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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
The Honorable Robert L. Reibold, Administrative Law Judge
Docket No. 25-ALJ-17-0156-CC

Appellate Case No. 2026-001190

Matthew DeNapoli and Lindsay DeNapoli,……………………………………………Appellants,

v.

Charleston County Assessor,…………………………………………………………Respondent.

REPLY BRIEF OF APPELLANTS

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Pro Se Appellants

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These short forms identify the ALC filings and productions from which the cited pages were drawn. After the Record on Appeal is prepared under Rule 210, SCACR, the final brief under Rule 211 will substitute Record page citations in the form (R. p. __). No other changes will be made except correction of typographical errors. See Rule 211(b), SCACR.

REPLY TO RESPONDENT'S STATEMENT OF THE CASE AND STATEMENT OF FACTS

Respondent's Statement of the Case and Statement of Facts recast this appeal as a routine, time-barred refund. That recasting is the error under review. The Request for Contested Case Hearing was a de novo appeal of the Charleston County Board of Assessment Appeals (the Board). The Case Brief attached to that request contended that the 2015 application was complete and approved, that the burden was deemed met, that no further application was necessary, that the 2016 reclassification was unauthorized, and that S.C. Code Ann. § 12-60-1750 did not apply because the exemption application had already been timely filed and granted. (RCC.) The April 3 Order described that pleading as a contention that Respondent "improperly denied their refund requests." That is the Assessor's caption, not Appellants' contest. The controversy is the lawful tax liability on the home—whether Article X and S.C. Code Ann. § 12-43-220(c) continuously classify 918 Casseque Province at four percent—not whether a two-year refund form was stamped on time. Captioning a classification contest as a refund, then a revocation, then an allegation, then "sufficient notice," is how the agency kept a court from deciding a ratio that had already vested by operation of law.

S.C. Const. art. X, § 1 classifies a legal residence for assessment at four percent of fair market value. **S.C. Code Ann. § 12-43-220(c)(1)** implements that classification:

> "The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, is taxed on an assessment equal to four percent of the fair market value of the property."

Subsection (2)(i) requires actual ownership, occupancy, and domicile for some period of the tax year. Qualification for any part of the year entitles the ratio for the entire year:

> "To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year ***is entitled*** to the four percent assessment ratio provided in this item for the entire year…." (emphasis added)

Appellants own and have occupied 918 Casseque Province since the Certificate of Occupancy issued November 5, 2014. Respondent does not contest occupancy. The 2015 application stated the address, the occupancy date of November 5, 2014, and that the Virginia residence was abandoned the day it sold, October 31, 2014. (ASSESSOR_00036; Affidavit M, MTC-00094–00096.)

Subsection (2)(ii) requires a timely first-year application and this certification:

> "Under penalty of perjury I certify that: (A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and (B) that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence."

Appellants executed that certification. On September 8, 2015, Assessor staff marked the document checklist Complete and checked Approved: Yes on the application itself. (ASSESSOR_00036–00037.) The form offers only those two boxes and states: "You will be notified in writing if your application is denied." At that moment the ratio vested by operation of law.

Subsection (2)(iv) then commands:

> "If the owner or the owner's agent has made a *proper certificate* as required pursuant to this subitem and the owner *is otherwise eligible*, the owner is **deemed to have met the burden of proof and is allowed the four percent assessment ratio allowed by this item…."** The same subitem lists proof the assessor may require, including but not limited to the most recently filed South Carolina return, vehicle registrations, and other proof. (emphasis added)

The Appellant's packet included South Carolina driver's licenses (2), vehicle registrations (2), and voter identification (2), certificate of occupancy (ASSESSOR_00039 – 00043), amongst other documents. The most recently filed South Carolina return is in C-1. Query searched this parcel for rental and found none. (ASSESSOR_00287.) The list is illustrative. It is not a sacrament that can un-vest an allowance already made.

> "For purposes of determining eligibility, rental income, and residency, the assessor annually may require a copy of applicable portions of the owner's federal and state tax returns, as well as the Schedule E from the applicant's federal return for the applicable tax year."

That sentence is permissive. It is not a condition subsequent. It is not a condition precedent to the allowance already marked Yes. "May require" "applicable portions" is an audit tool. It does not authorize a county letter to convert Approved: Yes into "provisionally approved," to demand the next year's full federal return “with all applicable schedules” as the price of retaining a vested ratio, or to attach back tax, penalties, and interest for 2015 if that future document cannot yet occur. It is impossible to submit Tax Year 2015 returns, before the auto-expire in 2015 occurred.

The only other lawful outcome in the same subitem is a later determination of ineligibility:

> “If the assessor ***determines the owner-occupant ineligible***, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title.” (emphasis added)

That determination, on this same tax map, looks like the previous owners ***“Unger”*** letter:

> “We are removing the 4% Legal Residence Special Assessment” for the following reason(s): “4% revoked for tax year 2012 by Assessor's audit. (30).” It quotes S.C. Code Ann. § 12-43-220(c), describes what will be effected, the classification and S.C. Code Ann. § 12-60-2520(A), starts a ninety-day clock, and states: “This notice is not a bill.” (Ex. E-5; ASSESSOR_00025.) That is Code 30. That is Chapter 60.

Appellants received Code 28. They never received Code 30. They received no written determination of ineligibility and no Chapter 60 appeal advisory. What the file does contain is the September 8, 2015 checklist marked Complete (ASSESSOR_00037) and the application marked Approved: Yes (ASSESSOR_00036). At that moment the ratio vested by operation of law. The Computer Assisted Mass Appraisal (CAMA) notes of September 16 and 23, 2015 recorded a modifier set to expire if tax returns were not submitted. (ASSESSOR_00012–00013.) That trigger was set before the 2015 returns could exist. The 2015 tax bill nevertheless issued and was paid at four percent. (ASSESSOR_01322, receipt ASSESSOR_01334.).

In 2016 the Respondent issued a Notice of Classification stating “New Improvement Completed”—the swimming-pool permit at ASSESSOR_00092. (ASSESSOR_01567.) The owner-occupied line is blank. The same cycle produced a tax bill coded OT6, paid at six percent. (ASSESSOR_01323, receipt ASSESSOR_01335.) A completed pool explains a value change. It does not announce that a vested classification has been stripped. *Mullane* requires notice reasonably calculated, under all the circumstances, to apprise the owner of the action and afford a chance to object. The circumstances included Matthew DeNapoli's detention in Afghanistan beginning May 2016. (Affidavit M, MTC-00094–00096.) A pool notice and an unexplained bill code are not that notice. Query wrote that no revocation letter was sent and no back-tax was assessed. (Ex. D-2.) FOIA-2025-01535 defines Code 28 as approved and Code 30 as revoked by audit. The Board slide still told the tribunal the ratio "is revoked for tax year 2016." (ASSESSOR_01404.) That sentence describes Unger. The 2016 mailbox contained a pool notice and a higher bill. No classification or revocation paper issued in the gap years 2017–2019. The next countywide reassessment year was 2020. The deprivation was the 2015 expire trigger. 2016 was the first bill that collected it.

Subsection (2)(vi) then locks the vesting:

> "No further applications are necessary from the current owner while the property for which the initial application was made continues to meet the eligibility requirements."

Eligibility continued. Occupancy never stopped. No ineligibility finding issued. The 2024 refund form demanded, in bold, a new 4% application anyway. (ASSESSOR_00262.) Affidavit I states there was no choice in filing it. (MTC-00061–00062.) A coerced second application does not un-vest a ratio the statute says need not be applied for again.

The September 23 letter, which the Brief quotes as if it were the statute, does not use "deemed," "allowed," or Chapter 60. It says:

> "Your application has been provisionally approved for the 2015 tax year. However, you will be required to submit your **2015 Federal (with all applicable schedules)** and SC state tax returns reflecting your SC address <u>when they are filed</u> to fully meet and retain the legal residence exemption in Charleston County. Failure to provide this information will result in the removal of the legal residence exemption and you will be subject to back tax, penalties and interest for 2015."
> (Resp. Br. at 2–3, quoting the September 23, 2015 letter.)

The Brief and the Order then say the ratio "reverted." (Resp. Br. at 3; Order Granting MSJ at 2–3.) An unsigned December 2025 draft stipulation called the same Yes box "conditional." (Stip. Draft ¶ 4.) None of those words is a status in S.C. Code Ann. § 12-43-220(c). On March 5 Respondent admitted no separate independent notice of revocation was sent. (ADM305.) On March 16 it offered "sufficient notice." The Order called notice immaterial and still used the 2016 reversion to start the clock.

A classification change made without the ineligibility determination and the Chapter 60 notice S.C. Code Ann. § 12-43-220(c)(2)(iv) requires is a void act. ***Massenberg*** holds that when the General Assembly has prescribed the notice that must precede a tax act, compliance is strict and a defect renders the act absolutely void. Forfeited Land Commission holds that a void tax act is a legal nullity. A statute of limitations does not run against it, and later bills cannot cure it. Respondent's 2016 flip had neither the determination nor the notice the Code writes. It was void ab initio. The two-year refund bar is written for proceedings conducted after proper notice. It does not start when that notice was never given. An agency may not treat a construction notice and an OT6 tax bill as the Chapter 60 determination it never issued, rename that file "sufficient notice" after discovery closed, and then take the two-year clock that real notice was supposed to start. That is Issues II and IV. It is not a new issue.

A vested four percent classification is property. Article X creates it. S.C. Code Ann. §12-43-220(c) implements it. Stripping it is a deprivation. S.C. Const. art. I, § 22 and the Fourteenth Amendment require notice and an opportunity to be heard before an administrative agency may finally take that interest. Apps. Init. Br. Issue V. A taking accomplished without that hearing—programmed in a CAMA note and collected on a later bill—is void when it occurs. Two years of bills do not supply the hearing that never happened.

The agency papers confirm the same divide. Respondent writes that on April 16, 2024, Appellants "applied … for a partial refund of ad valorem taxes paid between 2013 and 2021." (Resp. Br. at 2.) April 16 is the Assessor's own two-year refund worksheet. In bold it demanded: "YOU MUST SUBMIT A 4% LEGAL RESIDENCE APPLICATION ALONG WITH THIS REFUND REQUEST FORM." (ASSESSOR_00262–00263.) The claim Appellants filed was the April 26, 2024 protest of an "erroneous, improper or illegal assessment" after the 2015 approval "moving forward." (ASSESSOR_00289–00292.) The January 2, 2025 second notice amended that protest, recited vesting under S.C. Code Ann. § 12-43-220(c)(2)(iv) and (vi), a silent reversion without notice, and credits under S.C. Code Ann. § 12-60-1755 for any year proof is provided. (ASSESSOR_00094–00104.) The Tax Refund Committee answered with a one-page denial under S.C. Code Ann. § 12-60-2560 and no revocation finding. [DENAPOLI EXHIBIT — Ex. K].

Respondent does not confront the text of S.C. Code Ann. § 12-43-220(c)(2) that Appellants briefed as Issue I. The Brief cites subsection (iv) only to argue that Appellants lacked a South Carolina return and were therefore only "provisionally" approved. (Resp. Br. at 7–8 & n.1.) It never quotes the command that once a proper certificate is made and the owner is otherwise eligible, "the owner is deemed to have met the burden of proof and is allowed the four percent assessment ratio." It never quotes that no further applications are necessary while eligibility continues. It never answers the September 8, 2015 checklist marked Complete or the Approved box checked on the application form. (ASSESSOR_00036–00037.) That checklist is not a blank. Staff initialed South Carolina driver's licenses, vehicle registrations, and voter identification cards showing this address—documents the State had already issued on the premise that 918 Casseque Province was the legal residence. A county assessor does not get to ignore the State's own domicile papers and invent a tax-return sacrament the statute does not make exclusive. *Phillips, Gasque,* and *Ravenel* test domicile by intent and conduct. Respondents silence on the vesting statute, and on those documents, is not a response.

Respondent asks this Court to apply the September 23 letter as if it were S.C. Code Ann S.C. Code Ann. § 12-43-220(c). The letter and the Code have already been set next to each other. The letter invents "provisionally," "retain," and "removal." The Code uses "deemed," "allowed," and Chapter 60. Act No. 259 of 2014 left the Assessor no third status. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011); *Southeast-Kusan, Inc. v. S.C. Tax Comm'n,* 276 S.C. 487, 280 S.E.2d 57 (1981). Respondent's "therefore … reverted … in accordance with Respondent's September 23, 2015 correspondence" names the source it is using. This Court applies the Code. That comparison is Issues I through VI of the Initial Brief, not a new issue.

Four recitations in the Respondent's Brief are inconsistent with the exhibits.

First. Respondent writes that on July 31, 2024, it "denied Appellants' refund request as untimely," citing only "(See id.)"—page 3 of the April 3 Order—not the letter. (Resp. Br. at 2.) The July 31 letter from Wanda Query does not deny anything as untimely. It states: "Your refund application has been approved for the 2022-2023 tax year(s)." [Ex. G.] It recalculates those two years from six percent to four percent and sends the file to the Auditor and the Treasurer. It does not grant a 2024 legal-residence classification. There is no Code 28 letter for 2024 in this record. An internal "Approved: Yes" box on the coerced form dated the same day (ASSESSOR_00263) is office use, not notice. The Board PowerPoint told the Board the opposite: "7/31/2024 — Assessor approves the DeNapoli's for Legal Residence for tax year 2024 and retroactively for tax years 2022 and 2023." (CHAS. CNTY. ASSESSOR_01405.) The Order adopted that characterization. (Order Granting MSJ at 3.) The Brief then cites the Order. That is circular.

Second. Respondent writes that Appellants "did not provide Respondent with their 2015 Federal and South Carolina state tax returns, and therefore, beginning in tax year 2016, Appellants assessment ratio reverted to 6% in accordance with Respondent's September 23, 2015 correspondence." (Resp. Br. at 3.) The letter demanded those returns "when they are filed." Returns for tax year 2015 could not be filed until 2016. The same week, CAMA notes recorded a modifier set to expire if tax returns were not submitted. (ASSESSOR_00012–00013.) The 2014 returns are in C-1. The 2015 federal and South Carolina returns and the April 17, 2016 accepted extension issued in discovery with Assessor Bates only and a "BAA" stamp (C-2; ASSESSOR_00163–00172). A Board member asked whether the 2015 returns were provided "because they're shown in this." The Assessor answered that he thought they were provided "after the fact." [BAA Transcript, MTC-00102–00142.] The "missing returns" story is the contested premise, not a fact. Appellants do not concede those returns were a legal prerequisite to domicile. They impeach the revocation narrative.

Third. Respondent's Prehearing Statement of September 23, 2025 stated as fact that "the Assessor revoked the 4% legal residence special exemption" after Petitioners "failed to provide" 2015 returns, and that the Assessor "approved" a 2024 application "on July 31, 2024." [PHS-R.] Petitioners' Prehearing Statement identified the controversy as that alleged revocation and the absence of notice. [PHS-P.] The Motion for Summary Judgment later recast the same event as Appellants' "allegation" and asked the Court to decide only whether a refund claim was late. The April 3 Order treated the reversion as undisputed while declaring the Court "need not resolve" whether Respondent possessed the returns. (Order Granting MSJ at 2 n.2.) Respondent now tells this Court there is "no dispute that the Assessor did, in fact, revoke Appellants' 4% ratio in 2016." (Resp. Br. at 10.) That sentence is the case. It is not an undisputed fact.

Fourth. Respondent writes that a hearing was held before the Board on April 23, 2025, "and Appellants' refund request was again denied as untimely on April 29, 2025." (Resp. Br. at 2.) The transcript shows the Assessor opened as counsel for the Tax Refund Committee, told the Board the ratio was "revoked for 2016," that a 2024 application had been approved, and that years before 2022 were barred by S.C. Code Ann. § 12-60-1750. [MTC-00102–00142.] Appellants answered that there was no revocation and "it's a lie." The April 3 Order later held that S.C. Code Ann. § 12-60-1750 was "not implicated." The statute used to win the caption at the Board was discarded once the caption had won.

This Reply raises no new issue. It applies Issues I through VI of the Initial Brief to the contentions actually advanced in the Respondent's Brief. Administrative agencies do not write assessment ratios. The General Assembly did. Extra-statutory conditions cannot be read into S.C. Code Ann. § 12-43-220(c) because the language is plain. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011); *Southeast-Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 280 S.E.2d 57 (1981). Affirming that practice would tell every assessor that extra-statutory conditions need not be judged so long as two years have run. That is why Issues I, III, and V were briefed.

ARGUMENT

I. RESPONDENT'S LIMITATIONS DEFENSE ASSUMES A LAWFUL 2016 REVOCATION THE RECORD DOES NOT CONTAIN

Respondent's Argument I is that S.C. Code Ann. § 12-60-2560(A) and 12-54-85(F) bar any refund filed more than two years after payment; that Thornley and Marvin make the bar mandatory even if the underlying assessment was wrong; and that whether Appellants were eligible for the four percent ratio is "immaterial." (Resp. Br. at 5–8.) That argument treats a lawful 2016 change in classification as a given. The record set out above is not that case. Apps. Init. Br. Issues I–V.

A. Thornley and Marvin do not decide a void extra-statutory reclassification

Thornley involved a taxpayer who accepted that taxable acreage had been misdescribed and sought money back outside the two-year window. Marvin involved a taxpayer who had received an unconditional four percent approval and was thereafter billed, by admitted error, at six percent. Neither taxpayer contended that the assessor had silently stripped a vested statutory classification without a determination of ineligibility and without Chapter 60 notice. Neither record contained an internal auto-expire modifier set to fire before the documents demanded in the assessor's own letter could exist. Neither record contained the assessor's written admission that no revocation letter was sent.

Respondent itself used that distinction below. In its March 16, 2026 Reply, Respondent argued Appellants were "less sympathetic" than the Marvin taxpayer because Appellants received only a "provisional" approval. [R-0316.] Respondent cannot now collapse the distinction and treat Marvin as controlling a void-act challenge. A limitations statute that bars recovery of an acknowledged overcharge does not authorize an agency to create the overcharge by an ultra vires act and then plead the statute as a defense to examining the act.

B. S.C. Code Ann. § 12-43-220(c) vested the ratio when the application was marked Complete and Approved

CFRE controls the method of reading § 12-43-220(c). The Supreme Court reversed an assessor and an ALC that denied the four percent ratio by adding a condition the statute does not contain. Statutory interpretation is de novo. Words are given their plain meaning. The statute is read as a whole so that "deemed" and "allowed" are not surplusage. Strict construction "does not mean that we will search for an interpretation in [the agency's] favor where the plain and unambiguous language leaves no room for construction." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) (quoting *Southeast-Kusan, Inc. v. S.C. Tax Comm'n,* 276 S.C. 487, 280 S.E.2d 57 (1981)). Respondent's Brief does that search. It quotes the September 23 letter and never quotes the command Act 259 placed in (2)(iv). Extra-statutory opinions did not save Greenville County. A county letter does not save Charleston County.

The vesting is the record above. Article X classifies the legal residence at four percent. S.C. Code Ann. § 12-43-220(c) implements that classification. After a proper certificate and eligibility, the owner "is deemed to have met the burden of proof and is allowed the four percent assessment ratio." On September 8, 2015, the checklist was marked Complete and the application Approved: Yes. (ASSESSOR_00036–00037.) At that moment the ratio vested by operation of law. The packet the State had already issued—driver's licenses, vehicle registrations, voter identification—is conduct, not a tax-return sacrament. *Phillips v. South Carolina Tax Commission,* 195 S.C. 472, 12 S.E.2d 13 (1940); *Gasque v. Gasque*, 246 S.C. 423, 143 S.E.2d 811 (1965); *Ravenel v. Dekle*, 265 S.C. 364, 218 S.E.2d 521 (1975). Respondent has never named a successor domicile. Footnote 1 of the Brief is a documents quarrel, not a quo animo quarrel.

The burden then shifted to the Respondent. The only remaining lawful path was a determination of ineligibility and the Chapter 60 appeal (2)(iv) itself provides. No evidence of that determination exists. Subsection (2)(vi) locks the vesting: no further applications are necessary while eligibility continues. A later "provisional" stamp, a future-returns condition, or a coerced 2024 form cannot repeal that command. The annual-returns sentence is a look-back tool. It is not authority to auto-expire an approval already marked Yes. Apps. Init. Br. Issues I and III.

Discovery was reopened so Appellants could prove entitlement. Respondent refused to stipulate that no revocation notice was sent. [MTC-00005–00015; Stip. Draft.] FOIA-2025-01535 then stated the County is not in possession of any additional responsive documents beyond the September 23 letter when asked for an ineligibility determination, a back-tax notice, or a 2016 revocation notice. There is no evidence of ineligibility in this record. The limitations defense is an attempt to avoid that empty file.

C. The September 23 letter is not the statute; Massenberg, Forfeited Land Commission, and Mullane close the notice theories

The letter bears Code 28. Code 30 is the form this office uses when it intends a revocation. Unger, on this same tax map, received that form: the word revoked, Code (30), § 12-43-220(c), § 12-60-2520(A), a ninety-day clock, and “This notice is not a bill.” (Ex. E-5; ASSESSOR_00025.) Appellants received Code 28. They never received Code 30. Query wrote that no revocation letter was sent and no back-tax was assessed. (Ex. D-2.) On March 5 Respondent admitted that no separate, independent notice of revocation was sent. [ADM305.] Half of the September 23 letter is statutory. Half is ultra vires. The ultra vires half does not undo the September 8 vesting. The 2016 mailbox—pool notice and OT6 bill—is the collection of a 2015 expire trigger, not Chapter 60 notice. That record is set out above.

The Supreme Court has not left taxing officials a discretion to invent the process. In *Massenberg v. Clarendon County Treasurer*, 443 S.C. 546, 905 S.E.2d 399 (2024), the Court reiterated that tax proceedings which take an interest in property “must be conducted in strict compliance with statutory requirements,” that enforcing agencies of government are held to that compliance, and that:

> "[f]ailure to give the required notice is a fundamental defect in the tax proceedings which renders the proceedings absolutely void." "Even actual notice is insufficient … absent strict compliance with statutory requirements." Id.

The purpose of those requirements is "the protection of the taxpayer against surprise or the sacrifice of his property." Id. The treasurer had mailed notices and had caused a paper to be stapled to a tree. That was not the notice the statute described. The sale was void.

The Court of Appeals drew the limitations consequence in *Forfeited Land Comm'n of Bamberg Cty. v. Beard*, Op. No. 5570 (S.C. Ct. App. filed June 20, 2018). Requirements "intended for the protection of the taxpayer against surprise or the sacrifice of his property" are mandatory. The short bar in the tax-sale statute exists "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." Where the proceeding suffers a jurisdictional defect—failure to give the notice the statute requires—the proceeding is absolutely void and "the statute of limitations may not run at all." Failure of required statutory notice is that jurisdictional defect, not a "mere irregularity". The sale was void from the onset. The cloud on title could not be quieted on a void deed. Respondent asks this Court to do what the circuit court did in Forfeited Land Commission: concede the statutory notice never issued, then run the short bar anyway. Massenberg holds that missing required tax notice is a fundamental defect and the act is absolutely void. Forfeited Land Commission holds that a limitations period written for proceedings conducted after proper notice does not start when that notice was never given. After a vested (2)(iv) allowance, Chapter 60 determination and notice were required. Neither issued. S.C. Code Ann. § 12-60-2560 and 12-54-85(F) therefore never began to run. Apps. Init. Br. Issues II and IV.

The April 3 Order and the March 16 "sufficient notice" theory rest on an impossibility. There is nothing in the file from which a taxpayer could acquire "knowledge" of a 2016 revocation, because the agency says the revocation was never lettered. *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306 (1950), requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present objections.

> "When notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane.*

Appellants were not unknown absentees. The Assessor had their name, their parcel, and the mailing address filed with the Auditor on November 14, 2014. Code 30 to Unger on this same parcel is that means. A 2015 letter demanding future returns, and a 2016 bill that talks about a pool, are not that notice. They are the gesture. S.C. Const. art. I, § 22 is the same command. In May 2016 Matthew DeNapoli was detained in Afghanistan. [Aff. M.] *Gasque* holds that absence for government-related work does not abandon a domicile already fixed. It also makes contemporaneous "knowledge" of a silent CAMA change a fiction. One cannot know of a revocation Respondent admitted it never sent. (App D-2 p 4-8) Appellants timely moved to strike the "sufficient notice" theory. [MTS 3/19/26.] The Order denied the motion and called notice "immaterial" while still using a 2016 reversion as the event that started the clock. Process due for an Article X classification is not a gesture and is not a two-year refund clock.

D. The 2024 papers did not break the vesting; the Order misdescribed them

Respondent and the Order treat July 31, 2024 as a new classification approval for tax year 2024 plus a retroactive grant for 2022 and 2023. That is not what the letter says, and it is not what § 12-43-220(c)(2)(vi) requires. The letter approves a refund application for two years: "Your refund application has been approved for the 2022-2023 tax year(s)." [Ex. G.] There is no written determination in this record granting a 2024 legal-residence classification analogous to the September 23, 2015 Code 28 letter.

The refund form itself demanded the manufactured break. In bold: “YOU MUST SUBMIT A 4% LEGAL RESIDENCE APPLICATION ALONG WITH THIS REFUND REQUEST FORM.” (ASSESSOR_00262.) The demanded application is ASSESSOR_00263. An internal box on that form is checked “Approved: Yes” and dated July 31, 2024. That box is not notice to the taxpayer. PowerPoint 01405 then recast the refund letter as approval “for tax year 2024.” The Prehearing Statement repeated the same line. The Order copied the PowerPoint. The Brief cites the Order.

Appellants attested under penalty of perjury that they had no choice in filing the second application. [Affidavit I, MTC-00061–00062.] S.C. Code Ann. § 12-43-220(c)(2)(vi) says no further applications are necessary while eligibility continues. Respondent required the application the statute forbids as unnecessary, paid two years, and then treated the coerced filing as proof the 2015 vesting had ended. Paying the only years the Assessor would pay is not an admission that the vesting lapsed. The 2024 paperwork left the 2016 reclassification unexamined. It did not cure it.

E. Eligibility and notice are not “immaterial” to whether S.C. Code Ann. § 12-54-85(F) ever started

Respondent argues the Administrative Law Court correctly declined to decide eligibility, notice, and ultra vires because those questions are “immaterial” to timeliness, and that Rule 56 was satisfied because the only “material” fact is the date of the refund request. (Resp. Br. at 7–8 & nn.1–2.) A fact is material under Rule 56 if it could affect the outcome. Knight v. Austin, 396 S.C. 518, 722 S.E.2d 802 (2012); Gary v. Askew, 423 S.C. 47, 813 S.E.2d 717 (2018). Whether the application was marked Complete and Approved on September 8, whether a determination of ineligibility was made, whether notice was sent, whether the CAMA modifier had legal effect, and whether the 2015 returns were already in the Assessor's file determine whether any limitations period ever began. The Court was required to view those facts in the light most favorable to Appellants. It instead declared them undisputed or irrelevant while using the reversion as the event that started the clock.

Footnote 1 of the Respondent's Brief revives the claim that Appellants could not qualify in 2015 because they lacked a South Carolina return, after the body of the Brief tells this Court that eligibility is immaterial. (Resp. Br. at 8 n.1.) Respondent cannot have both. The most recently filed South Carolina return is in C-1. Respondent has not identified a determination of ineligibility or any proof that domicile was abandoned. Treating those questions as immaterial is a waiver of the only burden the statute left the Assessor after September 8, 2015.

The Court itself reopened discovery on November 25, 2025, so Petitioners could "obtain necessary evidence supporting their claim of entitlement to four-percent legal residence classification from 2015-2022." [Disc. Order.] That evidence arrived: FOIA-01535, C-1 and C-2, ASSESSOR_01567, and Exhibit D-2. On December 4, 2025, counsel stated the theory the Order later adopted: the case "is not about the notices"; 2014 and 2015 "do not matter." [MTC-00005–00015.] They would not stipulate that no revocation notice was sent. The April 3 Order then held notice "immaterial" and that the Court "need not resolve" whether Respondent possessed the returns. A court may not open the record on entitlement and grant judgment by declaring entitlement beside the point. S.C. Code Ann. § 1-23-600 required a decision of the contested case. Characterizing threshold notice and validity questions as "civil matters," while treating the silent reversion as established, is a refusal to decide the case. S.C. Const. art. I, § 22; Hooper v.

Ebenezer Senior Services & Rehabilitation Center, 386 S.C. 108, 687 S.E.2d 29 (2009); Apps. Init. Br. Issue V.

For these reasons, Respondent's Argument I does not support affirmance. The order granting summary judgment should be reversed on Issues I through V of the Initial Brief.

II. CHEWNING APPLIES TO THE KNOWING PRESENTATION OF A FALSE PREMISE TO SUCCESSIVE TRIBUNALS

Respondent's Argument II is that Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003), is inapplicable because there is no prior final judgment to reopen, because 2025 conduct could not have prevented earlier refund filings, and because Appellants were heard below. (Resp. Br. at 9–10). Respondent then asserts the Board statement was "truthful" because "there is no dispute that the Assessor did, in fact, revoke Appellants' 4% ratio in 2016." (Resp. Br. at 10). That last sentence is the answer to the rest.

> *Chewning* defined extrinsic fraud as *"fraud that induces a person not to present a case or deprives a person of the opportunity to be heard."* Relief is granted *"on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action." (quoting Hilton Head Ctr. of South Carolina v. Public Serv. Comm'n,* 294 S.C. 9, 362 S.E.2d 176 (1987)*).* (Emphasis added)

Appellants do not ask this Court to vacate a 1992 jury verdict. They ask it not to affirm a summary judgment that rests on a factual premise the Assessor's own records contradict. Apps. Init. Br. Issue VI.

The original deprivation was the silent 2015–2016 reversion: no determination of ineligibility, no Code 30 notice, no hearing. That is the Chewning definition in its simplest form. The later narrative is what kept that deprivation from being examined.

The sequence is documentary. On March 25, 2025, Query wrote that no revocation letter was sent and no back-tax was assessed. (D-2). On April 23, 2025, the Assessor presented Exhibit S, Bates 01404: "2016 — Assessor does not receive the DeNapoli's 2015 income tax returns, and Legal Residence is revoked for tax year 2016." Appellants told the Board there was no revocation, no penalty, no interest, and "not a scintilla of evidence" of revocation. "It's a lie." A Board member then asked about the 2014 and 2015 returns "shown in this" FOIA packet. The Assessor said the 2015 returns were provided "after the fact." Those pages issued in discovery as C-2, Assessor Bates 00163–00172, marked "BAA." On September 23, 2025, the Prehearing Statement formalized the revocation as fact. After the emails were compelled and placed before the Court on March 4, 2026, Respondent admitted there was no separate independent notice and shifted to a "sufficient notice" theory Appellants timely moved to strike. [MTS 3/19/26]. The April 3 Order denied the motion to strike, treated the reversion as undisputed, and held notice "immaterial."

Respondent argues 2025 conduct could not have prevented a 2016 filing. That is true and beside the point. The assigned error is that successive tribunals were asked to decide the case on a false premise, and that the Court that received the contradiction elected not to confront it while still using the premise to start the limitations clock. Raising the contradiction below is how a party tries to force a real contest. The Court's refusal to adjudicate the contradiction is the error, not proof that no deprivation occurred.

Respondent's Argument II therefore fails. The order should be reversed on Issue VI as well.

CONCLUSION

Respondent's Brief reduces the appeal to a date. The record reduces the date to a revocation that was never noticed, never coded, never back-taxed, and internally admitted not to have been lettered—then presented to the Board as fact. The ratio vested when the checklist was marked Complete and the application Approved on September 8, 2015. S.C. Code Ann. § 12-43-220(c) shifted the burden. No evidence of ineligibility followed. A limitations statute cannot run against that act. The April 3 Order, by treating the act as undisputed while calling the defects immaterial, and by describing a 2024 refund letter as a new classification approval, committed the errors assigned in the Initial Brief. This case is about the correct classification—and therefore the correct tax liability—of a legal residence the Constitution and the Code entitled Appellants to have assessed at four percent. The position flips were not confusion. They were how the agency kept successive tribunals from deciding that liability. Agencies do not write assessment ratios. The General Assembly did. If a letter and a silent reversion can displace Act 259, courts become optional and every owner-occupant holds the ratio at the Assessor's pleasure. Southeast-Kusan and CFRE do not permit that result. Neither should this Court.

Appellants respectfully request that this Court reverse the April 3, 2026 Order Granting Motion for Summary Judgment and the April 29, 2026 Order Denying Motion to Reconsider, and grant the relief requested in the Conclusion of Appellants' Initial Brief.

Respectfully submitted,

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