

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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JUL 10 2014  
SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Deborah Brooks Durden, Administrative Law Judge

Docket No. 13-ALJ-17-0104-CC

William J. Montgomery, .....Respondent,

v.

Spartanburg County Assessor, .....Appellant.

**APPELLANT’S CONSENT TO SOUTH CAROLINA DEPARTMENT OF  
REVENUE’S MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

The Spartanburg County Assessor (“Assessor”) consents to the South Carolina Department of Revenue’s (“SCDOR”) Motion for Leave to File Amicus Brief (“Motion”). SCDOR’s Motion should be granted.

This case involves one legal issue: what is the meaning of “fair market value for agricultural purposes” as the term is used in South Carolina Code Annotated section 12-43-220(d)? SCDOR is uniquely qualified to assist the Court in answering this question.

The General Assembly created SCDOR to administer and enforce the taxation laws of the State of South Carolina. S.C. Code Ann. § 12-4-10. SCDOR formulates and recommends legislation to enhance uniformity, enforcement, and administration of the tax laws, and to secure just taxation and improvements in the tax system. *Id* at § 12-4-310. Further, SCDOR is empowered to make rules and regulations consistent with statutory law.

Moreover, SCDOR oversees county taxation matters, including the assessment and valuation of agricultural real property. *See id.* at § 12-4-520. Specifically, SCDOR advises and directs county assessors and county boards of tax appeals regarding their duties, and SCDOR may issue determinations directing county officials to comply with South Carolina law relating to the valuation, assessment, and taxation of property. *Id.* at § 12-4-535. Thus, the question before this Court is squarely within the statutory oversight authority the General Assembly vested in SCDOR.

As the agency charged with overseeing the administration and application of South Carolina's real property taxation laws, SCDOR's interpretation of South Carolina Code Annotated section 12-43-220(d) is entitled to respectful deference. *Goodman v City of Columbia*, 318 S.C. 488, 491, 458 S.E.2d 531, 532 (1995); *see also Sloan v S C Bd of Phys Therapy Exmnrs*, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006) ("The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." (citing *Emerson Elec Co v Wasson*, 287 S.C. 394, 397, 339 S.E.2d 118, 120 (1986))). Plainly, SCDOR is uniquely qualified to provide valuable insight regarding the interpretation of section 12-43-220(d)—insight and interpretive guidance entitled to respect and deference under South Carolina law.

Finally, the content of SCDOR's proposed Amicus Brief is not objectionable. Rule 213 of the South Carolina Appellate Court Rules states an amicus brief "shall be limited to argument of the issues on appeal as presented by the parties . . . ." Rule 213,

SCACR. The only limitation is amici briefs not present new *issues*<sup>1</sup> and comply with the formal requirements of Rules 208(b) and 211, SCACR. Here, SCDOR raises no new legal issues. Rather, SCDOR's Amicus Brief will assist the Court in fully and fairly deciding the issue already raised in this case. *See Savannah Riverkeepers v. S C Dept of Health & Env'tl Control*, 400 S.C. 196, 207, 733 S.E.2d 903, 909 (2012) (Kittredge, J. dissenting) ("In hindsight, I believe it was error to deviate from our standard practice of accepting amici briefs. I do not know whether the amicus brief raised a meritorious issue. But I do believe we have an obligation to consider an issue fully before making a decision."). The Assessor asks, therefore, that the Court grant SCDOR's Motion.

### **CONCLUSION**

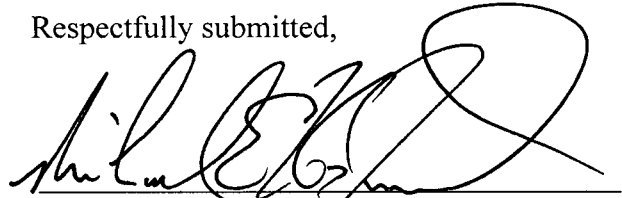
The Assessor respectfully requests that the Court grant SCDOR's Motion for Leave to File Amicus Brief.

*[SIGNATURE PAGE FOLLOWS]*

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<sup>1</sup>Although the Court has granted exceptions to this general new-issue prohibition in the past based on a "significant public interest" exception, SCDOR does not raise any new issues in its proposed Amicus Brief and the Court is not required to determine whether the exception applies here. *See State v Langford*, 400 S.C 421, 432-33, 735 S E 2d 471, 476 (2012) ("[W]e previously have considered arguments raised only by an amicus when they concern 'a matter of significant public interest'")

Respectfully submitted,



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July 9, 2014  
Columbia, South Carolina

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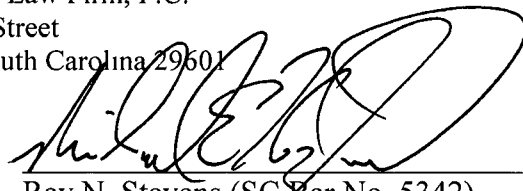
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**PROOF OF SERVICE**

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The undersigned hereby certifies that on July 9, 2014 s/he has caused a copy of Appellant's Consent to South Carolina Department of Revenue's Motion for Leave to File Amicus Curiae Brief to be served upon all parties of record by placing a copy of the same in the United States Mail, postage prepaid, addressed as follows:

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Jennifer J Miller, Esquire  
L Warren Clayton, III, Esquire  
The Carpenter Law Firm, P.C.  
819 E. North Street  
Greenville, South Carolina 29601



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July 9, 2014

*VIA UNITED STATES MAIL*

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

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**SC Court of Appeals**

**Re: *Appellate Case No. 2013-002697***  
***William J. Montgomery vs. Spartanburg County Assessor***  
***Docket No. 13-ALJ-17-0104CC***

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Appellant's Consent to South Carolina Department of Revenue's Motion for Leave to File Amicus Curiae Brief in the above-referenced matter. Please file the original and return a clocked-in copy to me in the enclosed, self-addressed, stamped envelope.

As copied on this letter, and as evidenced by the Proof of Service, we have provided a copy of the Consent on counsel of record.

Do not hesitate to contact me with any questions.

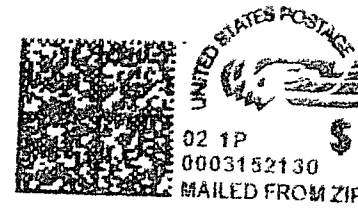
With warmest regards,

A handwritten signature in black ink, appearing to read 'Michael E. Kozlarek', written over a large, stylized circular flourish.

Michael E. Kozlarek

MEK/ccq  
Enclosures

cc: James G. Carpenter, Esquire (*w/enclosure via US Mail*)  
Jennifer J. Miller, Esquire (*w/enclosure via US Mail*)  
L. Warren Clayton, III, Esquire (*w/enclosure via US Mail*)



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To:

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
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