THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2022-001791
Case No. 2021-CP-34-0150

RS&A Piping & Fabrication, Inc. a/k/a R. S. & A Piping, Inc.,..... Appellant,

v.

Ronald D. Kirby, Dylan T. Kirby, Treasurer for Marlboro County, and Danny T. Williams,..... Respondents.

PETITION FOR REHEARING OF RESPONDENT TREASURER FOR MARLBORO COUNTY

The Respondent Treasurer for Marlboro County petitions the South Carolina Court of Appeals for a rehearing of the Court's recent decision in *RS&A Piping & Fabrication, Inc. v. Kirby*, Op. No. 2025-UP-085 (S.C. Ct. App. filed March 12, 2025).

The grounds for the Respondent Treasurer for Marlboro County's petition for rehearing are addressed in detail in the supporting memorandum filed herewith and incorporated herein.

The Respondent Treasurer for Marlboro County's petition for rehearing is based on the Court's decision in *RS&A Piping & Fabrication, Inc. v. Kirby*, Op. No. 2025-UP-085 (S.C. Ct.

App. filed March 12, 2025); the supporting memorandum filed herewith; the briefs and Record on Appeal; Rule 221(a), SCACR; Rule 240, SCACR; and other rules of court.

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March 27, 2025

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v.

Ronald D. Kirby, Dylan T. Kirby, Treasurer for Marlboro County, and Danny T. Williams,..... Respondents.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING OF RESPONDENT TREASURER FOR MARLBORO COUNTY

The Respondent Treasurer for Marlboro County ("Marlboro County") has petitioned this Court for a rehearing of the recent decision in *RS&A Piping & Fabrication, Inc. v. Kirby*, Op. No. 2025-UP-085 (S.C. Ct. App. filed March 12, 2025). The Respondent Marlboro County respectfully submits that the following points were overlooked or misapprehended by this Court:

I.

As an important threshold issue, the Respondent Marlboro County respectfully submits that the Court failed to apply the proper standard of review. The Court's holding is stated as follows: "We hold the circuit court erred when it found the statute of limitations precluded RS&A Piping's action to set aside the tax sale because Marlboro County failed to strictly comply with statutory

notice requirements in its mailing of the redemption notice, a fundamental defect, which rendered the statute of limitations inapplicable." (Slip Op. at 2). The Court then proceeded to include a string citation of three cases setting forth the standard of review applicable to *factual issues*. However, this appeal does not turn on any factual issue in dispute, which is part of the reason summary judgment was entered in the first place. In fact, Marlboro County does not dispute any material facts, including the Appellant's allegation that the redemption notice was mailed two or three days early, on a Thursday rather than on the ensuing Saturday or Sunday. Rather, the resolution of the summary judgment granted by the Circuit Court turns entirely on legal issues, to which a *de novo* standard must be applied. *See*, *South Carolina Dept. of Social Services v. Boulware*, 422 S.C. 1, 809 S.E.2d 223, 226 (2018) ("[q]uestions of statutory interpretation are questions of law, which are subject to *de novo* review and which we are free to decide without any deference to the court below"). As discussed below, this case turns on the proper interpretation and application of two provisions of the Alternate Procedure for Collection of Property Taxes Act, specifically Sections 12-51-160 and 12-51-90(C), and the 2006 amendments enacted by the General Assembly. Yet, from this Court's memorandum opinion, there is no indication that the Court addressed any issues of law, and likewise there is no mention of the Court applying the *de novo* standard of review. Respectfully, that merits a rehearing.

II.

As indicated, this appeal turns on issues of law, none of which appear to have been considered by the Court, and certainly none of which are addressed by the series of string citations included in the memorandum opinion. The Respondent Marlboro County fully addressed in its brief the two interrelated legal issues that support the summary judgment entered by the Circuit Court. First, Marlboro County argued that the Appellant's action to set aside the tax sale is time-barred by the operation of Sections 12-51-160 and 12-51-90(C), in which the General Assembly

adopted what is, in essence, a statute of repose or a time limitation after which the tax sale becomes "incontestable." Second, Marlboro County made the related argument that the time bar created by the 2006 amendments to Sections 12-51-160 and 12-51-90(C) is not nullified by any "jurisdictional defect," such as a minor and non-prejudicial error with the statutory notice requirements. To that point, Marlboro County has demonstrated that the reference to such an error as a "jurisdictional defect" is itself a misnomer and is inconsistent with the original Supreme Court precedent in *Leysath v. Leysath*, 209 S.C. 342, 40 S.E.2d 233 (1946), as well as more modern decisions that clarify the meaning of the terms "jurisdictional defect" and subject matter jurisdiction in general. Respectfully, the Court in its memorandum opinion not only did not adjudicate these legal issues, but the opinion does not even acknowledge that these issues were raised. While the Court issued an unpublished *per curiam* memorandum opinion pursuant to Rule 220(b), SCACR, the Court does not specify which provision of Rule 220(b)(1) that it found applicable to the issues raised on appeal. Moreover, the Court has given no indication that it was affirming under Rule 220(b)(2), which requires a finding that the issues are "manifestly without merit."

For the reasons discussed in detail in its Respondent's Brief, Marlboro County believes that these two, interrelated legal issues must be addressed in adjudicating this appeal, and in fact, that a proper adjudication of those issues will result in an affirmance of the Circuit Court's ruling that the Appellant's action to set aside the tax sale was untimely and therefore was "incontestable." On rehearing, Marlboro County reasserts its analysis of those two issues and respectfully requests that the Court consider and address those issues, particularly because all of the authorities cited by this Court, even the post-2006 decisions, fail to properly consider or apply the 2006 amendments.

To recap, the Appellant brought this action to overturn a tax sale that occurred on November 18, 2018. This action, however, was not filed until May 17, 2021, which, as the

Circuit Court correctly found, was more than two years after the date of the tax sale and is therefore time-barred pursuant to the provisions of Alternate Procedure for Collection of Property Taxes Act, S.C. Code Ann. § 12-51-40, *et seq*.

As previously argued, the Circuit Court based its ruling on two statutory provisions that must be read *in pari materia*: Section 12-51-160 and Section 12-51-90(C). Section 12-51-160 provides, in pertinent part: "An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12-51-90(C)." S.C. Code Ann. § 12-51-160. Section 12-51-90(C), which is directly referenced in Section 12-51-160, provides as follows: "If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at the delinquent tax sale within the twelve months provided in subsection (A) and after the passing of an additional twelve months, the tax deed issued is incontestable on procedural or other grounds." S.C. Code Ann. § 12-51-90(C).

Like the Appellant did in its briefs, this Court in its memorandum opinion cites to cases that apply the statute of limitations set forth in Section 12-51-160 as it was written prior to the enactment of 2006 Act No. 238, which adopted Section 12-51-90(C) as a new provision and which significantly amended Section 12-51-160. The proper interpretation of the so-called "statute of limitations" in Section 12-51-160 cannot be accurately discerned from the pre-2006 amendment case law. Yet, this Court includes no discussion of – nor even any mention of – the significant changes in the law resulting from the enactment of 2006 Act No. 238.

Additionally, this Court cites post-2006 cases as well, including placing substantial weight on this Court's decision in *Forfeited Land Commission of Bamberg County v. Beard*, 424 S.C. 137, 817 S.E.2d 801 (Ct. App. 2018). Notably, in *Beard*, this Court cited Section 12-51-160 as follows: "[a]n action for the recovery of land sold pursuant to this chapter or for the recovery

of the possession must not be maintained unless brought within two years from the date of sale…." 817 S.E.2d at 805. The amended language in 2006 is replaced by a mere ellipsis, and Section 12-51-90(C) appears nowhere in the opinion. Importantly, none of the decisions of this Court that have been issued since the 2006 Act, including *Beard*, have analyzed the changes in Section 12-51-160 that were enacted in 2006. Regrettably, this Court has followed that same pattern and has refused to give needed consideration to the 2006 amendments, including the adoption of Section 12-51-90(C), which significantly altered the legal landscape in this context.[1]

Accordingly, a proper legal analysis should start with consideration and analysis of changes resulting from the 2006 Act. The title to 2006 Act No. 238 states as follows:

> AN ACT … TO AMEND SECTION 12–51–90, AS AMENDED, RELATING TO REDEMPTION OF REAL PROPERTY FOLLOWING ITS SALE FOR DELINQUENT TAXES, SO AS TO PROVIDE THAT THE TAX DEED IS INCONTESTABLE TWELVE MONTHS AFTER ISSUE; TO AMEND SECTION 12–51–160, RELATING TO TAX DEEDS, SO AS TO CONFORM THE TIME AFTER WHICH THE DEED IS INCONTESTABLE TO THE TIME PROVIDED IN THE AMENDMENT TO SECTION 12–51–90 CONTAINED IN THIS ACT.

See, 2006 Act No. 238. The body of 2006 Act No. 238 then provides as follows:

> **Tax deeds, time after which incontestable**
>
> SECTION 3.
>
> A. Section 12–51–90 of the 1976 Code, as last amended by Act 89 of 2001, is further amended by adding at the end:
>
> << SC ST § 12–51–90 >>
>
> (C) If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at

[1] In its memorandum opinion, this Court also cites to *Dibble v. Bryant*, 274 S.C. 481, 265 S.E.2d 673 (1980), and *In re Ryan Inv. Co.*, 335 S.C. 392, 517 S.E.2d 692 (1999), but both of those case pre-date the 2006 amendment of Section 12-51-160 and the adoption of Section 12-51-90(C) – meaning those cases have no precedential value in interpreting or applying those statutes in a post-2006 case.

> the delinquent tax sale within the twelve months provided in subsection (A) and after the passing of an additional twelve months, the tax deed issued is incontestable on procedural or other grounds.
>
> B. Section 12–51–160 of the 1976 Code is amended to read:
>
> << SC ST § 12–51–160 >>
>
> Section 12–51–160. In all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, is prima facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with. An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12–51–90(C).

See, 2006 Act No. 238, § 3. This demonstrates that Section 12-51-90(C) did not previously exist; that provision was adopted anew in 2006. Then, Section 12-51-160 was amended to specifically apply the incontestable provision adopted as part of Section 12-51-90(C).

The obvious intent of the General Assembly in enacting Section 3 of 2006 Act No. 238 is spelled out in the title to the Act: Section 3 was intended to make a tax sale "incontestable" two years after the date of the tax sale and one year after the redemption period ends. In *Whetstone v. South Carolina Department of Highways and Public Transportation*, 272 S.C. 324, 252 S.E.2d 35 (1979), the Supreme Court stated its interpretation of a statute was supported by the "underlying legislative history as exemplified by the original title of the pre-codified Act." 252 S.E.2d at 37. *See also*, *Kennedy v. South Carolina Retirement System*, 345 S.C. 339, 549 S.E.2d 243, 248 (2001) (where the Court looked at the title of an Act to glean legislative intent); *Demas v. Convention Motor Inns*, 268 S.C. 186, 232 S.E.2d 724, 726 (1977) (noting that it is proper to discern legislative intent from the title of an Act); *Duvall v. South Carolina Budget & Control Board*, 377 S.C. 36, 659 S.E.2d 125, 130 (2008) (same).

That intent is further made evident by reference to the General Assembly's adopted

heading to Section 3 which states "Tax deeds, time after which incontestable." Inexplicably, the Code Commissioner did not amend the heading to Sections 12-51-160 and 12-51-90 as codified in the Code of Laws to include the heading that was actually adopted by the General Assembly. However, that is immaterial. *See*, S.C. Code Ann. § 2-13-175 ("The catch line heading or caption which immediately follows the section number of any section of the Code of Laws must not be deemed to be part of the section and must not be used to construe the section more broadly or narrowly than the text of the section would indicate. The catch line or caption is not part of the law and is merely inserted for purposes of convenience to the person using the Code"). The heading, as actually provided by the General Assembly, demonstrates the legislative intent to make a tax sale "incontestable" after two years.

In effect, the provisions of 2006 Act No. 238 have made it clear (or at least should have made it clear) that the limitations bar set forth in Sections 12-51-160 and 12-51-90 is actually a statute of repose rather than what is typically referred to as a statute of limitations. In 2005, this Court in *Corbin v. Carlin* 366 S.C. 187, 620 S.E.2d 745 (Ct. App. 2005), had already recognized that Section 12-51-160, prior to any amendment, "appears to operate as a statute of repose." 620 S.E.2d at 748, n.2. But this Court left that question unanswered explaining "[w]hether the statute is one of limitations or one of repose, however, is not a question we must address in order to decide the issues on appeal." *Id*. Thus, the legal question remained unresolved, that is, until the enactment of 2006 Act No. 238, when the General Assembly removed any uncertainty and specifically declared as public policy that a tax sale becomes "incontestable" two years after the date of the tax sale. That clearly made the provision a statute of repose.

In the post-2006 case of *Federal Financial Co. v. Hartley*, 380 S.C. 65, 668 S.E.2d 410 (2008), the Supreme Court described the limitations bar in Section 12-51-160 in terms of a statute of repose without using that precise terminology. The Supreme Court held: "The two

year limitation in this statute is the period in which an owner who lost title to the property through a tax sale may bring an action to recover that property. Once two years have passed after the sale, the sale is not a cloud on the property's title." 668 S.E.2d at 412, *citing Corbin, supra*. Note also that the Supreme Court did not use the terminology of a "statute of limitations." Interestingly, while citing to this Court's decision in *Corbin* as to the purpose of Section 12-51-160, the Supreme Court deliberately excised the phrase "after proper notice" from the direct quote in *Corbin*. This demonstrates that the Supreme Court views Sections 12-51-160 and 12-51-90(C) as establishing a statute of repose. Notably, in its memorandum opinion in this case, this Court never cites, let alone distinguishes, the Supreme Court's decision in *Hartley*.

Furthermore, in other cases, the Supreme Court has explained the distinction between a statute of limitations and a statute of repose as follows: "A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action. A statute of repose creates a substantive right in those protected to be free from liability after a legislatively-determined period of time." *Langley v. Pierce*, 313 S.C. 401, 438 S.E.2d 242, 243 (1993). "[A] statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body." *Id*. Thus, a statute that makes a matter "incontestable" after a certain period of time is a statute of repose in that it sets the absolute time limit for bringing a particular cause of action.

The legislative history for the 2006 amendments also supports Marlboro County's position; yet, it was not considered by this Court in its memorandum opinion in the case at bar. With its enactment of 2006 Act No. 238, it is fully apparent that the General Assembly was acting in response to the *Corbin* decision. In *Corbin*, *supra*, this Court opined that the pre-2006 version of Section 12-51-160 was intended by the legislature "to create a time limit during which

one who lost title to property through a tax sale, *after proper notice*, may attempt to regain title." 620 S.E.2d at 749. (Emphasis added). The General Assembly sought to correct the italicized language which judicially creates an exception to the two-year limitations period. The General Assembly clarified with the 2006 amendments that Section 12-51-160 and the newly adopted Section 12-51-90(C) make a tax sale "incontestable" two years after the date of the tax sale, regardless of whether there was "proper notice." That is evident from the plain and ordinary meaning of the term "incontestable" which is defined as "not to be contested" and "indisputable" and "unquestionable." *See*, Webster's New World College Dictionary, 4th Edition. That is further evident from the explicit language of Section 12-51-90(C) making "the tax deed issued … incontestable *on procedural or other grounds*." *See*, S.C. Code Ann. § 12-51-90(C). (Emphasis added). "Other grounds" is an obvious reference to the "jurisdictional defect" language that was erroneously used years ago by the Supreme Court and has remained in the jurisprudence ever since. It is well settled that the General Assembly's subsequent amendment of a statute can be considered clarification of the legislative intent. *See*, *Buist v. Huggins*, 367 S.C. 268, 625 S.E.2d 636, 640 (2006) (noting that a subsequent statutory amendment may be interpreted as clarifying statutory intent); *Stuckey v. State Budget & Control Board*, 339 S.C. 397, 529 S.E.2d 706, 708 (2000) ("[a] subsequent statutory amendment may be interpreted as clarifying original legislative intent"). And that is precisely the purpose of Section 3 of 2006 Act No. 238 – to clarify that a tax sale cannot be contested on any basis after the passage of two years from the date of the tax sale. Hence, Sections 12-51-160 and 12-51-90(C) create a statute of repose.

This interpretation of Sections 12-51-160 and 12-51-90(C), as applied by the Circuit Court in this case, is also consistent with the recognized need for some finality and certainty, which is particularly important in real property transactions and ownership. There must be some

finality. The Supreme Court recognized that need as far back as 1946, when the Court observed the following in *Leysath v. Leysath*, 209 S.C. 342, 40 S.E.2d 233 (1948):

> If the two year limitation does not apply to defects of the character now under consideration, what purpose does it serve? *If it only applies where the tax proceedings are regular in every respect, the purchaser would have no need of the protection which this limitation was designed to give. A statute of repose is not needed in favor of purchasers at valid tax sales.* The very purpose of such a statute is to shut off inquiry into such defects as are now complained of, and confirm the tax deed in spite of them, and unless it does this it is nugatory.

40 S.E.2d at 236-237. (Emphasis added).

This citation makes two invaluable points. First, as the italicized language points out, if the time-bar of Section 51-12-160 applies only to tax sales that are flawless and technically sound (i.e., no technical issues) – which is exactly what the Appellant argues in the present case – there is no need for a statute of limitations or a statute of repose or any other time-bar because there can be no liability. If the Appellant's position is correct (and that seems to be the net result of this Court's decision in favor of the Appellant), that would not only be illogical and contrary to sound public policy, as discussed below, but quite frankly, Section 51-12-160 would be rendered legally meaningless and a nullity. Moreover, such a construction flies in the face of the well-settled rule of statutory construction that "[t]he Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196, 198 (2002).

Second, and perhaps most importantly, there would practically speaking be no time-bar for an action to set aside a tax sale. If there is a technicality that qualifies as a "jurisdictional defect" (whatever that means exactly), such as in this case where the Appellant claims the mailing of the redemption notice a mere two or three days *early* is a jurisdictional defect, then *there would never be a time-bar for an action to set aside a tax sale*. In other words, if the

Appellant did not file its action on May 17, 2021, but rather waited until 2071 (fifty years later), there would still be no time-bar under the Appellant's analysis. The subject property could have been conveyed dozens of times in the intervening years, but the defaulting taxpayer would be within its right to bring an action to set aside tax sale in 2071 because there was a "jurisdictional defect" regardless of how minor or non-prejudicial, and as a result, the existing property owner would be ousted in favor of the defaulting taxpayer.

In sum, the law does not support such an absurd and frankly meaningless construction or application of Section 51-12-160; yet, that is precisely the argument that the Appellant has made and one the pre-2006 amendments case law admittedly seems to support …. at least to some extent. To reiterate, the Supreme Court recognized in *Leysath* that "[a] statute of repose is not needed in favor of purchasers at valid tax sales." 40 S.E.2d at 236. Instead, a statute of repose is needed in cases where the tax sale is contestable. Hence, the General Assembly – in establishing the public policy as is its prerogative – amended Section 12-51-160 and adopted Section 12-51-90(C) precisely to adopt a statute of repose or, as the title to Act No. 238 states, "to provide that the tax deed is incontestable twelve months after issue." That is precisely how Sections 12-51-160 and 12-51-90(C) should be interpreted and applied. That is precisely how those statutes were interpreted and applied by the Circuit Court in dismissing the Appellant's action to set aside the tax sale. This Court is respectfully asked to rehear this case, allow oral argument if that would be helpful, and affirm the Circuit Court.

In its brief, Marlboro County stressed the need for this Court to take a fresh look at this area of the law not only to properly interpret and apply Sections 12-51-160 and 12-51-90(C) after the 2006 amendments, but also to apply some common sense and logic to the analysis and even some consideration of equitable principles. As far back as *Leysath* in 1946, the Supreme Court recognized that there are "jurisdictional defects" and conversely "mere irregularities." The

Supreme Court regrettably chose "not to undertake to lay down a general rule defining those defects in tax proceedings which should be considered as mere irregularities, to which the statute under consideration would apply, and those which should be deemed jurisdictional, so as to render the statute inapplicable." *Leysath*, 40 S.E.2d at 237. That is regrettable because over 70 years later there has still been no attempt by the courts to distinguish "jurisdictional defects" from "mere irregularities." Of course, as discussed above, with 2006 Act No. 238, that is no longer necessary. But in the event this Court chooses to reject the foregoing construction and application of Sections 12-51-160 and 12-51-90(C) in light of 2006 Act No. 238, the Court is nonetheless urged to recognize that there is a dichotomy between "jurisdictional defects" and "mere irregularities" and that there must be a recognition in the interests of good policy and common sense that the actions of the Delinquent Tax Collector in mailing the redemption notice two days *early* is not such a "jurisdictional defect" or fundamental defect *to render the tax sale null and void forever* – regardless when asserted. Yet, that is the crux of this case. The Appellant concedes that the redemption notice was sent two or three days early (on a Thursday rather than a Saturday or Sunday), and that act is a "technicality" at worst. (R. 51). With the intervening weekend, the U.S. mail, if received, would have been received within the 25-day window created by Section 12-51-120. Yet, for that alleged "defect" (i.e., early notice), the Appellant asks this Court to rule (and this Court indeed did rule) that the tax sale is null and void in perpetuity and that there is no statute of repose or time limitation for the defaulting taxpayer to have filed an action to set aside the tax sale. With all due respect, that is an unsound public policy and cannot be what the General Assembly has intended. *See*, *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364, 366 (1994) ("However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept

it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention").

Moreover, while "equitable maxims are not binding legal doctrines," they do "assist a court in applying and balancing equitable considerations," and of course, an action to set aside a tax sale is a matter in equity. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 715 S.E.2d 348, 354 (Ct. App. 2011). As this Court has observed, "[t]he notion 'equity looks to substance rather than form' evolved out of judicial regard for that which ought to be done." *Id*. "This maxim applies by dispensing with pure formalities which would otherwise defeat the equity." *Id*. *See also, Blake v. Cannon*, 312 S.C. 135, 439 S.E.2d 302, 304 (Ct. App. 1993) ("[e]quity regards substance over form"). In application of these equitable maxims, the Court should readily recognize that the mailing of a redemption notice two or three days *early* – an admitted "technicality" by the Appellant – should not render a tax sale null and void and certainly should not render a tax sale voidable in perpetuity, that is, with no repose or time limitation on a legal challenge to that tax sale.

Finally, as Marlboro County also argued, the concept of a "jurisdictional defect" in this context requires a fresh look, particularly in light of the modern approach that our appellate courts have taken on the issue of subject matter jurisdiction. Specifically, in recognition that the terms "jurisdictional" and "subject matter jurisdiction" have been misused and misapplied in many contexts over the years, the South Carolina appellate courts have clarified over the past decade that "[a] court's subject matter jurisdiction is determined by whether it has the authority to hear the type of case in question." *Baddourah v. McMaster*, 433 S.C. 89, 856 S.E.2d 561, 565 (2021). The use of the term "jurisdictional defect" in the context of a tax sale seems to be a misnomer. A tax sale does not require or even involve a court unless there is an action filed to set aside a tax sale or potentially an action to quiet title, and even when an action is filed, the

statutory procedures followed for the tax sale have no impact on whether the court hearing such an action has jurisdiction or not. This presents an additional reason a fresh look at the existing case law is needed. Respectfully, this Court should not continue to describe a minor, non-prejudicial defect in the notice procedures as being a "jurisdictional defect." Instead, it is a "mere irregularity" using the verbiage from *Leysath*, and not one that makes a tax sale incontestable in perpetuity. The Court is thus asked to grant a rehearing to fully address these legal issues under the correct *de novo* standard of review and to give the required effect to the 2006 amendments.

CONCLUSION

The Respondent Treasurer for Marlboro County respectfully requests that the Court rehear its decision in this case for the reasons argued herein. The Respondent further requests that the Court schedule oral argument so that the significant legal issues and public policy concerns raised by this appeal may be fully considered and addressed.

Respectfully submitted,

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March 27, 2025

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM MARLBORO COUNTY
Roger E. Henderson, Circuit Court Judge

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v.

Ronald D. Kirby, Dylan T. Kirby, Treasurer for Marlboro County, and Danny T. Williams,..... Respondents.

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Petitioners, does hereby certify that service of the **Petition for Rehearing of Respondent Treasurer for Marlboro County** and **Memorandum in Support of Petition for Rehearing of Respondent Treasurer for Marlboro County** in the above-captioned matter was made upon all counsel of record by email only this the 27th day of March 2025, as follows:

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March 27, 2025

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RE: RS&A Piping & Fabrication, Inc. a/k/a R. S. & A Piping, Inc. v. Ronald D. Kirby, Dylan T. Kirby, Treasurer for Marlboro County, and Danny T. Williams
SCCA Case Number: 2022-001791
Civil Action Number: 2021-CP-34-0150
Our File Number: 79.20659

Dear Ms. Kitchings:

Pursuant to Section (b)(2)the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as amended April 24, 2024), please find enclosed for filing the **Petition for Rehearing of Respondent Treasurer for Marlboro County** and **Memorandum in Support of Petition for Rehearing of Respondent Treasurer for Marlboro County** with regard to the above referenced appeal. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

My firm's $50.00 check for the filing fee will be mailed to the Court via U.S. Mail. If you have any questions, please advise. Thank you for your assistance.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jac
Enclosures

cc: Leonard R. Jordan, Jr., Esquire *(w/ Enclosures, Via Email Only)*
Andrew F. McLeod, Esquire *(w/ Enclosures, Via Email Only)*
J. René Josey, Esquire *(w/ Enclosures, Via Email Only)*
Allison Truitt Burch, Esquire *(w/ Enclosures, Via Email Only)*