervening as a matter of right:

> Upon timely application anyone shall be permitted to intervene in an action . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Both of these elected county officials readily meet these criteria, which are to be "liberally" construed, "particularly where, as here, judicial economy will be promoted by the declaration of the rights of all parties who may be affected." *Berkeley Electric Cooperative*, 302 S.C. at 189, 394 S.E.2d at 714. The circuit court misapplied this rule in all respects, as explained below.

(Pet. for Rule to Show Cause ¶ 4 (Aug. 25, 2009).) The Company cannot now take a contrary position. *See Charleston County Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E.2d 362, 364 (Ct. App. 2001) ("Any allegations, statements, or admissions contained in a pleading are conclusive against the pleader, and a party cannot subsequently take a contrary or inconsistent position.").

A. The motions to intervene were timely filed under the four-factor test established by the Supreme Court.

Rule 24(a)'s first requirement is that an application to intervene must be "timely." Though the circuit court held otherwise, there cannot be any real dispute that the Treasurer's and the Auditor's respective motions were timely filed. Our Supreme Court has established four factors to consider when evaluating the timeliness of intervention:

> (1) "the time that has passed since the applicant knew or should have known of his or her interest in the suit";
>
> (2) "the reason for the delay";
>
> (3) "the stage to which the litigation has progressed"; and
>
> (4) "the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial."

Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991).

As explained above in the discussion of Rule 60(b), the Treasurer filed his motion to intervene within weeks of this Court's remittitur of the earlier appellate proceedings back to the circuit court. The Auditor's intervention motion was filed not even two months after that.[5]

The "reason for the delay," of course, was that the case was pending before this Court, and this Court had substituted the Treasurer in as the real party in interest—at the suggestion of Florence County and without any objection from the Pee Dee Land

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[5] The circuit court's May 23, 2011 order indicates that the Treasurer and the Auditor waited over a year to seek intervention. (Order at 5 (May 23, 2011).) This assertion is pegged to the circuit court's September 30, 2009 ruling, which was timely appealed by the Treasurer. That appeal—which was ultimately dismissed for procedural reasons—vested jurisdiction over this case in the Court of Appeals until the remittitur was issued in August 2010. *See* Rule 205, SCACR (providing that service of a notice of appeal vests the appellate court with "exclusive jurisdiction over the appeal"). The circuit court's observations, therefore, are completely at odds with the relevant timeframe.

Company. (Order from the Court of Appeals (Feb. 16, 2010).) Because the Treasurer was ***already*** a party, there was no reason for him to go back to the circuit court during the pendency of the initial appellate proceedings and move to intervene there. And because the Treasurer was presenting jurisdictional and statutory-interpretation arguments against the circuit court's September 30, 2009 order—indeed, he fully briefed these issues to this Court once before, though this Court has not yet passed judgment on those arguments—the Auditor's interests in the case were adequately represented at that point. It was only after this Court rescinded its earlier substitution order and remitted this case back to the circuit court that either of these county officials had any reason to believe that a motion to intervene at the trial level would be necessary or even procedurally appropriate. *See* Rule 205, SCACR (explaining that a notice of appeal gives the appellate court "exclusive jurisdiction over the appeal").

Importantly, after the Treasurer and the Auditor became aware of the circuit court's improper exercise of jurisdiction and misapplication of a clear statute, at least one of these officials has ***always*** asserted their offices' interests or challenged the propriety of the circuit court's ruling:

- The Treasurer appealed the circuit court's September 30, 2009 ruling within the time prescribed by Appellate Court Rule 203(b)(1). (Notice of Appeal (Oct. 29, 2009).)

- One week after this Court dismissed that appeal—but well before it issued its remittitur to the circuit court—the Treasurer sought relief before the Supreme Court regarding the circuit court's jurisdictional defects. He named both the Pee Dee Land Company and Florence County as respondents to that action. (Petition for Writ of Prohibition (Aug. 2, 2010).)

- Out of an abundance of caution, while his separate proceeding was still pending before the Supreme Court, the Treasurer filed his motion to intervene in this action with the circuit court. (Treasurer's Motion to Intervene and for Relief from Judgment (Sept. 30, 2010).)

- While the Treasurer's intervention motion was still pending before the circuit court, the Auditor filed his companion motion to intervene. (Auditor's Motion to Intervene and for Relief from Judgment (Nov. 24, 2010).)

Given this background, there is no conceivable prejudice that the Pee Dee Land Company (or Florence County, for that matter) can claim with respect to allowing these county officials to intervene. Both the Company and Florence County have been aware of the arguments presented in this brief since the Treasurer raised them in his initial appellate brief, which was filed on November 30, 2009, over one and a half years ago. Rather than addressing the merits of the circuit court's jurisdictional defect—a defect that cannot be waived, and a defect of which this Court can take judicial notice under any circumstance, *see Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989) ("Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court.")—they have raised one procedural hurdle after another for the Treasurer and the Auditor to negotiate. Any so-called prejudice that either has suffered from this case continuing has been self-inflicted.

In short, these county officials have acted promptly and diligently in presenting their arguments and protecting the interests of the County's taxpayers. Their motions to intervene are timely under *Davis*'s four-factor test, and the circuit court's holding to the contrary should be reversed.

B. As elected county officials with statutory responsibilities involving tax collection, the Treasurer and the Auditor have interests in this action that will be impaired if they are not permitted to intervene.

Rule 24(a)(2)'s second criterion for intervention requires the proposed intervener to have an "interest relating to the property or transaction which is the subject of the action," and resolution of the case without the intervener's involvement "may as a

practical matter impair or impede his ability to protect that interest." The circuit court held that neither the Treasurer nor the Auditor have an interest in this case because the statutes in dispute—South Carolina Code §§ 12-43-224 through -225, which set forth the unambiguous deadline that the Pee Dee Land Company indisputably missed—provide direction only to county assessors. (Order at 6–7 (May 23, 2011).) This ignores the fact that these sections are only pieces of the larger tax-collection scheme, a process that gives these officials defined roles that are directly, and adversely, impacted by this case.

Florence County has a "council-administrator" form of government. Accordingly, the Treasurer and the Auditor are elected by the citizens on a countywide basis, and they necessarily operate independently of County Council and the County Administrator. *See, e.g.*, S.C. Code Ann. § 4-9-650 (explaining that as a general matter, "the county administrator shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by the general law of the State," which includes county treasurers and auditors); *Eargle v. Horry County*, 344 S.C. 449, 455–56, 545 S.E.2d 276, 280 (2001) (holding that a county auditor elected by the citizenry was able to manage her own office and was not subject to oversight by county council or the county administrator).[6]

As independently-elected officials, the Treasurer and the Auditor fulfill specific statutory obligations in the tax-collection process that are beyond the reach of the County Assessor and County Council. The Auditor, for instance, is charged by law "to determine

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[6] Florence County's form of government is in sharp contrast to other county government models, where the treasurer and auditor may be appointed by, and consequently controlled by, county council. *See, e.g.*, S.C. Code Ann. § 4-9-860 (providing that in a "council-manager" form of county government, the treasurer and auditor may be appointed by county council and "shall be subject to control by council and the manager in the same manner as other appointed county department heads").

the sums to be levied upon each tract and lot of real property and upon the amount of personal property, monies, and credits listed in his county in the name of each person." S.C. Code Ann. § 12-39-180. He is also required by law to add a series of penalties when a taxpayer fails to pay its taxes owed. *Id.* § 12-45-180(A).

Likewise, the Treasurer is charged with collecting taxes, *id.* § 12-45-70(A), and penalties associated with delinquent taxes, *id.* § 12-45-180(A). By law, the Treasurer is "prohibited from collecting any tax" that is not ordered by the Auditor. *Id.* § 12-45-60. Importantly, the Treasurer—and the Treasurer alone—has the authority to waive any tax-based penalties, and his decision is not subject to review:

> Notwithstanding the provisions of Section 12-45-180, the county treasurer may waive the penalties imposed pursuant to that section if the taxpayer provides clear and convincing evidence to the county treasurer that the taxpayer delivered the timely payment to the United States mail or that the taxpayer otherwise timely delivered or caused to be delivered the payment. The request for waiver must be in the form of an application in writing to the county treasurer that includes documentation sufficient for the treasurer to conclude that the taxpayer made timely payment of the taxes. ***Waiving penalties is within the sole discretion of the county treasurer and the treasurer's denial of a waiver is not subject to appeal.***

Id. § 12-45-185 (emphasis added).

In this case, the Pee Dee Land Company requested that the circuit court "eliminate the penalties charged to date" due to the Company's failure to timely pay its property taxes. (Pet. for Rule to Show Cause ¶ "Wherefore" (Aug. 25, 2009).) The circuit court, in turn, granted that request and ordered the County Assessor—not the Treasurer, and not the Auditor—to "remove any levies or delinquency penalties placed on any of the lots owned by Pee Dee Land Company." (Order at 2 (Sept. 30, 2009).)

Accordingly, the Company's requested relief and the circuit court's subsequent order squarely encroach on a key aspect of the tax-collection process that is committed solely to the Treasurer and the Auditor. As a matter of law, the Auditor levies all tax-based penalties, and the Treasurer—in his "sole discretion"—may choose to waive such penalties. But by virtue of its order, the circuit court has improperly attempted to re-delegate these statutory obligations to an unelected county employee while denying these elected officials an opportunity to protect their offices' respective interests in court.

This is hardly the "liberal" application of Rule 24 prescribed by the Supreme Court, and it certainly does not promote judicial economy. *Berkeley Electric Cooperative*, 302 S.C. at 189, 394 S.E.2d at 714. To the contrary, if these officials continue to be frozen out of this litigation, they will continue to assess penalties against the Pee Dee Land Company for its failure to timely pay its property taxes, as they—as nonparties—are not subject to the circuit court's order. In turn, this will cause all interested parties to be stuck in a stalemate:

- The Treasurer will no doubt continue his efforts to collect late-taxes penalties against the Company, as he is compelled to do so by the State Tax Code.
- The Auditor will no doubt continue to assess late-taxes penalties against the Company, as he is also compelled to do so by the State Tax Code.
- The Pee Dee Land Company will no doubt refuse to pay any late-taxes penalties, relying on the circuit court's September 30, 2009 order.
- The Florence County Assessor, who serves at County Council's pleasure, will no doubt refuse to seek any late-taxes penalties against the Company, also relying on the circuit court's September 30, 2009 order.

Presumably, the only ways out of this thicket are either (1) to vacate the circuit court's orders for lack of subject matter jurisdiction; (2) to allow the Treasurer and the Auditor to intervene in this case and resolve it on its merits now; or (3) to require the

Company to file a new lawsuit—likely a mandamus-type action—seeking a court order directing the Auditor and the Treasurer to comply with the circuit court's September 30, 2009 order. The third option, of course, would result in the ***exact*** same challenge by the Treasurer and the Auditor to the September 30, 2009 order's validity that is presented here, only it would return to this Court many months—perhaps even years—down the road. The "pragmatic consequences" of the circuit court's decision to exclude the Treasurer and the Auditor, therefore, make it clear that they have interests in this case that will necessarily be impaired if they are not permitted to intervene. *Berkeley Electric Cooperative*, 302 S.C. at 189, 394 S.E.2d at 714.

C. The interests of the Treasurer and the Auditor have not been represented at all by the existing parties.

The final criterion for intervention under Rule 24(a) is that the existing parties do not "adequately represent" the proposed intervener's interests. While the Treasurer and the Auditor bear the burden of demonstrating the inadequacy of representation, "[t]his burden is minimal and the applicant need only show that the representation of his interests 'may be' inadequate." *Id.* at 191, 394 S.E.2d at 715.

Without any analysis, the circuit court held that the Treasurer and the Auditor were "adequately represented" by Florence County in this case because "Florence County defended the Receiver's Petition for Rule to Show Cause." (Order at 7 (May 23, 2011).) This is a generous characterization of Florence County's conduct, as its responsive pleading conceded all relevant allegations and then invited the circuit court to "instruct[] the Florence County Tax Assessor as the Court deems appropriate after analyzing the positions of the parties in this matter." (Def.'s Resp. to Pet. of Pl. ¶ "Wherefore"(b) (Aug. 26, 2009).)

Further, the circuit court's ruling is at odds with the Supreme Court's standard for assessing the "adequacy of representation" prong of the intervention analysis, which looks to three factors:

(1) "whether the existing parties will undoubtedly make all of the intervenor's arguments";

(2) "whether the existing parties are capable and willing to make such arguments"; and

(3) "whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent."

Berkeley Electric Cooperative, 302 S.C. at 191, 394 S.E.2d at 715.

Here, it is straightforward that each of these factors cuts against the circuit court's ruling. Regarding the first two factors, it is obvious that the existing parties will not make any of the interveners' arguments, as they have either ignored or actively opposed the arguments presented above in Sections I through III throughout this dispute. In fact, the then-attorney for Florence County wrote a letter to the below-signed counsel after this case was initially appealed and explained that Florence County Council ***would not*** challenge the circuit court's ruling, but that the Treasurer and the Auditor could do so on their own. (Letter from James C. Rushton, III, to Kevin A. Hall, at 1 (Dec. 1, 2009).)[7] With respect to the final factor, the Treasurer and Auditor have certain statutory duties

[7] Moreover, in other litigation pending at the circuit-court level, the Florence County Council has taken the remarkable position that when it is adverse to the Office of the Treasurer on basic separation-of-powers issues, the County Council may be represented by the County Attorney (as well as additional attorneys in private practice), but the Office of the Treasurer cannot pay an attorney to represent it or even select its own counsel without first securing the County Council's approval of the attorney. *Fowler v. Florence County*, Case No. 2010-CP-21-1248 (S.C. Cir. Ct.).

that are adversely impacted by this case with which none of the existing parties have any familiarity.[8]

Accordingly, the Treasurer and the Auditor readily meet all criteria for intervening as a matter of right under Rule 24(a). The circuit court's ruling on this point should be reversed.

D. This case remains ongoing.

As an additional basis for denying the intervention motions, the circuit court stated as follows: "This action has long been concluded and the purported Motions to Intervene are denied because there is no longer an active pending case in which to file motions." (Order at 4 (May 23, 2011).) This holding, for which the circuit court provided no authority, makes little sense.

As explained above in the Statement of the Case, this dispute has been ongoing—either through a pending appeal, pending motions before the circuit court, or a petition for an extraordinary writ before the Supreme Court—since the circuit court entered its first improper order. Nor can it be true that a case ends "for all purposes . . . when the time for filing a Notice of Appeal with the South Carolina Court of Appeals expired." (*Id.*) For one, the South Carolina Rules of Civil Procedure specifically permit challenges to final orders ***after*** those thirty days have lapsed. *See, e.g.*, Rule 60(b), SCRCP (permitting

[8] The Auditor also has a particular interest in the jurisdictional issues presented in this case. Under the Revenue Procedures Act, taxpayers are directed to appeal an adverse "personal property tax assessment or a denial of a homestead exemption" to the Auditor. S.C. Code Ann. § 12-60-2910(A). If the circuit court's ruling is allowed to stand, the Auditor's subject matter jurisdiction under this parallel provision of the Revenue Procedures Act may be jeopardized. In this regard, he certainly offers a "perspective on the proceedings that would otherwise be absent." *Berkeley Electric Cooperative*, 302 S.C. at 191, 394 S.E.2d at 715.

motions for relief from "a final judgment, order, or proceeding" to be filed at least one year after entry of the judgment).

Moreover, courts routinely permit post-judgment intervention. *See, e.g., Nat'l Loan & Exch. Bank of Greenwood v. Gustafson*, 164 S.C. 203, 204, 162 S.E. 264, 265 (1932) (holding that "though a strong showing must be made to justify intervention after final judgment, such a showing has been made in this case, particularly in view of the fact that to deny the petitioner the right to intervene . . . would be to prevent his having a day in Court"). As one treatise on the federal parallel to Rule 24 explains:

> [A]lthough the cases "tend to involve unique situations" and to require "a close examination of all the circumstances of the case," in a significant number of cases intervention has been allowed even after judgment. One reason for allowing this is so that the intervenor can prosecute an appeal that the existing party has determined not to take.

7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1916, at 571–76 (3d ed. 2007) (quoting *Smuck v. Hobson*, 408 F.2d 175, 182 (D.C. Cir. 1969), and citing dozens of cases for this proposition); *see also Guaranty Nat'l Ins. Co. v. Pittman*, 501 So. 2d 377, 381 (Miss. 1987) ("There is nothing per se offensive about post-judgment intervention. In other jurisdictions having a rule comparable to our Rule 24, post-judgment intervention has been allowed.") (internal citations omitted).

For these reasons, the circuit court's finding that "[t]here is no longer a pending action in which to file motions" is wrong as a matter of law. (Order at 4 (May 23, 2011).) It should be reversed accordingly, and the Treasurer and the Auditor should be permitted to intervene and protect the interests of their respective offices in this litigation.

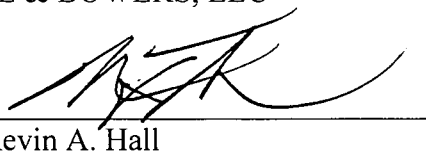
CONCLUSION

The law is clear. The General Assembly has vested subject matter jurisdiction over tax disputes in the executive branch of government, not with the circuit court. The General Assembly has also determined that any developer seeking a tax discount for owning multiple lots must apply for the tax break no later than May 1st of each year. The circuit court ignored both of these unambiguous statutory points when it issued its September 30, 2009 order. Worse, when the Treasurer and the Auditor tried to point out these defects in the circuit court's earlier ruling, they were not even allowed to have a seat at the table.

Accordingly, the Court should correct these errors, which have significant separation-of-powers implications, and vacate the circuit court's orders of September 30, 2009, and May 23, 2011.

Respectfully submitted,

HALL & BOWERS, LLC

By: 

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