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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
In the Administrative Law Court

Crystal M. Rookard, Administrative Law Judge

Appellate Case No. 2025-001876

Orangeburg County Assessor..... Respondent,

v.

Rekha Bali Haribabu and Thiyagarajhan Vasudevan ..... Appellants

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INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTION

STATUTES

REGULATIONS

COURT RULES

ISSUES ON APPEAL

I. Whether the Administrative Law Court's denial of the property tax legal residence classification under S.C. Code Ann. § 12-43-220(c) (Supp. 2025) is supported by substantial evidence on the record as a whole.

II. Whether the issues raised by the Appellants on appeal are precluded due to their failure to timely file a Motion for Reconsideration pursuant to SCALC Rule 29(D).

STATEMENT OF THE CASE

The Respondent accepts the Statement of the Case as written by the Appellants.

STANDARD OF REVIEW

The standard of review governing decisions of the Administrative Law Court is set forth in the South Carolina Administrative Procedures Act. See S.C. Code Ann. § 1-23-610(B) (Supp. 2025), which provides:

> The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
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> (a) in violation of constitutional or statutory provisions;
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> (b) in excess of the statutory authority of the agency;
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> (c) made upon unlawful procedure;
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> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
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> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

"The decision of the Administrative Law Court should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." Centex Intern., Inc. v. South Carolina Dept. of Revenue, 406 S.C. 132, 139, 750 S.E. 2d 65, 69 (2013). "In determining whether the decision of the ALC was supported by substantial evidence, a reviewing court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion as the ALC." Books-A-Million, Inc. v. South Carolina Department of Revenue, 130 S.C. 388, 391, 844 S.E.2d 399, 400 (Ct. App. 2020). "Substantial evidence" is evidence which, considering the

record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached. Charleston County Assessor v. University Ventures, LLC, 421 S.C. 194, 203, 805 S.E.2d 216, 221 (Ct. App. 2017). "The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding from being supported by substantial evidence." Original Blue Ribbon Taxi Corp. v. South Carolina Dept. of Motor Vehicles, 380 S.C. 600, 605, 670 S.E.2d 674, 677 (Ct. App. 2008). Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support the ALJ's decision. Daisy Outdoor Advertising Co., Inc. v. South Carolina Dept. of Transportation, 352 S.C. 113, 117, 572 S.E.2d 462, 464 (Ct. of App. 2002)

STATEMENT OF FACTS

Ms. Haribabu is a native and citizen of India who is lawfully present in the United States pursuant to an H-1B visa. [Tr. pp. 97, 99]. Her husband, Thiyagarajhan Vasudevan, also a native of India, is present in the United States on an H-4 dependent visa. Ms. Haribabu additionally holds an approved I-140 immigrant petition, which provides a pathway for her to obtain lawful permanent resident status in the future.

In 2022, Ms. Haribabu purchased a residence in Orangeburg County in her sole name. In December 2023, she and her husband jointly applied for the legal residence property tax classification. The Orangeburg County Assessor denied the application, citing an inability to determine Mr. Vasudevan's domiciliary intent. [Tr. p. 50]. Accordingly, Mr. Vasudevan's domiciliary intent and conduct is the issue that is now before this Court. Ms. Haribabu's domiciliary intent and conduct is not in issue. The tax years at issue are 2023 and 2024. (Tr. p.36.

Ms. Haribabu and Mr. Vasudevan were married in 1997 and have one son, born in 1998. [Tr. p. 156]. Ms. Haribabu first entered the United States in 2009 on a J-1 visa, while her husband and their eleven-year-old son remained in India. [Tr. pp. 97, 157]. From 2009 to 2012, she was employed as a teacher in the Hartford, Connecticut school district.

In 2012, Ms. Haribabu returned to India to satisfy the two-year home residency requirement associated with her J-1 visa. [Tr. pp. 97–98]. She reentered the United States in 2014 and subsequently worked as a teacher in multiple school districts in South Carolina. Her husband and son remained in India.

In August 2018, Ms. Haribabu began employment with the Orangeburg County School District, which sponsored her for an H-1B visa and later for an I-140 immigrant petition. [Tr. pp. 98–99, 105]. She testified that she remained continuously in the United States from 2014 until December 2019, when she returned to India to take a master's examination. [Tr. pp. 104–05]. She later acknowledged that she also traveled to India during holiday periods. [Tr. p. 129].

Ms. Haribabu's son came to the United States on an H-4 visa in 2018. He later decided to pursue his education in South Carolina and enrolled in Midlands Technical College. [Tr. pp. 117-118]

Mr. Vasudevan first entered the United States in 2019, after Ms. Haribabu obtained H-1B status. [Tr. pp. 163–64]. On cross-examination, he testified that prior to 2019, he remained in India because a visitor visa would have permitted him to stay in the United States for only two to three months at a time. He further explained that he stayed in India to care for both his parents and his wife's parents. [Tr. pp. 183–84]. Mr. Vasudevan never came to the United States to visit Ms. Haribabu at any time during the periods from 2009 to 2012 or from 2014 to April 2019.

In January 2021, the Orangeburg County School District filed an I-140 Immigrant Petition for Alien Worker on behalf of Ms. Haribabu with U.S. Citizenship and Immigration Services. [Petitioner's Ex. 14]. The petition was approved in April 2021. [Petitioner's Ex. 5].

Part 7 of the I-140 petition requires the applicant to "provide information on the spouse and all children related to the individual for whom you are filing this petition," and to indicate whether such individuals will seek a visa abroad or adjustment of status. The only individual identified in this section of Ms. Haribabu's petition was her son, Charan Rajhan Thiyagarajhan, and the petition reflected that he would not be applying for a visa or adjustment of status. Mr.

Vasudevan was not listed in Part 7, although his passport and travel history show that he was in the United States at the time the I-140 Petition was being prepared. [Tr. pp. 142–43; Petitioner's Ex. 14, 18].

Ms. Haribabu testified that she reviewed the I-140 petition prior to its submission but did not notice the omission of her husband's name. She offered no explanation as to why her son was included while her husband was not. [Tr. p. 125]. She further testified that Mr. Needle, counsel for the School District who prepared the petition, instructed her to review the document for accuracy and that she did so. [Tr. p. 138]. Mr. Vasudevan was never added after her review. Although she acknowledged having the opportunity to present Mr. Needle as a witness at the hearing, she deferred that decision to her counsel, and Mr. Needle did not testify. [Tr. p. 144].

In 2022, Ms. Haribabu purchased real property located on Lata Palm Court in Orangeburg, South Carolina. [Petitioner's Ex. 2]. Title to the property and the associated mortgage were placed solely in her name. She testified that her husband was with her at that time and supported the decision to put the home and mortgage solely in her name because she intended to remain in the United States long-term, whereas he might travel. [Tr. p. 108].

After coming to the United States in 2019, Mr. Vasudevan did not seek employment in 2019 or 2020. He testified that he was first employed in 2021 as a front desk clerk at a motel. [Tr. p. 164]. However, the record reflects that he was not approved for an Employment Authorization Document (EAD) until January 31, 2022 and did not obtain a Social Security card until February 1, 2022. [Petitioner's Ex. 6, 7]. Accordingly, his testimony regarding employment in 2021 is not corroborated by the documentary evidence.

Ms. Haribabu testified that Mr. Vasudevan was employed in 2022 and again in 2023 prior to his departure to India in August 2023. [Tr. p. 149]. The parties' joint federal income tax return for 2022 reflects a combined income of $81,374. [Tr. p. 111]. Ms. Haribabu testified that she earned approximately $74,000 of that amount, leaving approximately $7,000 attributable to Mr. Vasudevan for that year. [Tr. p. 111]. She did not recall his income for 2023.

Conversely, Mr. Vasudevan testified that he earned approximately $30,000 in both 2022 and 2023. [Tr. p. 196]. No pay stubs, wage statements, or other corroborating documentation were introduced to support this testimony. If accurate, such income would be inconsistent with the parties' reported income on their 2022 and 2023 tax returns.

Although Mr. Vasudevan holds a bachelor's degree in Mathematics and previously owned a printing business in India, he has been employed exclusively in front desk positions at various motels since obtaining his EAD. [Tr. p. 175].

Mr. Vasudevan's I-94 travel history for tax years 2023 and 2024 reflects that he departed the United States for India on August 23, 2023, and did not return until March 27, 2025. [Tr. p. 58; Petitioner's Ex. 18]. Accordingly, he was physically present in the United States for 234 days from January 1, 2023, through August 22, 2023, and remained outside the United States for approximately 582 consecutive days thereafter. [Tr. p. 58]. The record further reflects that, during the approximately fifteen years that Ms. Haribabu has been present in the United States, Mr. Vasudevan has been absent for approximately seventy-one percent of that time. [Tr. p. 65].

Mr. Vasudevan testified that he returned to India in 2023 to assist his adult son with a visa-related issue and to help care for his aging parents, one of whom was having surgery, as well

as Ms. Haribabu's father. [Tr. p. 169]. His son had previously returned to India in 2022. [Tr. p. 107] Mr. Vasudevan stated that he returned to the United States in March 2025 because his son had resumed his studies in the United States. [Tr. p. 171]. He later clarified that his return was motivated by a desire to earn income to assist with his son's educational expenses. [Tr. p. 185]. Prior testimony established that his son was expected to graduate in either December 2025 or June 2026. [Tr. p. 120].

Mr. Vasudevan further testified that his sister resides approximately three to four kilometers from his parents and is currently providing care for them. [Tr. pp. 179–80]. He, nonetheless, stated that his parents are distressed by his absence. [Tr. p. 180].

With respect to his intent to remain in the United States, Mr. Vasudevan's testimony was inconsistent. At one point, he indicated that he intended to return to India periodically to care for his parents. [Tr. p. 172]. This statement was consistent with his wife's earlier testimony that if there was a medical issue with his parents, he would definitely leave to be with them. [Tr. p. 134] At another point, he stated that he planned to remain in the United States for "more than eighteen months this time". [Tr. p. 190]. However, when directly asked by the Court whether he intended to return to India from time to time, he ultimately responded that he did not. [Tr. p. 191].

ARGUMENT

I. The Administrative Law Court's denial of the property tax legal residence classification under S.C. Code Ann. § 12-43-220(c) (Supp. 2025) is supported by substantial evidence on the record as a whole.

A. Eligibility for the Legal Residence Classification

The legal residence property tax classification is governed by S.C. Code Ann. § 12-43-220(c) (2014 & Supp. 2025). This classification affords qualifying taxpayers a favorable four percent assessment ratio, rather than the standard six percent ratio, and provides an exemption from all school operating millage.

The statute sets forth specific eligibility requirements. Under Section 12-43-220(c)(2)(i) (Supp. 2025), a taxpayer must both own and occupy the property as his legal residence and be domiciled at that address for some period during the applicable tax year. The statute further provides that if a residence qualifies as a legal residence for any portion of the tax year, the owner is entitled to the four percent assessment ratio

In addition to the substantive eligibility requirements, the statute imposes a mandatory certification requirement. Pursuant to Section 12-43-220(c)(2)(ii) (2014), the applicant must certify under penalty of perjury that the subject property is his legal residence and domicile at the time of application, and that neither the applicant nor any member of his household claims residency in another jurisdiction or the benefit of the special assessment ratio on another residence. This sworn certification is not a formality; it is a substantive safeguard designed to ensure that the preferential classification is limited to true South Carolina domiciliaries.

The statute further defines "member of my household" to include the owner-occupant's spouse, unless legally separated and living apart, and any dependent child under the age of

eighteen who is claimed, or eligible to be claimed, on the owner-occupant's federal income tax return. Section 12-43-220(c)(2)(iii)(A) (Supp. 2025). By expressly including household members within the certification requirement, the General Assembly broadened the inquiry beyond the applicant alone and required consistency of domicile across the household.

Finally, the statute specifically states that the burden of proof for eligibility is on the owner-occupant. Section 12-43-220(c)(2)(iv) (2014 & Supp. 2025) requires the applicant to provide proof sufficient for the assessor to verify domicile, including, but not limited to, South Carolina income tax returns, motor vehicle registrations, and any other evidence necessary to determine eligibility for the four percent assessment ratio. Absent such proof, the classification must be denied.

Read together, these provisions make clear that the applicant and members of the applicant's household must affirmatively demonstrate exclusive South Carolina domicile. The statutory requirement that neither the applicant nor any member of the household claim residency in another jurisdiction for any purpose forecloses any contrary showing. Any other construction would undermine the statute's plain language and defeat the General Assembly's intent to reserve this preferential tax treatment solely for those who are, in fact, domiciled in South Carolina.

The terms "domicile" and "legal residence" are central to the above statutory scheme and must be construed consistently with their established legal meaning. South Carolina regulations define "legal residence" as "the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled." 10 S.C. Code Ann. Regs. 117-1800.1(2) (2012). Thus, by definition, eligibility for the legal residence classification turns on domicile.

Although the statute does not define "domicile," South Carolina appellate courts have long supplied a clear and controlling definition. The South Carolina Supreme Court has held that domicile is "the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning." Gasque v. Gasque, 246 S.C. 423, 426, 143 S.E.2d 811, 812 (1965). Critically, domicile is not established by mere presence. It depends on intent, as demonstrated by the totality of the facts and circumstances. *Id.* Moreover, a domicile, once established, is presumed to continue unless and until there is clear proof of both an intent to abandon the prior domicile and acquire a new one. *Id.* at 427, 143 S.E.2d at 812.

The Court has repeatedly reaffirmed this principle. To effect a change of domicile, there must be both (1) actual abandonment of the former domicile with no intent to return, and (2) acquisition of a new domicile through residence coupled with the intent to make that location a permanent home. Ferguson v. Employers Mut. Cas. Co., 254 S.C. 235, 239, 174 S.E.2d 768, 769 (1970). Importantly, a person may have multiple residences, but only one domicile at any given time. Ravenel v. Dekle, 265 S.C. 364, 379, 218 S.E.2d 521, 528 (1975). Courts must therefore evaluate any claimed intent in light of the individual's conduct, not merely his assertions. *Id.*

For tax purposes, "legal residence" is synonymous with domicile. Phillips v. S.C. Tax Comm'n, 195 S.C. 472, 12 S.E.2d 13 (1940). The Supreme Court has emphasized the longstanding distinction between actual residence and legal residence, recognizing that a person may physically reside in one place while remaining legally domiciled in another. *Id.*; Roof v. Tiller, 195 S.C. 132, 10 S.E.2d 333 (1940).

Accordingly, because the legal residence classification requires domicile, and domicile

requires both presence and intent, a taxpayer's failure to establish a change in domicile is fatal to his claim for the legal residence property tax classification.

South Carolina courts have consistently held that S.C. Code Ann. § 12-43-220(c) is a property tax exemption statute and must therefore be strictly construed. CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011); see also Mead v. Beaufort County Assessor, 419 S.C. 125, 796 S.E.2d 165 (Ct. App. 2016); Hibernian Soc. v. Thomas, 282 S.C. 465, 319 S.E.2d 339 (1984). Under this well-settled rule, the statutory language may not be expanded by implication or liberally construed in favor of the taxpayer.

Instead, courts must apply the plain and ordinary meaning of the statute and strictly construe any ambiguity against the claimed exemption. John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer, 276 S.C. 314, 278 S.E.2d 340 (1981); Berkeley County Sch. Dist. v. S.C. Dep't of Revenue, 383 S.C. 334, 679 S.E.2d 913 (2009); Owen Indus. Prods., Inc. v. Sharpe, 274 S.C. 193, 262 S.E.2d 33 (1980).

Accordingly, because the four percent legal residence classification is a statutory tax benefit in derogation of the general six percent rate, the appellants bear the burden of bringing themselves squarely within the terms of the statute. Any doubt must be resolved in favor of taxation, not exemption.

B. The Appellants' Statements and Conduct Fail to Establish Mr. Vasudevan's domicile in Orangeburg, South Carolina.

The record contains no competent evidence that Mr. Vasudevan intended to make the United States, and specifically Orangeburg County, his true, fixed, and permanent home. To the

contrary, the undisputed facts demonstrate the absence of any clear intent to abandon his longstanding domicile in India, as required under Gasque, 246 at 427, 143 S.E. 3d at 812.

For nearly a decade, Ms. Haribabu and Mr. Vasudevan lived on separate continents, namely from 2009 to 2012 and again from 2014 to 2019. During these periods, Mr. Vasudevan never once visited the United States, as confirmed by his passport records. He did not enter the United States until 2019, years after his wife had already begun establishing her professional life in South Carolina. This prolonged physical absence is wholly inconsistent with any claim that he had formed the intent to establish a permanent home in South Carolina.

Even after his arrival, the evidence reflects that Mr. Vasudevan never committed to establishing domicile in the United States in the same manner as Ms. Haribabu. The testimony demonstrates that, consistent with cultural expectations, he remained closely tied to India due to ongoing obligations to care for aging parents with medical needs. These continuing familial responsibilities acknowledged by both appellants are not incidental. They reflect a persistent and substantial connection to Mr. Vasudevan's prior domicile that was never abandoned.

Mr. Vasudevan's own testimony regarding intent further undermines his claim. He provided conflicting statements, at times asserting that he would return to India to care for his parents, at other times indicating an intent to remain in the United States only temporarily, and still at other points suggesting he would not return to India at all. Under South Carolina law, such equivocal and contradictory testimony cannot satisfy the requirement of "clear proof" necessary to establish a change in domicile. Gasque, 246 S.C. at 427, 143 S.E.2d at 812.

The objective evidence surrounding the conduct of the Appellants likewise fails to demonstrate domiciliary intent. Ms. Haribabu's I-140 immigrant petition, an official document

central to any claimed long-term relocation, identified her son's status but omitted Mr. Vasudevan entirely. This is despite the requirement of disclosure of spouse and dependent family members clearly written immediately above the area designated for disclosure of those persons. This omission contradicts any assertion that Mr. Vasudevan was part of a unified plan to permanently relocate to the United States at the time the I-140 petition was filed. Although Ms. Haribabu suggested this was an error, no corroborating testimony was offered from the attorney who prepared the petition, despite the opportunity to do so.

Similarly, the couple's financial and property arrangements do not reflect a shared, permanent domicile in South Carolina. The Orangeburg residence was purchased solely in Ms. Haribabu's name, and the mortgage obligation is hers alone. She testified that this arrangement was intentional to allow Mr. Vasudevan flexibility to travel. This explanation directly contradicts any claim that he had established a fixed and permanent home in Orangeburg County.

Mr. Vasudevan's employment and financial history further undermine any assertion of domiciliary intent. His claimed employment timeline is inconsistent with the documentary record, which shows that he did not receive employment authorization or a Social Security number until 2022. His reported income is minimal, inconsistent, and largely uncorroborated. Likewise, the parties' joint tax returns do not reflect that Mr. Vasudevan had meaningful independent economic establishment in South Carolina. This lack of stable economic integration on the part of Mr. Vasudevan weighs heavily against a finding of domicile.

His physical presence in South Carolina is likewise inconsistent with permanency. After first entering the United States in 2019, he continued to spend extended periods abroad, including a departure in August 2023 followed by an absence of approximately 582 consecutive days.

Indeed, over the course of his wife's extended presence in the United States, he has been outside the country approximately seventy-one percent of the time. Such prolonged and repeated absences are fundamentally incompatible with the concept of a "true, fixed and permanent home."

The reasons for these absences confirm that his domicile remained in India. He returned abroad to address family caregiving responsibilities and his son's visa-related matters and acknowledged ongoing obligations to his parents, who continue to reside in India. These are not temporary or incidental ties; they reflect enduring connections to his prior domicile that were never relinquished.

Finally, the limited indicia of residency identified by Appellants, namely South Carolina driver's licenses, Employment Authorization Documents, Social Security cards, an auto insurance policy, and joint tax filings, are insufficient as a matter of law to establish domicile. These items are equally consistent with the status of a nonimmigrant temporarily residing in the United States and do not demonstrate the requisite intent to abandon a prior domicile and establish a permanent home in South Carolina. Without more, they fail to satisfy Appellants' statutory burden.

For example, South Carolina law requires individuals to obtain a valid driver's license in order to operate a motor vehicle on the State's roads. See S.C. Code Ann. § 56-1-20 (Supp. 2025). Consistent with that requirement, nonimmigrants residing in South Carolina, whether on a temporary or permanent basis, are expressly permitted to obtain a South Carolina driver's license. See S.C. Code Ann. § 56-1-40(7) (Supp. 2025). Thus, possession of a driver's license reflects compliance with state law, not an intent to establish domicile.

While an assessor may consider a driver's license as one factor in confirming an applicant's address, it is not, and cannot be, determinative of legal residence. Critically, the term "resident" as used in Section 56-1-40(7) is construed broadly in light of the statute's regulatory purpose and does not require domicile. This stands in contrast to the "legal resident" requirement under the property tax statute, which demands proof that the taxpayer has established domicile in South Carolina.

The same reasoning applies to Appellants' reliance on automobile insurance. South Carolina law mandates that all drivers maintain insurance coverage. See S.C. Code Ann. §§ 56-10-10, -20 (2018). Accordingly, the fact that Mr. Vasudevan is insured is merely evidence of legal compliance and does not support a finding of domicile.

Finally, Appellants' reliance on South Carolina income tax filings is misplaced. Although tax payments may be considered as part of a domicile analysis, they are not dispositive. South Carolina imposes income tax obligations on all individuals who earn income within the State, regardless of domicile. See S.C. Code Ann. §§ 12-6-1710, -1720 (2014). Thus, the filing of state income tax returns does not, standing alone, establish legal residence. Here, the minimal and sporadic nature of Mr. Vasudevan's South Carolina income further undermines any claim that he intended to establish domicile in this State.

Viewing the record in its totality under the strict construction governing tax exemption statutes, the evidence compels a single conclusion: Mr. Vasudevan did not establish domicile in South Carolina. Appellants therefore failed to meet their burden of proof, and the Administrative Law Court's decision denying the legal residence classification must be affirmed.

II. The Issues Raised by the Appellants on Appeal are Precluded Due to their Failure to Timely File a Motion for Reconsideration Pursuant to SCALC Rule 29(D).

A. Rule 29(D) is Consistent with All Applicable Constitutional Provisions

S.C. Code Ann. § 1-23-650 (Supp. 2025) expressly authorizes the Administrative Law Court ("ALC") to promulgate rules governing practice and procedure before it. South Carolina courts have recognized this authority, noting that the ALC has established its own procedural rules pursuant to this statutory grant. See Gateway Enterprises, Inc. v. South Carolina Department of Revenue, 341 S.C. 103, 108, 533 S.E.2d 896, 899 (2000). This delegation is consistent with the longstanding principle that the General Assembly may vest administrative bodies with broad discretion to adopt rules necessary to carry out their functions. Fisher v. J.H. Sheridan Co., 182 S.C. 316, 189 S.E. 356, 360 (1936).

The statutory framework under which Rule 29(D) was adopted ensures constitutional oversight. Section 1-23-650(B) provides that ALC procedural rules are "subject to review as are rules of procedure promulgated by the Supreme Court under Article V of the Constitution." Thus, the General Assembly preserved uniformity by subjecting ALC rules to the same Supreme Court review as judicial rules under S.C. Const. art. V, § 4, while maintaining the ALC's placement within the Executive Branch.

Appellants contend that Rule 29(D) violates S.C. Const. art. V, § 1 by creating inconsistency within the unified judicial system. This argument fails because the ALC is not part of the unified judicial system. It is an executive branch tribunal. Accordingly, Article V, § 1 does not govern ALC procedure. The only constitutional constraint implicated here arises through § 1-23-650(B), which, as noted, expressly subjects ALC rules to Supreme Court review, thereby preserving constitutional structure rather than undermining it.

B. SCALC Rule 29(D) Serves as a Mechanism for Issue Preservation and is Consistent with Existing Statutes and Case Law Governing Appeals from the ALC.

Rule 29(D) also reflects well-established principles of administrative exhaustion and issue

preservation that South Carolina appellate courts consistently enforce. In Risher v. South Carolina Department of Health and Environmental Control, 393 S.C. 198, 712 S.E.2d 428 (2011), the Supreme Court held that an issue was unpreserved where the appellants failed to file a motion for reconsideration under SCALC Rule 29 or a motion pursuant to Rules 59(e) or 60, SCRCP. The Court applied this requirement even amid uncertainty regarding the availability of such motions in ALC proceedings. *Id.* at 206, 712 S.E.2d at 431.

Similarly, in South Carolina Department of Motor Vehicles v. Dover, 423 S.C. 153, 813 S.E.2d 532 (Ct. App. 2018), the Court of Appeals held that a statutory interpretation argument was unpreserved where the appellant failed to file a Rule 59(e) or Rule 29(D) motion for reconsideration, even though the issue had been briefed and argued during the underlying proceedings. *Id.* at 169 n.3, 813 S.E.2d at 540 n.3. These decisions confirm that a post-decision motion is required to preserve issues for appellate review.

Motions for Reconsideration are valuable tools for the judiciary in that they promote judicial economy and efficiency by allowing administrative law judges to correct errors without requiring appellate intervention. In addition, the ALC rule requiring Motions for Reconsideration protects parties from inadvertent failure to preserve issues for appeal. [1]

Further, Rule 29(D) does not abrogate the right to appeal under S.C. Code Ann. § 1-23-

[1] The case of Home Medical Systems, Inc. v. South Carolina Dept. of Revenue was decided in 2009 when SCALC Rule 29(D) still contained the language indicating that a motion for reconsideration was not a prerequisite for filing a notice of appeal from a final decision of an administrative law judge. In that case the Supreme Court emphasized that such motions were often required for issue preservation but bolded the language in SCALC Rule 29(D) that such motions were not required. Home Medical Systems, Inc. v. South Carolina Dept. of Revenue, 382 S.C. 556, 561, 677 S.E.2d 582, 585 (2009). Although the Home Medical case has not been overruled, the subsequent Risher case in 2011, *supra,* was much more forceful in stating that a Motion for Reconsideration was required for issue preservation. Since the Risher case is a more recent opinion with respect to this issue and was, likewise, issued before the ALC removed the language stating that a Motion for Reconsideration was not a requirement to appeal, it should be given greater weight in the determination of the matter at hand.

610 (Supp. 2025). That statute governs the timing and forum for appeals. It does not preclude procedural prerequisites such as Rule 29(D) for preserving issues before appellate review is sought.

C. A Motion for Reconsideration Presents a Meaningful Opportunity for Relief, Not a Mere Futile Act

Appellants' assertion that filing a motion for reconsideration would have been futile is unavailing. Their appeal challenges the sufficiency of the evidence, an issue squarely within the scope of Rule 29(D), which incorporates the grounds set forth in Rule 59, SCRCP. Rule 59 expressly permits a tribunal to amend findings of fact and conclusions of law. South Carolina courts routinely entertain Rule 59(e) motions addressing substantial evidence determinations. See A.O. Smith Corp. v. South Carolina Department of Health and Environmental Control, 428 S.C. 189, 833 S.E.2d 451 (2019); Schwiers v. South Carolina Department of Health and Environmental Control, 429 S.C. 43, 837 S.E.2d 730 (2019); Books-A-Million, Inc. v. South Carolina Department of Revenue, 430 S.C. 388, 844 S.E.2d 399 (2020).

Moreover, reconsideration is not futile for three independent reasons. First, Rule 29(D) is mandatory; compliance does not depend on the perceived likelihood of success. Second, the ALC regularly grants reconsideration motions addressing factual findings. Third, even if denied, such a motion preserves issues for appeal and satisfies the rule's requirements.

D. Remand is Not the Proper Remedy for Failing to File a Motion for Reconsideration

Finally, Appellants' proposed remedy, a remand, is inconsistent with the governing law. Rule 29(D) does not contemplate remand as a cure for noncompliance. Instead, the failure to file a required motion results in issue preclusion. This outcome serves the rule's core purpose:

affording the ALC an opportunity to correct its own errors before appellate intervention. See Dover, *supra* and Risher, *supra.*

CONCLUSION

Substantial evidence in the record supports the Administrative Law Court's determination that Mr. Vasudevan was not domiciled in Orangeburg, South Carolina, for the 2023 and 2024 tax years. The record does not establish that he abandoned his domicile in India or formed the requisite intent to establish domicile in South Carolina. The decision below should therefore be affirmed.

Further, Rule 29(D) constitutes a valid exercise of the Administrative Law Court's statutory authority and is fully consistent with South Carolina's constitutional and procedural framework. Because Appellants failed to file a timely motion for reconsideration as required by that rule, the issues they now seek to raise were not preserved for appellate review and are therefore procedurally barred. For these reasons, the decision below should be affirmed.

Respectfully submitted,

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