

The Supreme Court of South Carolina

Hampton Friends of the Arts, Appellant,

v

South Carolina Department of
Revenue, Respondent

The Honorable John McLeod
Richland County
Trial Court Case No 2010-AL-17-00538

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules,
this appeal is hereby certified for review by the South Carolina Supreme
Court. Upon receipt of this order, the Court of Appeals is hereby directed to
forward the case file, all records and briefs and any exhibits on file to this
Court.

IT IS SO ORDERED



FOR THE COURT C.J.

Columbia, South Carolina

July 25, 2012

cc Marion Clyde Fairey, Jr , Esquire
Sean G Ryan, Esquire
Harry T Cooper, Jr , Esquire
Milton G Kimpson, Esquire
The Honorable Jenny Kitchings

The Fairey Law Firm, LLC

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MARION C FAIREY JR

bfairey@embarqmail.com

February 20, 2012

Via First Class US Mail, Postage Pre-paid

The Honorable Tanya Gee
Clerk of South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

**RE Hampton Friends of the Arts V South Carolina Department of Revenue,
Docket Number 10-ALJ-17-0538-CC**

Dear Ms Gee

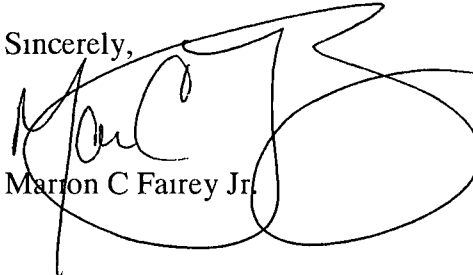
Enclosed for filing please find the original and fifteen copies of

- (1) Appellant's Final Brief
- (2) Appellant's Final Reply Brief

Additionally, I have enclosed an original Certificate of Counsel of compliance with Rule 211(b) SCACR and Proof of Service

Please accept my highest regards

Sincerely,



Marion C Fairey Jr.

Enclosures

CC Sean G Ryan, Esq

POS
2/20

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MARION C FAIREY JR

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January 30, 2012

US Mail

The Honorable Tanya Gee
Clerk of South Carolina Court of Appeals
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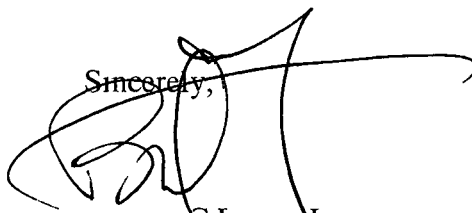
**RE Hampton Friends of the Arts V South Carolina Department of Revenue,
Docket Number 10-ALJ-17-0538-CC**

Dear Ms Gee

Please find enclosed an original and fifteen copies of the Record on Appeal for the above referenced case. By this letter opposing counsel has been served.

Please accept my highest regards

Sincerely,


Marion C Fairey Jr.

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SC Court of Appeals

Enclosures

cc Sean Ryan



The South Carolina Court of Appeals

FANYA A. GIFT
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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January 9, 2012

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SC Department of Revenue
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Re Hampton Friends v. SC Dept. Rev.
2011190669

Dear Counsel,

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT staple, spiral bind, velobind or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on appeal should still have front and back covers in compliance with Rule 267(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

Please be advised that the Court of Appeals policy requires the bar number and firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1205 Pendleton Street, Columbia, S.C. 29201. Thank you for your attention to this.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Fanya A. Gift". Below the signature, the word "CLERK" is printed in a small, sans-serif font.

CLERK

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D McLeod, Judge
South Carolina Administrative Law Court

Case No 10-ALJ-17-0538-CC

Hampton Friends of the Arts

Appellant,

v

South Carolina Department of Revenue

Respondent

PROOF OF SERVICE

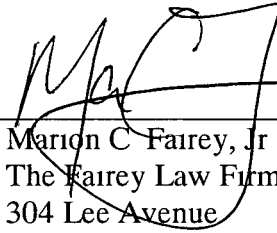
I certify that on December 29, 2011, I have served a copy of Appellant's Initial Reply Brief, Appellant's Supplemental and Amended Designation of Matters to Be Included in the Record on Appeal, and Certification of Counsel pursuant to Rule 209(c), SCACR, on

Sean G Ryan, Esq
South Carolina Department of Revenue
Managing Counsel for Litigation
Office of General Counsel for Litigation
301 Gervais, St , Post Office Box 12265
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<signature page to follow>

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JAN 05 2012

SC Court of Appeals

A handwritten signature in black ink, appearing to read 'M. C. Faurey, Jr.', is written over a horizontal line.

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December 29, 2011
Hampton, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D. McLeod, Judge
South Carolina Administrative Law Court

Case No. 10-ALJ-17-0538-CC

Hampton Friends of the Arts

Appellant,

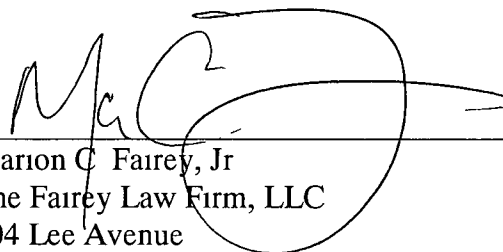
v

South Carolina Department of Revenue

Respondent

CERTIFICATION OF COUNSEL

Pursuant to Rule 209(c), SCACR, I certify that the Appellant's Supplemental and Amended Designation of Matters to Be Included in the Record on Appeal contains no matter which is irrelevant to the appeal.



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**RE Hampton Friends of the Arts V South Carolina Department of Revenue,
Docket Number 10-ALJ-17-0538-CC**

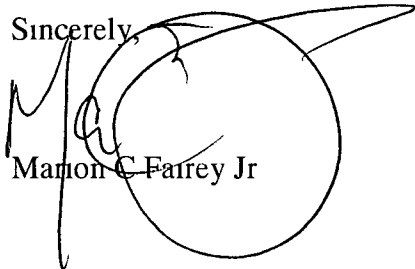
Dear Ms Gee

Enclosed please find the original and two copies of

- (1) Proof of service of the Appellant's Initial Reply Brief, Certification of Counsel, and Supplemental and Amended Designation of Matters to be Included in the Record on Appeal
- (2) Appellant's Initial Reply Brief

If it would be greatly appreciated if you would please file the original and one copy and return a clocked copy to me in the enclosed self addressed stamped envelope Thank you for your assistance with this matter and please contact me if you have any questions

Sincerely,


Marion C Fairey Jr

Enclosures

CC Sean G Ryan, Esq
Janet E Shealy, South Carolina Administrative Law Court

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D. McLeod, Judge
South Carolina Administrative Law Court

Case No. 10-ALJ-17-0538-CC

Hampton Friends of the Arts

Appellant,

v

South Carolina Department of Revenue

Respondent

APPELLANT'S INITIAL REPLY BRIEF

December 29, 2011
Hampton, South Carolina

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SC Court of Appeals

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ARGUMENT

I THE MATTERS DESIGNATED ARE PROPERLY IN THE RECORD

The Department argues that the first four items designated by Friends of the Arts are not properly in the record because they were not presented to the ALC. This argument rests on the premise that Friends of the Arts' challenge to the property tax was initiated with the ALC and ignores the administrative history of this case.

Under the South Carolina Revenue Procedures Act, Friends of the Arts were required to exhaust their administrative remedies prior to filing this action with the ALC. S.C. Code Anno §12-60-1730. This required that Friends of the Arts first obtain a written response to from the County Auditor prior to initiating any further appeals. S.C. Code Anno §12-60-2910(C). Item 1 in Friends' of the Arts Designation is the June 8, 2009 written response from the Hampton County Administrator, the receipt of which triggered Friends of the Arts' right to initiate an appeal with the Department of Revenue and was part of the administrative record.

Item two in the Designation was Friends of the Arts' official written protest to the Department pursuant to S.C. Code Anno §12-60-2120(A). This letter was a necessary pleading required of Friends of the Arts to initiate agency review and therefore was part of the administrative record.

Item three in the Designation was the Department's initial determination of Friends of the Arts' appeal to the Department of Revenue under S.C. Code Anno §12-60-2120. Item 4 is Friends of the Arts' written request for review of the initial Agency decision by the Office of General Counsel. This determination and subsequent request was required before the Department's Office of General Counsel could review Friends of the Arts' appeal. (Appeal Procedures for Tax Refund Claims, South Carolina Department of Revenue, Form CID-26). It

was not until after the Office of General Counsel denied Friends of the Arts' appeal that this matter could be brought before the ALC S C Code Anno §12-60-2130 ("if the taxpayer requests a contested case hearing before the Administrative Law Judge Division without exhausting his prehearing remedy because he failed to file a protest, the administrative law judge shall dismiss the action without prejudice ")

Once the request for an appeal is made with the ALC, Rule 36 of the Rules of the Administrative Law Court requires the Agency to supply the Court with the Administrative Record of the Agency's review Moreover, the ALC's review is confined to the administrative record through the agency level determination which includes "all pleadings [and] intermediate rulings S C Code Anno §1-23-320 (G)

All of the items challenged by the Department are either letter/pleadings that were statutorily required to initiate Friends of the Arts' appeal and request for a refund, or intermediate rulings by the local taxing authority or the Department Accordingly, these matters are properly in the record

II THE REQUEST FOR A REFUND WAS RAISED BEFORE THE ALC

The Department next argues that Friends of the Arts failed to raise the issue of a refund before the ALC, and that this argument is not properly before this Court This is not accurate

Friends of the Arts' initial Letter of Protest expressly requested a refund of the property taxes paid for the 2008 tax year (October 7, 2009 Protest Letter) When Friends of the Arts petition was denied by the Department, it filed its Notice of Appeal with the ALC on June 28, 2010 (June 28, Notice of Appeal) In its notice, Friends of the Arts' expressly presented the issue "Whether HFA, Inc can be charged for property taxes as of December 31, 2007 when they were not the owners of the property on that date " In its Pre-hearing brief before the ALC,

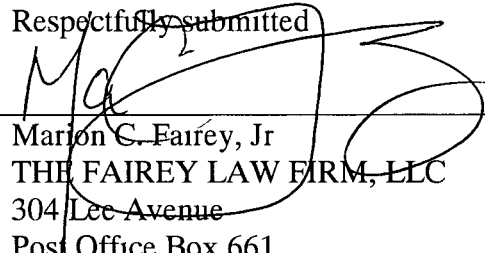
Friends of the Arts stated, “[i]n this appeal, the Petitioner contends that it is not liable for taxes for the 2008 tax year and seeks to have the finding of the [Department of Revenue] overruled and its tax payment for the 2008 tax year refunded with interest ” (September 16, 2010 Pre-hearing Brief) Finally, during counsel’s opening statement at the December 2, 2010 hearing before the ALC, the issue was stated as follows “if the taxes are owed at all, they’re owed and liable from the sellers because they were the ones who owned [the property] as of December 31, 2007 And under that the Hampton Friends of the Arts would be entitled to a refund of the taxes they paid ” (December 2, 2010 Transcript, p 6) Finally, the proposed order tendered to the ALC by Friends of the Arts expressly raised the issue of a refund of the taxes paid by Friends of the Arts Accordingly, the matter was properly raised and considered by the ALC and is therefore properly before this Court

CONCLUSION

The items included in the Designation by Friends of the Arts were properly in the administrative record before the ALC Moreover, the issue of a refund was squarely raised by Friends of the Arts to the ALC and that issue is properly before this Court For the reasons previously argued, Friends of the Arts is entitled to a refund of the tax paid under protest along with interest It was error for the ALC not to order this relief

December 29, 2011
Hampton, South Carolina

Respectfully submitted



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The South Carolina Court of Appeals

Hampton Friends of the Arts,

Appellant,

v

South Carolina Department of
Revenue,

Respondent

The Honorable John McLeod
Richland County
Administrative Law Court Case No 2010-AL-17-00538

ORDER

For good cause having been shown, the time for the Appellant's Initial Reply Brief to be served and filed in the above entitled matter is hereby extended until December 29, 2011.

IT IS SO ORDERED

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY

V. Claude Allmon

CLERK

Columbia, South Carolina

cc Marion Clyde Faurey, Jr, Esquire
Sean G Ryan, Esquire
Harry T Cooper, Jr, Esquire
Milton G Kimpson, Esquire

FILED

12/21/11

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D. McLeod, Judge
South Carolina Administrative Law Court

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Case No. 10-ALJ-17-0538-CC

Hampton Friends of the Arts

Appellant,

v

South Carolina Department of Revenue

Respondent

APPELLANT'S MOTION FOR AN EXTENSION OF TIME
TO FILE INITIAL REPLY BRIEF

The Appellant respectfully submits this motion for an extension of time to file its initial reply brief. The Respondent served its initial brief on November 30, 2011, making the initial reply brief due on December 12, 2011. The Appellant respectfully requests an additional ten (10) days in which to file the initial reply brief, which would make it due on December 22, 2011. Counsel for the Respondent has been consulted and consents to this motion.

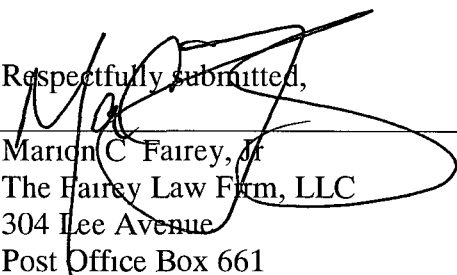
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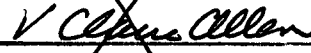
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Respectfully submitted,


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December 12, 2011
Hampton, South Carolina

~~GRANTED
JOHN CANNON FEW CJ
FOR THE COURT~~

By 
~~(Clerk)~~ (Deputy Clerk)

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

)
)
)

CERTIFICATE OF SERVICE

**RE Hampton Friends of the Arts v South Carolina Department of Revenue
Case No 10-ALJ-17-0538-CC**

PERSONNALLY APPEARED before me Amber Adams, who being duly sworn, deposes and says that she is employed by The Fairey Law Firm, that she served or caused to be served via Facsimile and US Mail Delivery postage prepaid the attached Appellant's Motion for an Extension of Time to File Initial Reply Brief to the address listed below on December 12, 2011

VIA US Mail and Facsimile

Sean Ryan
South Carolina Department of Revenue
Office of General Counsel for Litigation
P O Box 12265
Columbia, SC 29211


Amber Adams

Sworn to before me this
12th day of December, 2011


Notary Public for South Carolina
My Commission Expires 10/23/2021

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MARION C FAIREY JR

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December 12, 2011

Via Facsimile and US Mail

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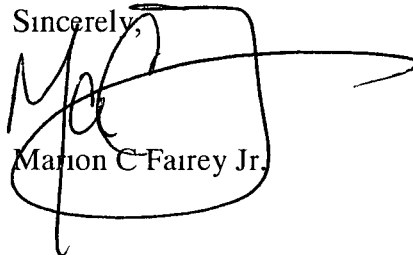
**RE Hampton Friends of the Arts V South Carolina Department of Revenue,
Docket Number 10-ALJ-17-0538-CC**

Dear Ms Gee

Enclosed please find the appellant's motion for a 10 day extension of time to file its initial reply brief in the above-referenced matter along with a check for \$25 to cover the motion the

Please accept my highest regards

Sincerely,



Marion C Fairey Jr.

Enclosures
CC Sean G Ryan, Esq

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable John D McLeod
Administrative Law Judge

DOCKET NO 10-ALJ-17-0538-CC

Hampton Friends of the Arts,

Appellant

v

South Carolina Department of Revenue

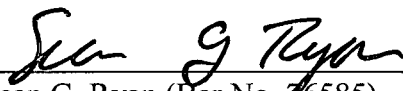
Respondent

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondent designates the following to be included in the Record on Appeal

- 1 Administrative Law Court's Order of March 22, 2011,
- 2 Transcript of December 2, 2010 hearing before the Administrative Law Court,
- 3 Respondent Department of Revenue's Department Determination dated June 23, 2010,

I certify that this Designation contains no matter which is irrelevant to this appeal


Sean G Ryan (Bar No 76585)
Managing Counsel for Litigation
Harry T Cooper, Jr (Bar No 1383)
Chief of Staff
Milton G Kimpson (Bar No 7917)
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803-898-5375
Attorneys for Department of Revenue
ryans@sctax.org
courtdorders@sctax.org

Columbia, South Carolina
November 30, 2011

PROOF OF SERVICE

I, Jean M O'Connor, do hereby certify that I have and caused to be mailed, postage prepaid, a copy of the South Carolina Department of Revenue's Initial Brief and Designation of Matter to be included in the Record on Appeal in Hampton Friends of the Arts v South Carolina Department of Revenue, Docket No 10-ALJ-17-0358-CC to Marion C Faurey, Jr , Esquire, PO Box 661, Hampton, SC 29924, this 30th day of November 2011


Jean M O'Connor

State of South Carolina
Department of Revenue
Office of General Counsel for Litigation
301 Gervais Street, P O Box 12265, Columbia, South Carolina 29211
Telephone (803) 898-5375 FAXr (803) 898-5147

November 30, 2011

The Honorable Tanya Gee, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re Hampton Friends of the Arts v South Carolina Department of Revenue
Docket No 10-ALJ-17-0538-CC
Tracking No 2011190669

Dear Ms Gee

Enclosed please find the Department's Initial Brief and Designation of Matter to be included in the Record on Appeal in the above-referenced matter Also enclosed is a Proof of Service

If you have any questions, please feel free to contact me at (803) 898-5375 or via e-mail at ryans@sctax.org

Yours very truly,

OFFICE OF THE GENERAL COUNSEL



Sean G Ryan
Managing Counsel for Litigation

SGR jmo

Enclosures

c Marion C Fairey, Jr , Esquire

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable John D McLeod
Administrative Law Judge

DOCKET NO 10-ALJ-17-0538-CC

Hampton Friends of the Arts,

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RESPONDENT'S INITIAL BRIEF

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Attorneys for Department of Revenue,

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SC Court of Appeals

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STATEMENT OF THE ISSUES ON APPEAL

- I CAN THE RECORD ON APPEAL CONTAIN AND THE APPELLANT UTILIZE DOCUMENTS THAT WERE NOT PRESENTED TO THE TRIAL COURT?
- II DID THE APPELLANT FAIL TO PRESERVE THE REFUND CLAIM ARGUMENT RAISED IN ITS BRIEF THEREFORE THIS ISSUE IS NOT PROPERLY BEFORE THIS COURT?
- III DID THE ALC ERR IN FINDING THAT PROPERTY ACQUIRED BY A NOT FOR PROFIT ELEEMOSYNARY CORPORATION IN 2008 IS NOT ENTITLED TO AN EXEMPTION FROM 2008 PROPERTY TAXES?

STATEMENT OF THE CASE

Hampton Friends of the Arts (Appellant or taxpayer) is a not for profit eleemosynary corporation. The taxpayer purchased real property on Lee Avenue in Hampton, South Carolina, in March of 2008. On October 27, 2008, the taxpayer applied for a property tax exemption for the 2008 tax year. On November 25, 2008, the Respondent, South Carolina Department of Revenue, (Department) approved an exemption for the taxpayer's property for 2009, but denied an exemption for the Lee Avenue property for 2008. The Department denied the exemption because it determines the taxability of property on December 31 of the year preceding the tax. On December 31, 2007, the Lee Avenue property was privately held and subject to tax, therefore the property was subject to 2008 ad valorem property taxes.

On October 7, 2009, the taxpayer wrote the Department appealing the denial of an exemption for 2008. On June 23, 2010, the Department issued its Department Determination finding that the Lee Avenue property was not exempt from ad valorem property taxes for 2008. The Department Determination denied the exemption because the taxability of property is determined on December 31 of the preceding year. The Lee Avenue property was privately held and subject to property taxes on December 31, 2007, therefore the Department determined the property was not exempt from 2008 ad valorem property taxes.

The taxpayer requested a contested case hearing before the South Carolina Administrative Law Court (ALC) to dispute the Department Determination. A hearing on the issues was held before ALC on December 2, 2010. On March 22, 2011, the ALC issued its order upholding the Department's position and denying the requested property

tax exemption for 2008 On April 21, 2011, the taxpayer mailed its Notice of Appeal to this Court

STATEMENT OF FACTS

The taxpayer is a not for profit eleemosynary corporation founded to promote the arts in Hampton County, South Carolina ¹ On March 4, 2008, the taxpayer purchased real property on Lee Avenue in Hampton County ² Prior to the taxpayer's purchase, including December 31, 2007, the Lee Avenue property was privately held and subject to property taxes ³ On October 27, 2008, the taxpayer applied for a property tax exemption for the Lee Avenue property ⁴

On November 25, 2008, the Department approved an exemption for the taxpayer's property for 2009, but denied an exemption for the Lee Avenue property for 2008 ⁵ The Department denied the exemption because it determines the taxability of property on December 31 of the year preceding the tax On December 31, 2007, the Lee Avenue property was privately held and subject to tax, therefore the property was subject to 2008 ad valorem property taxes ⁶

¹ALC Order, p 2, para 2

²ALC Order, p 2, para 3

³ALC Order, p 2, para 5

⁴ALC Order, p 2, para 7

⁵ALC Order, p 2, para 8

⁶ALC Order, p 2, para 9

On October 7, 2009, the taxpayer wrote the Department appealing the denial of an exemption for 2008⁷ On June 23, 2010, the Department issued its Department Determination finding that the Lee Avenue property was not exempt from ad valorem property taxes for 2008⁸ The Department Determination denied the exemption because the taxability of property is determined on December 31 of the preceding year⁹ The Lee Avenue property was privately held and subject to property taxes on December 31, 2007, therefore the Department determined the property was not exempt from 2008 ad valorem property taxes¹⁰

The Department was not involved in mailing property tax bills for the taxpayer's property Hampton County handles the mailing of its property tax bills The initial 2008 property tax bill for the Lee Avenue property is not in evidence, and where the 2008 property tax bill was mailed is not in the record

Appeals from final decisions of the ALC are governed by S C Code Ann § 1-23-610(B) (Supp 2010)

1-23-610 Quasi-judicial and judicial review of decisions
of administrative law judge

* * *

(B) The review of the administrative law judge's order must be confined to the record The reviewing tribunal may affirm the decision or remand the case for further proceedings, or it may reverse or modify the decision if the

⁷ALC Order, p 2, para 10

⁸ALC Order, p 2, para 11

⁹ALC Order, p 2, para 11

¹⁰ALC Order, p 2, para 11

substantive rights of the petitioner has been prejudiced because of the finding, conclusion, or decision is

- (a) in violation of constitutional or statutory provisions,
- (b) in excess of the statutory authority of the agency,
- (c) made upon unlawful procedure,
- (d) affected by other error of law,
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion

Appellate review of an ALC order must be confined to the record Section 1-23-610(B) The State Supreme Court, in Carroll v S C Department of Public Safety, 388 S C 39, 693 S E 2d 430 (2010), found

This court may not substitute its judgment for that of the ALC as to the weight of the evidence on questions of fact

This court may affirm the decision, remand the case for further proceedings, or “reverse or modify the decision if the substantive rights of the petitioner have been prejudiced

Id., 388 S C at 41-42, 693 S E 2d at 432 The record supports the ALC’s ruling in this matter and the taxpayer’s rights have not been prejudiced, therefore the decision of the ALC should be affirmed

ARGUMENTS

I THE RECORD ON APPEAL MAY NOT CONTAIN AND THE APPELLANT MAY NOT UTILIZE DOCUMENTS THAT WERE NOT PRESENTED TO THE TRIAL COURT

In its Designation of Matters To Be Included In the Record On Appeal, the taxpayer includes documents not presented to the trial court and not admitted into

evidence. The taxpayer's brief relies upon these new documents to support the taxpayer's assertions. The trial transcript demonstrates that the taxpayer entered only one document, "Petitioner's Exhibit 1" into evidence at the trial. Now, in its appeal, the taxpayer relies upon and seeks to include other additional documents that were not presented at the trial. Because these documents were not presented to the trial court, the taxpayer may not rely upon such documents, and such documents should not be included in the Record On Appeal.

Documents 1 through 4 of the Appellant's Designation of Matters To Be Included In the Record On Appeal are documents which are not pleadings and were not presented to the trial court. Rule 209(b), SCACR, states in part "the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]". Documents 1 through 4 of the taxpayer's Designation are not transcripts, pleadings, orders, or exhibits, therefore such documents may only be included in the Designation if Rule 210(c), SCACR, allows for such documents to be included. Rule 210(c), SCACR, states in part "The Record shall not, however, include matter which was not presented to the lower court or tribunal". Documents 1 through 4 of the taxpayer's Designation were not presented to the lower court, therefore Rule 210(c), SCACR, does not allow for such documents to be included in the Record on Appeal. Therefore, pursuant to Rules 209 and 210, SCACR, these documents may not be included in the Record on Appeal.

The taxpayer's brief makes assertions and arguments based upon documents that were not presented to the trial court. The taxpayer makes arguments about where the 2008 tax bill was sent, but that bill is not in evidence and was not presented to the trial

court The taxpayer makes assertions and arguments about letters to and from Hampton County and the Department, but those letters are not in evidence and such were not presented to the trial court These documents were not entered at the trial and such may not be now entered on appeal Moreover, the taxpayer cannot rely upon such documents to support its assertions in this matter

Section 1-23-610 sets forth the applicable standard of review when the Court of Appeals sits in review of a decision by the ALC Section 1-23-610 explicitly states that “the review of the administrative law judge's order must be confined to the record ” Documents 1 through 4 of the Appellant’s Designation of Matters are not part of the record Because these documents are not part of the record, § 1-23-610 requires that those documents not be considered in this appeal

In State v White, 372 S C 364, 642 S E 2d 607 (Ct App 2007), aff’d, 382 S C 265, 676 S E 2d 684 (2009), this Court addressed a similar circumstance when an appellant sought to use a written statement that was not part of the trial court record This Court excluded the written statement from the Record on Appeal and ruled that the appellant could not rely upon that statement to support his appeal In so holding this Court stated “a brief must reference the Record on Appeal to support the facts alleged

'The Record shall not, however, include matter which was not presented to the lower court or tribunal ' Morris' statement was not presented to the lower court and cannot be properly included in the Record on Appeal ” State v White, at 387, 642 S E 2d at 619 (quoting Rule 210, SCACR) Similarly in the present matter, documents 1 through 4 of the Appellant’s Designation were not presented to the lower court and cannot be properly included in the Record on Appeal Moreover, such documents should not be considered

by this Court or considered evidence supporting the taxpayer's arguments. The taxpayer chose not to enter those documents at the trial level where such documents could have been fully addressed by the ALC and by the Department. The taxpayer may not now bring those documents into the record when they were not addressed at the hearing and the Department did not have the opportunity to enter evidence to dispute such documents.

II THE APPELLANT FAILED TO PRESERVE THE REFUND CLAIM ARGUMENT RAISED IN ITS BRIEF THEREFORE THIS ISSUE IS NOT PROPERLY BEFORE THIS COURT

The taxpayer argues in its initial brief that it was an error for the ALC to fail to order a refund of the 2008 property taxes. As the ALC's Order in this matter demonstrates, this argument was not ruled upon by the trial court and the taxpayer failed to preserve that issue for appeal. It is well established that for an issue to be preserved for appeal, it must be raised and ruled upon by the trial court. Elam v. S.C. Dept. of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004), Kiawah Resort Assoc. v. S.C. Tax Comm'n., 318 S.C. 502, 505, 458 S.E.2d 542, 544 (1995). Because this issue was not ruled upon by the ALC, such issue is not preserved for appeal.

The taxpayer argues that it is entitled to a refund of property taxes and it was an error for the trial court not to order such refund. The taxpayer referenced a refund during the trial, and its proposed final order to the Court argued entitlement to a refund. The taxpayer's refund argument was not addressed in any fashion in the ALC's Order. What weight or consideration the ALC felt this argument was worth cannot be determined based on the order in this case.

Our Supreme Court has held that in order to preserve an issue for appeal, the losing party must first try to convince the lower court it is has ruled wrongly and then, if

that effort fails, convince the appellate court that the lower court erred I'On, L L C v Town of Mt Pleasant, 338 S C 406, 422, 526 S E 2d 716, 724 (2000) “This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments” 338 S C at 422, 526 S E 2d at 724, Citing E g, Smith v Phillips, 318 S C 453, 458 S E 2d 427 (1995), State v Williams, 303 S C 410, 401 S E 2d 168 (1991), Sumter Building & Loan Ass'n v Winn, 45 S C 381, 23 S E 29 (1895) When an issue or argument has been raised to but not ruled upon by the trial court, a party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review I'On, L L C , at 422, 526 S E 2d at 724, see also, Elam at 24 n 4, 602 S E 2d at 780 n 4 The record in this case clearly demonstrates that the taxpayer did not file a motion to alter or amend the judgment Because the taxpayer did not file a motion to alter or amend the judgment, the issue of whether or not it was an error for the ALC to fail to order a refund is not preserved and is not properly before this Court Because the refund issue was not preserved and is not properly before this Court, such issue should not be considered in this appeal

III THE ALC DID NOT ERR IN FINDING THAT PROPERTY ACQUIRED BY A NOT FOR PROFIT ELEEMOSYNARY CORPORATION IN 2008 IS NOT ENTITLED TO AN EXEMPTION FROM 2008 PROPERTY TAXES

The sole remaining issue in this matter is whether property acquired by a not for profit eleemosynary corporation is exempt from ad valorem property taxes for the year in which the property is acquired It is well established in South Carolina that an exemption of private property is strictly construed, because in such case taxation is the rule and

exemption is the exception State v Columbia, 115 S C 108, 104 S E 337 (1920) The ALC properly applied the law in this matter and its ruling should not be overturned

S C Code Ann § 12-37-220(B)(24) (Supp 2010) provides an exemption for all property of an eleemosynary corporation used exclusively for the promotion of the arts The taxpayer is a tax exempt entity pursuant to § 12-37-220(B)(24), but that exemption does not eliminate property taxes for the year property is acquired The taxpayer purchased the Lee Avenue property in March of 2008 and in October of 2008 it applied for an exemption from 2008 property taxes The taxpayer asserts that because it acquired the property prior to tax bills being issued, the property taxes for 2008 were eliminated because it is a tax exempt entity The taxpayer's argument is not supported by the law of South Carolina and the ALC properly ruled against the taxpayer's argument

Pursuant to S C Code Ann § 12-4-710 (2000), the Department is the agency charged with determining whether property qualifies for an exemption from property taxes under § 12-37-220 The Department determines property tax exemptions based upon the tax status of that property, that being whether the property is subject to tax or tax exempt, on December 31 of the year preceding the tax If property is owned by a taxable entity on December 31, that property is subject to property taxes for the following year, regardless of transfer of ownership during the year If property is owned by a tax exempt entity on December 31, that property is exempt and not subject to property taxes for the following year, regardless of transfer of ownership In the present matter, the subject property was privately owned and subject to property taxes on December 31, 2007 Because the property was taxable on December 31, 2007, that property is not exempt from 2008 property taxes

A The South Carolina Code Demonstrates That The Taxability of Property Is Determined On December 31 Of The Preceding Year

S C Code Ann § 12-37-210 (2000) provides “[a]ll real and personal property in this State shall be subject to taxation” unless explicitly exempted. General exemptions to property tax are delineated in § 12-37-220. It is well settled that exemptions from taxing statutes exist through legislative grace, and a taxpayer asserting an exemption must bring itself squarely within the statute authorizing the exemption. Southern Weaving Co v Query, 206 S C 307, 313, 34 S E 2d 51, 54 (1945). This construction means that the statutory language creating such exemptions will not be strained or liberally construed in the taxpayer’s favor. Charleston County Aviation Authority v Wasson, 277 S C 480, 289 S E 2d 416 (1982).

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Chem-Nuclear Sys, LLC v S C Bd of Health & Env’tl Control, 374 S C 201, 205, 648 S E 2d 601, 603 (2007). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” McClanahan v Richland County Council, 350 S C 433, 438, 567 S E 2d 240, 242 (2002). Thus, whether the exemption applies to the taxpayer’s situation must be determined by examining the statute in light of legislative intent. Legislative intent should be ascertained primarily from the plain language of the statute. State v Landis, 362 S C 97, 102, 606 S E 2d 503, 505 (Ct App 2004). Moreover, while a statute’s text is the best evidence of legislative intent, the real purpose and intent of the lawmakers will prevail over the literal import of the words. Floyd v

Nationwide Mut Ins Co, 367 S C 253, 260, 626 S E 2d 6, 10 (2005), Bayle v S C Dep't of Transp., 344 S C 115, 122, 542 S E 2d 736, 740 (Ct App 2001)

As the ALC recognized, the South Carolina Code creates tax requirements and liabilities for owners of real property and the Code specifically places those requirements and liabilities on the person or entity that owns the property on December 31¹¹ Pursuant to S C Code Ann § 12-37-900 (Supp 2010), each property owner in this State is required to provide his or her county auditor with a list of all real property owned on December 31 of the preceding year The foregoing list must be provided to the county auditor between January 1 and March 1 of the next year, regardless of whether or not that person still owns the listed property 1968 S C Op Atty Gen No 2508, p 193, 1968 WL 8904 (Sept 12, 1968)

The owner of property on December 31 must not only list that property with the county, that owner is also statutorily liable for the next year's property taxes Pursuant to S C Code Ann § 12-37-610 (Supp 2010), each person in this State is liable for taxes and assessments on the real property that he or she owns on December 31 of the year preceding the tax Even if the property is sold during that next year, the owner on December 31 of the preceding year remains liable for the property taxes 1973 S C Op Atty Gen No 3548, p 185, 1973 WL 21005 (June 21, 1973), 1968 S C Op Atty Gen No 2508, p 193, 1968 WL 8904 (Sept 12, 1968)

Prior to 2000, § 12-37-610 read as follows “[e]very person is liable to pay taxes and assessments on the real estate which he owns or may have the care of as guardian, executor, trustee, or committee ” In 2000, the South Carolina Legislature amended § 12-

¹¹ALC Order, p 7

37-610 so that it now reads as follows

Each person is liable to pay taxes and assessments on the real property that, **as of December thirty-first of the year preceding the tax year**, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, or on the real property that, as of December thirty-first of the year preceding the tax year, he has care of as guardian, executor, or committee or may have the care of as guardian, executor, trustee, or committee

(Emphasis added) The significant change created by the 2000 amendment is the addition of language specifying that it is the owner of property on December 31 of the preceding year that is liable for the tax. Id. Prior to this amendment the statute provided no specificity as to what period of ownership bore the liability for taxes. The current version of § 12-37-610 explicitly states that it is the owner on December 31 of the preceding year that is liable for property taxes. Because ownership on December 31 determines liability for property taxes, the ALC properly found that such date also determines the taxability of the property.¹² The ALC found that the 2000 amendment to § 12-37-610 clearly demonstrates that the Legislature intended for the taxability of property to be determined based upon the ownership of that property on December 31 of the year preceding the tax.¹³

Furthermore, as the ALC recognized, pursuant to S.C. Code Ann. § 12-49-20 (2000), a lien is created on December 31 of the preceding year for the taxes to be paid

¹²ALC Order, p. 8

¹³ALC Order, p. 8

during the ensuing year¹⁴ This lien attaches to all real and personal property and such constitutes a first lien

The foregoing statutes demonstrate that the owner of property on December 31 has to list that property with the county, that person is personally liable for taxes related to that property regardless of sale, and a lien covering the amount of the property taxes attaches to all of the December 31 owner's property Simply stated, the obligations and liabilities associated with real property are placed upon the owner on December 31 of the preceding year Because the obligations and liabilities associated with property taxes are determined based upon ownership on December 31, such date is used to determine the tax status of the property Moreover, because the obligations and liabilities for property taxes are placed on the December 31 owner, a transfer of ownership during the foregoing year has no impact on the tax status of the property, as taxability and liability were already determined on December 31 Therefore, because the Lee Avenue property was subject to taxation of December 31, 2007, transfer of that property to the taxpayer in March of 2008 does not eliminate the 2008 property taxes for that property

B Case Law Supports The Department's Position In This Matter

The ALC correctly recognized that South Carolina case law supports determining the taxability of property on December 31 of the year preceding the tax¹⁵ In Atkinson Dredging Co v Thomas, 266 S C 361, 223 S E 2d 592 (1976), the Supreme Court held that the taxable status of property is determined on December 31 of the year preceding the tax In Atkinson Dredging Co., the owner of dredging equipment disputed 1971

¹⁴ALC Order, p 8

¹⁵ALC Order, pp 8-10

property taxes assessed against its equipment. The dredging equipment was located in Charleston on December 31, 1970, therefore Charleston County assessed 1971 property taxes against the equipment. The owner^c removed the equipment from South Carolina in February of 1971. Because the property was in South Carolina for less than two months, the owner argued that the property taxes should be apportioned to reflect the percentage of the year the property was located in this State. The Supreme Court rejected this argument and stated

While there is some appeal to Atkinson's argument that its taxes should be apportioned on the basis of the time its dredge and other equipment were physically in the County during 1971, such an argument is available to many citizens of this and other states as illustrated by the following example contained in the lower court's order

“If a Charleston taxpayer had bought an automobile on Christmas Day, 1974, and that automobile had been totally destroyed on New Year's Day, he would, none the less, be liable to pay property tax for the entire year 1975. On the other hand, if he had bought an automobile on January 2, 1975, he would owe no personal property tax on that for the year 1975. In an ideal state, it would probably be well to levy the personal property tax on a daily basis. However, this would be an administrative impossibility. Under our taxing system, there have always been inequalities and inequities resulting from the fact that **the tax for an entire year is contingent under Sec 65-1644 on possession or control on the 31st day of December next preceding the tax year in question**.”

Atkinson Dredging Co., at 369, 223 S E 2d at 597 (Emphasis added). Since the Atkinson Dredging Co. decision, courts of this State have consistently and routinely held

that the tax status of real property is determined on December 31 of the year preceding the tax. See Northbridge Associates, LLC v Charleston County Assessor, Docket No 06-ALJ-17-0863-CC (November 25, 2008), Mt Vintage Plantation Golf Club, LLC v Edgefield County Assessor, Docket No 07-ALJ-17-0569-CC (May 13, 2008), Richard Westfall v Richland County Assessor, Docket No 06-ALJ-17-0041-CC (November 14, 2006)

Pursuant to the Supreme Court's holding in Atkinson Dredging Co., and the litany of cases that cite this decision, it is clear that December 31 is the date that determines whether property is subject to taxation. Just as removing the dredging equipment from Charleston County in February of 1971 did not alter the 1971 property taxes on the dredging equipment, the sale of the Lee Avenue property in March of 2008 does not alter the 2008 property taxes on that property.

The Department's position and the ALC's Order are consistent with our Supreme Court's statements in Lindsey v South Carolina Tax Comm'n. In that case the Supreme Court stated, "[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year." Lindsey v South Carolina Tax Comm'n, 302 S C 274, 395 S E 2d 184 (1990), citing § 12-37-900 and Atkinson Dredging Co. Determining the value of property on December 31 of the preceding year is consistent with, and supports, the Department's utilization of such date to determine taxability of property on that date.

In 1978, the South Carolina Attorney General's office issued Opinion No 78-184 addressing whether the sale of real property from a tax exempt organization to a nontax exempt purchaser rendered the property subject to property taxes for the year of the sale.

and whether the purchaser could be held liable for such taxes 1978 S C Op Atty Gen No 78-184, p 211, 1978 WL 22652, (Nov 3, 1978) The opinion found that property tax liability attaches on December 31 of the preceding year and the owner on December 31 is the party liable for the taxes In that matter, the property was owned by a tax exempt organization on December 31, but was sold to a taxable entity during the next year The opinion found that the sale of the property during the next year to a taxable entity did not alter the taxability of the property Therefore, the property could not be taxed for the year it was purchased, nor could the purchaser be held liable for taxes for the year it was purchased This opinion supports the Department's position and is contrary to the position put forth by the taxpayer in the present matter If the sale of a piece of property not subject to tax on December 31 does not make the property taxable, then the sale of taxable property to a tax exempt organization does not make the property nontaxable

The case of TNS Mills, Inc v S C Dept of Revenue, 331 S C 611, 503 S E 2d 471 (1998), further supports the Department's position in this case In TNS Mills, the Supreme Court addressed whether property tax exemptions could be applied retroactively In ruling against retroactive exemptions the Court stated

Furthermore, an interpretation allowing retroactive exemptions would not fit with the procedural scheme set out by the General Assembly The Code requires the Department to make annual determinations concerning exemptions and to notify the appropriate county officials of what property was exempted from taxation by June first S C Code Ann § 12-4-710 (Supp 1992) The interpretation advanced by TNS would negate the purpose of notifying county officials by June first because the information given them would be worthless, the amount of exempted

property, would change every time the Department granted a retroactive exemption

The plain language of these Code sections, when read together, show the legislature intended to set clear deadlines for applying for exemptions as part of an overall plan to enable counties and school districts to plan budgets for each fiscal year. Any interpretation allowing the Department to grant exemptions after the deadline would negate the benefit of this plan.

TNS Mills, at 620-21, 503 S E 2d at 476. Similarly in this case, the taxpayer argues that an exemption can be granted up to the point that a tax bill is sent to a landowner and becomes a fixed charge on the property. Property bills are not sent until September, therefore under the taxpayer's argument, an exemption can be granted until September. As the TNS Court recognized, the Department must notify the counties which properties are exempted by June 1. See § 12-4-710. If an exemption can be granted until September as the taxpayer asserts, the information given to the counties in June would be worthless as the amount of exempted property could change after that June 1 date. Because the taxpayer's interpretation renders the June 1 deadline of § 12-4-710 meaningless, such is clearly not the correct interpretation of the South Carolina Code.

C The Case Of Town Of Myrtle Beach v Holliday Does Not Support The Taxpayer's Position In This Matter

The taxpayer asserts that the case of Town of Myrtle Beach v Holliday, 203 S C 25, 26 S E 2d 12 (1943), supports its position in this matter. Contrary the taxpayer's assertion, Holliday only addressed whether property taxes are immediately cancelled

when that property is acquired by a municipality¹⁶ The Holliday opinion does not address property acquired by private or nonmunicipal tax exempt entities Because the property in the present matter was not acquired by a municipality, the Holliday holding is not applicable

As the ALC recognized, Holliday goes into detail to explain the strict construction applicable to exemptions for private property as opposed to the liberal construction applicable to exemptions for municipal property Holliday, at 25, 26 S E 2d at 14¹⁷ The taxpayer's interpretation of Holliday makes no distinction between municipalities and all other tax exempt entities If such interpretation were correct, there would be no need for the Holliday Court to explain the standard applicable to exemptions for private property as opposed to exemptions for municipal property The present matter involves an exemption to private property, therefore the exemption at issue in this matter is subject to strict construction Id Because the Holliday decision is based upon the liberal construction given to municipalities and the present matter requires a strict construction, the Holliday decision is not applicable to the present matter

A quote within Holliday demonstrates that the Court was solely addressing property acquired by a municipality Within Holliday, the Court stated

As stated by plaintiff in its brief, if the present owner of the property were a private citizen or corporation, Sections

¹⁶The ALC's Order utilized the word municipality to collectively refer to the state, counties, municipalities, school districts, and other political subdivisions within the state For simplicities sake and to be consistent with the ALC's Order, this Brief will utilize the word municipality to collectively refer to property held by the state, counties, municipalities, school districts, or other political subdivisions, and used for a public purpose

¹⁷ALC Order, p 12

2569 and 2571 of the Code of 1942 would undoubtedly apply, but it is contended by plaintiff that said sections have no application to the question at issue, and we are in accord with this contention

Holliday, at 25, 26 S E 2d at 14 S C Code of Laws § 2569 (1942) provides that all tax assessments and penalties are a first lien upon the property taxed Said lien attaches to property at the beginning of the fiscal year and the county treasurer can enforce the lien through execution on the property S C Code of Laws § 2569 (1942) is a predecessor to S C Code Ann § 12-49-10 (Supp 2010) S C Code of Laws § 2571 (1942) provides that as soon as property is listed with the county auditor, taxes for that property become a first lien on the property and said property is subject to execution to satisfy the taxes Section 2571 is a predecessor to § 12-49-20 of the current South Carolina Code

According to the quote above, the Holliday Court agreed that if the matter involved a private taxpayer and not a municipality, the property would be subject to liens and enforcement actions More specifically, § 2569 would apply and a lien would attach at the beginning of the year Only because the matter involved a municipality did these sections not apply This clearly establishes that the holding in Holliday applies only to municipalities and cannot be applied to nonmunicipal tax exempt entities

The ALC properly recognized that the cases cited in Holliday, and the language used in explaining those citations, demonstrates that the Holliday holding is limited to municipalities ¹⁸ At the beginning of its analysis of case law from other jurisdictions, the Holliday Court explicitly stated that the issue addressed is property acquired by a political subdivision Holliday, at 25, 26 S E 2d at 14 The fact the Court explicitly

¹⁸ALC Order, pp 13-16

limited its analysis to political subdivisions demonstrates that the Court did not intend for the Holliday holding to be applied to all tax exempt entities

The ALC's Order goes to great length to explain how the analysis and holding of Holliday is only accurate if that holding is limited to property acquired by a municipality. As the ALC recognized, the Holliday Court states that it resorted to a study of text books and decisions of other jurisdictions, yet it only cited case law involving municipalities despite the fact case law addressing this issue, but involving private entities, existed at the time of the opinion.¹⁹ See First Congregational Church v County of Linn, 70 Iowa 396, 30 N W 650 (1886), and other cases cited below. Moreover, the Holliday Court stated that it reviewed the authority of other states and only Michigan had contrary authority. Holliday, at 25, 26 S E 2d at 14. This statement is correct if the issue being addressed is limited to municipal property. This statement is not correct if the issue being addressed is property acquired by nonmunicipal tax exempt entities. As the ALC found, at the time of the Holliday opinion, several states other than just Michigan had contrary law when the matter involved property acquired by a private tax exempt entity. See, Louisiana- Young Men's Christian Ass'n v City of New Orleans, 11 La App 360, 123 So 360 (La App 1929), Illinois- People ex rel McCullough v Ladies of Loretto, 246 Ill 403, 92 N E 908 (Ill 1910), People ex rel Thompson v St Francis Xavier Female Academy, 233 Ill 26, 84 N E 55 (Ill 1908), (Both cases address property acquired by tax exempt religious education corporations. The cases hold that taxability of property is determined on April 1 and acquisition by a tax exempt entity after that date does not change the taxability. The court held such despite the fact taxes for a given year are not paid until the following

¹⁹ALC Order, pp 13-15

year), Idaho- Clearwater Timber Co v Nez Perce County, 155 F 633 (C C D Idaho 1907), (In case involving land transferred to private timber company, the Court held that exemption from taxation is determined based upon the ownership of property on the second Monday in January Transfer of title after that date has no impact on the taxability In so holding, the Court stated "It is, of course, not necessary for the assessor upon that date actually to determine to whom the property should be assessed and to fix the value thereon and to enter the assessment in the assessment book Obviously that would be impossible" 55 F at 636-637), Mississippi- McHenry Baptist Church v McNeal, 86 Miss 22, 38 So 195 (1905), (Under Mississippi law, taxes for each current year attach on the 1st day of February On this date the land in controversy was subject to taxation, the fact that it was acquired by a private tax exempt entity after that date did not relieve it from the liability for taxes for the current year), Minnesota- Martin County v Drake, 40 Minn 137, 41 N W 942 (1889), (Statutes set May 1st as date for determining ownership and value for the purposes of taxation and if property is taxable on May 1st, it's taxable for the rest of the year regardless of transfer to a tax exempt entity), Iowa- First Congregational Church v County of Linn, (denying exemption to land acquired by tax exempt church in August despite the fact taxes were not levied until September) If the Holliday Court intended for its holding to be applied to all tax exempt entities, it would not have stated that only one state had contrary authority, as its analysis undoubtedly would have demonstrated that other states reached contrary conclusions when private tax exempt entities were involved The fact the Holliday Court neither recognized nor addressed these opinions clearly demonstrates that the Court was only addressing property acquired by a municipality

In addition the ALC properly recognized that the citations within the Holliday decision further demonstrate that the holding of that case applies only to property acquired by municipalities²⁰ As the ALC Order discusses, the Holliday opinion explicitly acknowledges the presumption that tax laws operate on private land and not public land²¹ Moreover, the Holliday Court chose to quote language from the State v Snohomish County, 71 Wash 320, 128 P 667 (1912), decision recognizing that public policy and constitutional declaration prevent taxation of municipal property As the ALC recognized, the Holliday Court utilized Snohomish solely for its analysis of property acquired by a municipality²² The Snohomish decision includes a discussion of when taxes are due and payable, yet our Supreme Court did not include that discussion in its citation Instead, the Holliday Court focused solely on the language of Snohomish addressing the ability to tax municipally held property If the Holliday Court intended its opinion to address private tax exempt entities, and if its opinion were truly based upon whether taxes were due and payable as the taxpayer asserts, it would undoubtedly utilized different or additional language from the Snohomish decision

The Holliday Court placed its greatest emphasis on the Louisiana case of Gachet v City of New Orleans, 52 La Ann 813, 27 So 348 (LA 1900) The Gachet case, just like the Holliday case, involved property acquired by a municipality At the time our Supreme Court wrote the Holliday opinion, other Louisiana case law addressed the acquisition of property by a private tax exempt organization In the 1929 case of Young

²⁰ALC Order, pp 15-16

²¹ALC Order, p 15

²²ALC Order, p 15

Men's Christian Ass'n v City of New Orleans, the Louisiana Court of Appeals held that property acquired by a tax exempt entity on June 30, 1920 remained subject to 1920 property taxes. The Court held that a property's status on January 1 of any given year determines its taxability. Because the property was subject to tax on January 1, 1920, it remained subject to tax regardless of it being transferred to a tax exempt entity. Id. Unlike the Gachet case, the Young Men's Christian Ass'n Court made no distinction between whether the taxes had become due and payable prior to or after the June 30, 1920 sale. Young Men's Christian Ass'n did not address Gachet nor overturn Gachet, on the contrary Gachet remained good law. The fundamental distinction between Young Men's Christian Ass'n and Gachet is whether the property involved is acquired by a municipality or acquired by a private tax exempt entity.

When the Holliday Court wrote its opinion, both Gachet and Young Men's Christian Ass'n were published. It is clear the Supreme Court analyzed the case law of Louisiana and likely knew of both decisions. The fact our Supreme Court elected to base its decision upon a Louisiana case that even in Louisiana only applied to municipalities, demonstrates that the Holliday opinion was not intended to apply to all tax exempt entities.

The taxpayer's brief provides no explanation for how its interpretation of Holliday is consistent with the analysis and cases put forth in the ALC's Order. To the contrary, the ALC's analysis of Holliday and the applicable case law, demonstrates that the holding of Holliday is limited to property acquired by municipalities.

D The Taxpayer's Position In This Matter Requires An Impermissible Interpretation Of The South Carolina Code

The taxpayer asserts the taxability of property immediately ceases when that property is sold to a tax exempt entity. As the ALC recognized, if the taxpayer's assertion were correct, there would be no need for § 12-37-220(D) of the South Carolina Code²³. In 1999, the South Carolina Legislature amended § 12-37-220 and added subsection (D) which states

(D) If a church acquires ownership of real property which will be exempt under this section when owned by the church, the transferor's liability for property taxes on the property ceases on the church acquiring the property, and any exemptions provided in this section then apply, subject to the requirements of Section 12-4-720. The property taxes accruing up to the date of the acquisition by the church, if any, must be paid to the county where the property is located within thirty days of the acquisition date. If the millage has not yet been set for the year when the acquisition occurs, the county auditor shall apply the previous year's millage in determining any taxes owed. If the millage has been determined, the auditor shall apply the current year's millage in determining any taxes owed. All taxes, assessments, penalties, and interest on the property acquired by a church are a first lien on the property taxed, the lien attaching December thirty-first of the year immediately preceding the calendar year during which the tax is levied.

Pursuant to this subsection, when a church acquires property, that property immediately becomes exempt from taxation. Churches were already tax exempt entities prior to the enactment of § 12-37-220(D). By enacting § 12-37-220(D), the Legislature chose to treat property acquired by a church differently than property acquired by the numerous other tax exempt entities provided in § 12-37-220. Unlike all other exempt private property,

²³ALC Order, pp 16-17

the exemption for church property takes effect immediately upon acquisition by a church and not the following December 31

The taxpayer asserts that taxation of property ceases on the date such property is acquired by a tax exempt organization. Under the taxpayer's argument, all tax exempt entities are entitled to the treatment churches receive pursuant to § 12-37-220(D). If the taxpayer's position were correct, there would be no need for the Legislature to enact § 12-37-220(D), as churches would already be entitled to the treatment provided in § 12-37-220(D).

As the ALC recognized, the taxpayer's argument requires an interpretation that renders § 12-37-220(D) superfluous and unnecessary²⁴. In interpreting statutes, courts must presume the Legislature did not intend a futile act, but rather intended its statutes to accomplish something. TNS Mills, Inc v South Carolina Dept of Revenue, State ex rel McLeod v Montgomery, 244 S C 308, 314, 136 S E 2d 778, 782 (1964). Moreover, when the Legislature adopts an amendment to a statute, it is presumed that the Legislature intended to change the existing law. Key Corp Capital, Inc v County of Beaufort, 373 S C 55, 60, 644 S E 2d 675, 678 (2007). As explained earlier, the taxpayer's argument stems from its incorrect interpretation of the Holliday case. If the taxpayer's interpretation were correct, the relief it seeks would have been the law of this State from at least 1943, when Holliday was issued, forward. If the law of this State already provided such relief, the Legislature would not have needed to enact subsection (D) and that subsection would not be a change to existing law. The Legislature's 1999 amendment of § 12-37-220 to add subsection (D) demonstrates that the Legislature

²⁴ALC Order, pp 17-18

intended to change the existing property tax law. Moreover, this amendment demonstrates that the taxpayer's interpretation is not correct, as such interpretation renders subsection (D) superfluous and unnecessary.

In its brief, the taxpayer asserts that § 12-37-220(D) does not create an immediate exemption for churches, rather it creates a new tax liability on nonexempt entities who transfer property to a church.²⁵ According to the taxpayer's brief "[t]he legislature enacted section (D) in an attempt to *generate* tax liability and revenue where none had previously existed" (Appellant's Initial Brief, p. 14) (emphasis in original). Simply stated, the taxpayer wants § 12-37-220(D) to be read as a taxing statute rather than an exemption statute. Such interpretation is unreasonable, incorrect, and contradicted by the statute itself. Section 12-37-220 is entitled "General Exemptions From Taxes." As explicitly stated in the title, it is a statute that creates exemptions, it is not a statute that generates "tax liability and revenue where none had previously existed." In construing statutory language, a statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992). It would be inconsistent to read § 12-37-220(D) as a taxing statute, when the remainder of the statute relates entirely to exemptions.

The taxpayer's attempt to convert § 12-37-220(D) from an exemption statute into a taxing statute is unreasonable and not supported by South Carolina law. There is no authority to support the taxpayer's strained interpretation of § 12-37-220(D). The taxpayer makes this strained argument in an effort to create an interpretation of § 12-37-

²⁵Appellant's Initial Brief, p. 14

220(D) that does not contradict its position in this matter. Contrary to the taxpayer's assertion, § 12-37-220(D) is not a taxing statute and it does not create a new tax liability. The only proper and reasonable interpretation of § 12-37-220(D) is that it creates a new exemption treatment for churches, wherein property acquired by a church becomes exempt immediately upon acquisition and not the following December 31.²⁶ This interpretation of § 12-37-220(D) demonstrates that the taxpayer's position in this matter is not correct. As the ALC found, the taxpayer's position in this matter, if correct, would render § 12-37-220(D) superfluous and unnecessary.²⁷ Moreover, under the taxpayer's position, enacting § 12-37-220(D) would not have changed existing law, as churches would have already received the treatment that § 12-37-220 provides, therefore such is not a permissible interpretation of South Carolina law.

E The Opinions And Decisions Relied Upon By The Taxpayer Are Not Persuasive

The taxpayer's brief relies upon opinions issued by the South Carolina Attorney General's office and decisions of the South Carolina Tax Commission to support its position. The taxpayer presented the same opinions and decisions to the ALC and the ALC properly recognized that such are not persuasive in this matter.²⁸

When the opinions and decisions relied upon by the taxpayer were issued, § 12-

²⁶The treatment provided churches in § 12-37-220(D) is not the only instance where the General Assembly provided different treatment to churches for property tax exemptions. As discussed in TNS Mills, Inc., from 1985 to 1990, S C Code Ann § 12-3-146 permitted churches and parsonages to apply for exemptions beyond the statute of limitations that applied to all other exemption applications. See, TNS Mills, Inc., at 623, 503 S E 2d at 477- 478.

²⁷ALC Order, pp 17-18

²⁸ALC Order, pp 18-20

37-610 placed liability for property taxes simply on the owner of property. The Code provided no specificity as to what period of ownership determined liability for property taxes. As discussed previously herein, in 2000 the South Carolina Legislature amended § 12-37-610. Under the amended § 12-37-610, it is the owner of property on December 31 of the year preceding the tax that is liable for property taxes. The opinions and decisions relied upon by the taxpayer were all written prior to the 2000 amendment to § 12-37-610. These opinions and decisions address the liability of the purchaser for property acquired at some point during the year. Pursuant to the current version of § 12-37-610, liability is statutorily fixed on the December 31 owner, therefore the analysis provided in the opinions and decisions is no longer applicable. Because the applicable law changed subsequent to the issuance of the relied upon opinions and decisions, such are not persuasive in this matter.

In addition to not addressing the current version of § 12-37-610, the opinions and decisions relied upon by the taxpayer do not address the implications of § 12-37-220(D). As explained herein, to allow all property tax exemptions to go into effect on the date property is acquired regardless of whether such is a church would render § 12-37-220(D) superfluous and unnecessary. Such interpretation is not permissible. The opinions and decisions relied upon by the taxpayer were written prior to the enactment of § 12-37-220(D) and do not address this impermissible result. Because these opinions and decisions do not address this impermissible interpretation of the Code, such opinions and decisions are not persuasive in this matter.

Furthermore, the opinions and decisions relied upon by the taxpayer were issued prior to our Supreme Court's ruling in Atkinson Dredging. As explained previously,

Atkinson Dredging firmly established that the taxable status of property is determined on December 31 of the year preceding the tax. To the extent any of the opinions and decisions relied upon by the taxpayer differ from that holding, such do not reflect the law of this State after Atkinson Dredging and therefore are not persuasive.

Several of the opinions relied upon by the taxpayer involve property acquired by a municipality, be it a local, state, or federal municipality. See 1983 WL 182006 (property acquired by the Small Business Administration which is a government entity), 1979 S C Op Atty Gen No 79-9, p 20, 1979 WL 29015 (1979) (property acquired by Dillon County), 1973 S C Op Atty Gen No 3654, p 340 (1973) (property acquired by Farmers Home Administration, an entity of the United States government). The taxpayer's brief fails to appreciate the significance of the fact these opinions involve property acquired by a municipality. Contrary to the taxpayer's assertions, and as explained previously, private tax exempt entities do not receive the same treatment as municipalities under South Carolina law. These opinions support granting an immediate exemption to municipalities, but like the Holliday case, these opinions neither address nor are they applicable to private tax exempt entities. Because the present matter does not involve property acquired by a municipality, such opinions are not persuasive in this matter.

The taxpayer's brief draws attention to the 1983 Attorney General opinion 1983, WL 182006, because it was written by Ray Stevens who later became Director of the Department of Revenue. Despite the taxpayer's utilization of this opinion, this opinion does not support the taxpayer's position, rather it explicitly supports the Department's position. In discussing the transfer of property to a municipality, the opinion states

The liability for ad valorem taxes is that of the owner of the property as of December 31 preceding the tax year, notwithstanding that the property owner may transfer the property subsequent to such date Atkinson Dredging Co v Thomas, 266 S C 361, 223 S E 2d 592. However, if the subsequent transfer is to a governmental agency exempt from tax and such transfer occurs prior to the tax becoming a fixed charge, the property is exempt for the year Town of Myrtle Beach v Holliday, 203 S C 25, 26 S E 2d 12.

The foregoing language demonstrates that the opinion date for determining liability for ad valorem taxes is December 31. Moreover, this language demonstrates that the opinion is limited to property transferred to a municipality. This opinion properly recognizes that the holding in Holliday is limited to property acquired by a municipality. Because the present matter does not involve a property acquired by a municipality, this opinion does not support the taxpayer's position.

The taxpayer's brief relies upon a 1972 Tax Commission decision that the ALC recognized incorrectly interprets Holliday.²⁹ See 1972 WL 21342 (S C Tax Comm 1972). This decision cites Holliday, but fails to acknowledge any distinction between the treatment of municipalities and private tax exempt entities. As the ALC found, a full analysis of Holliday demonstrates that its holding applies only to municipalities.³⁰ Moreover, the decision provides no explanation as to how a holding based upon the broad standard for exemptions given to municipal property can be equally applied to nonmunicipal exemptions where a strict standard applies. The decision provides no explanation for the Holliday Court's analysis of other jurisdictions and how such analysis is inaccurate when addressing all tax exempt entities and not just municipalities. Because

²⁹ALC Order, p 20

³⁰ALC Order, p 20

this decision misinterprets Holliday, and because this opinion does not address the standards applicable to exemptions, the ALC properly found that such case is not persuasive in this matter³¹

The taxpayer's brief mistakenly relies upon a 1976 South Carolina Tax Commission decision involving property acquired by a church. See 1976 WL 24902 (S C Tax Comm 1976). A careful reading of the facts demonstrates why this decision is not persuasive. At issue was whether the church was entitled to an exemption from 1975 property taxes. Unlike the taxpayer here, in that decision the church owned the property on the December 31, 1974. In fact, the church owned the property since May of 1973. This decision does not address changing the tax status of property in the middle of a year because of acquisition by a private tax exempt entity. On the contrary, this case solely addresses whether the church actually occupied its property, an issue of no relevance to the present matter.

Lastly, the taxpayer's brief asserts that Georgia case of Rayle Elec Membership Corp v Cook, 195 Ga 734, 25 S E 2d 574 (1943) supports its position. The taxpayer provides no explanation of whether this Georgia case is consistent with South Carolina law or the property tax system in South Carolina. More significantly, far more recent Georgia case law demonstrates that Georgia does not follow the taxpayer's position in this matter. In Teachers Ret Sys of Georgia v City of Atlanta, 249 Ga 196, 288 S E 2d 200 (1982), a tax exempt purchaser of property asserted that it was not liable for property taxes for the year in which it acquired property because the tax rate was not fixed and the taxes had not been levied when it acquired the property. The Supreme Court of Georgia

³¹ALC Order, p 20

disagreed with the taxpayer's argument and found that a lien for the taxes attached to the property on January 1, therefore the tax exempt entity acquired the property subject to the taxes for the year of acquisition Id., at 203, 288 S E 2d at 205 The Georgia Supreme Court held such despite the holding in Rayle Similarly, as explained previously, in South Carolina, § 12-49-20 creates a lien on December 31 of the preceding year for the taxes to be paid during the ensuing year Therefore, applying the logic of Teachers Ret. Sys. of Georgia, to South Carolina law clearly supports the Department's position in this matter Because current Georgia law supports the Department's position in this matter, the taxpayer's reliance upon Rayle is misplaced and should not be followed by this Court

The ALC properly ruled that the opinions and decisions relied upon by the taxpayer are not persuasive because they are not consistent with current South Carolina law³² The taxpayer's brief puts forth the same opinions and decisions presented to the ALC For the same reasons the ALC found, these opinions and decisions are either inapplicable and/or inconsistent with current South Carolina law Therefore, as the ALC found, such are not persuasive and do not entitle the taxpayer to the relief it seeks

F The Taxpayer's Theory Could Cause Devastating Consequences Throughout South Carolina

The ALC properly recognized that the taxpayer's theory in this case would have devastating consequence to the property tax system in South Carolina³³ Under the taxpayer's theory, the sale of property to any tax exempt entity eliminates that year's tax liability so long as the sale occurs prior to the property tax bills being mailed in

³²ALC Order, pp 18-20

³³ALC Order, pp 20-21

September. As the ALC recognized, under this theory, if such a sale occurred at the end of August, a county would have already determined its millage rate. That millage rate would have been determined based upon receiving taxes from that property. Under the taxpayer's theory, the property tax liability for that property is eliminated and as a result, the millage rate utilized by the county would be inaccurate and the county would collect less revenue than required to fund the county budget. The impact of this theory is increased exponentially when one considers the thousands of property transactions that occur every year in any given county. As the ALC recognized, under the taxpayer's theory, there is no limit to the amount of property taxes that could be eliminated in the middle of the year, thereby rendering a county incapable of funding county operations.³⁴ Moreover, the counties have no means to plan for such consequence as they have no control over the sale of private property.

As the Supreme Court recognized in TNS Mills, Inc., the Legislature intended to set clear deadlines for exemptions in order to enable counties and school districts to plan budgets for each fiscal year. TNS Mills, at 621, 503 S.E.2d at 476. The taxpayer's position, if correct, would prevent the counties and school districts from planning budgets, thereby negating the intent of the Legislature. Id. Because the taxpayer's theory would negate the intent of our Legislature, such theory is clearly not the proper interpretation of South Carolina law.

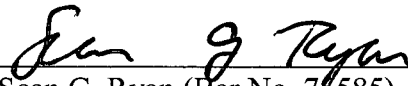
As the ALC found, utilization of December 31 of the year preceding the tax to determine taxability eliminates the devastating consequences allowed for under the

³⁴ALC Order, p. 21

taxpayer's theory³⁵ By utilizing December 31 of the year preceding the tax, each county is able to definitively know which property will be subject to tax and which property will be tax exempt The counties are able to accurately determine millage and properly fund their operations Such accuracy is fundamental to the survival of the property tax system in this State The serious implications allowed under the taxpayer's theory demonstrate why such theory cannot be the law of this State The consistency, accuracy, and predictability ensured through the Department's method demonstrate that the Department's method is proper

CONCLUSION

For the foregoing reasons, and pursuant Rule 220, SCRPC, for any other reason appearing in the Record on Appeal, the South Carolina Department of Revenue respectfully requests that the ruling of the ALC in this matter be affirmed


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Columbia, South Carolina
November 30, 2011

³⁵ALC Order, p. 21

The South Carolina Court of Appeals

Hampton Friends of the Arts,

Appellant,

v

South Carolina Department of
Revenue,

Respondent

The Honorable John McLeod
Richland County
Administrative Law Court Case No 2010-AL-17-00538

ORDER

For good cause having been shown, the time for Respondent's Initial Brief and Designation of Matter to be served and filed in the above entitled matter is hereby extended until November 30, 2011

IT IS SO ORDERED

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY V. Claude Allen, Deputy
CLERK

Columbia, South Carolina
cc Marion Clyde Faurey, Jr, Esquire
Sean Gordon Ryan, Esquire

FILED
10/27/11

State of South Carolina
Department of Revenue
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Telephone (803) 898-5375 FAX (803) 898-5147

October 20, 2011

The Honorable Tanya Gee, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re Hampton Friends of the Arts v South Carolina Department of Revenue
Docket No 10-ALJ-17-0538-CC
Tracking No 2011190669

Dear Ms Gee

I am writing in regards to the time for filing the Respondent's brief. For reasons unbeknownst to either party, the Department did not receive the Appellant's brief until October 19, 2011 when Appellant's counsel provided an electronic version. Based upon the proof of service, the Appellant mailed the Department its copy of the brief on September 28, 2011, thereby starting the Department's time period for filing its brief. Unfortunately, the Department never received that brief.

Because the Department did not receive the brief until October 19, 2011, the Department requests additional time to complete its brief. In light of the Thanksgiving holiday at the end of November, the Department requests that its brief now be due November 30th. Counsel for the Appellant is aware of the situation and he consents to this request.

If you prefer a formal motion requesting the extension described herein please let me know and I will provide such forthwith. If you have any questions, please feel free to contact me at (803) 898-5375 or via e-mail at ryans@sctax.org

Yours very truly,

OFFICE OF THE GENERAL COUNSEL



Sean G Ryan
Managing Counsel for Litigation

SGR lbc

c Marion C Faurey, Jr, Esquire (via USPS)

10/28/11 1st motion
11/30/11

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OCT 24 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D. McLeod, Judge
South Carolina Administrative Law Court

Case No. 10-ALJ-17-0538-CC

Hampton Friends of the Arts

Appellant,

v

South Carolina Department of Revenue

Respondent

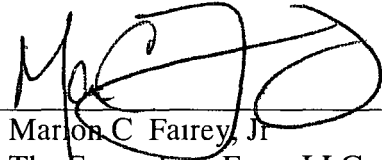
DESIGNATION OF MATTERS TO BE
INCLUDED IN THE RECORD ON APPEAL

Pursuant to Rule 209(a), SCACR, the Appellant designates the following materials for
inclusion in the Record on Appeal

- 1 June 8, 2009 Letter from Sabrena Graham
- 2 October 7, 2009 Protest Letter
- 3 January 25, 2010 Letter from Adriane Shealy
- 4 February 4, 2010 Appeal Letter
- 5 June 23, 2010 Determination Letter from Department of Revenue, OGC
- 6 June 28, 2010 Notice of Appeal

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SC Court of Appeals

- 7 March 22, 2011 Order
- 8 December 2, 2010 Transcript of Hearing
- 9 Petitioner's Exhibit 1, December 2, 2010 Hearing
- 10 Unpublished Order, *J R Cotttingham v Oconee County Assessor*, Docket No 05-ALJ-17-0101-CC (September 19, 2005)

A handwritten signature in black ink, appearing to read "Marion C. Faurey, Jr.", is written over a horizontal line.

Marion C. Faurey, Jr.
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September 28, 2011
Hampton, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D McLeod, Judge
South Carolina Administrative Law Court

Case No 10-ALJ-17-0538-CC

Hampton Friends of the Arts

Appellant,

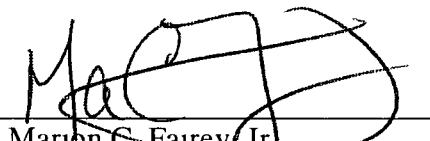
v

South Carolina Department of Revenue

Respondent

CERTIFICATION OF COUNSEL

Pursuant to Rule 209(c), SCACR, I certify that the Appellant's Designation of Matters to
Be Included in the Record on Appeal contains no matter which is irrelevant to the appeal



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September 28, 2011
Hampton, South Carolina

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SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D McLeod, Judge
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Case No 10-ALJ-17-0538-CC

Hampton Friends of the Arts

Appellant,

v

South Carolina Department of Revenue

Respondent

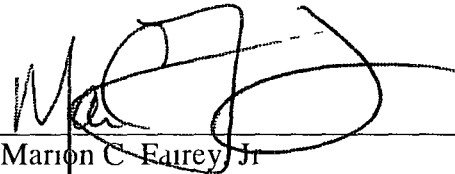
PROOF OF SERVICE

I certify that on September 28, 2011, I have served a copy of Appellant's Initial Brief, Appellant's, Appellant's Designation of Matters to Be Included in the Record on Appeal, and Certification of Counsel pursuant to Rule 209(c), SCACR, on

Sean G Ryan, Esq
South Carolina Department of Revenue
Office of General Counsel for Litigation
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OCT 03 2011
SC Court of Appeals

<signature page to follow>

A handwritten signature in black ink, appearing to read "Marion C. Faurey Jr.", is written over a horizontal line.

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MARION C FAIREY JR

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September 28, 2011

Via First Class US Mail, Postage Pre-paid

The Honorable Tanya Gee
Clerk of South Carolina Court of Appeals
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SC Court of Appeals

**RE Hampton Friends of the Arts V South Carolina Department of Revenue,
Docket Number 10-ALJ-17-0538-CC**

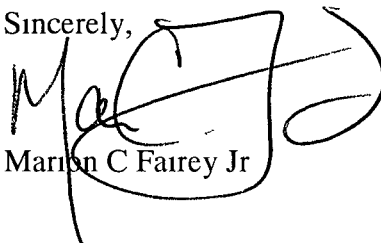
Dear Ms Gee

Enclosed please find the original and two copies of

- (1) Proof of service of the Appellant's Initial Brief, Certification of Counsel, and Designation of Matters to be Included in the Record on Appeal

If it would be greatly appreciated if you would please file the original and one copy and return a clocked copy to me in the enclosed self addressed stamped envelope Thank you for your assistance with this matter and please contact me if you have any questions

Sincerely,



Marion C Fairey Jr

Enclosures

CC Sean G Ryan, Esq
Janet E Shealy, South Carolina Administrative Law Court

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D McLeod, Judge
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Hampton Friends of the Arts

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South Carolina Department of Revenue

Respondent

APPELLANT'S INITIAL BRIEF

September 28, 2011
Hampton, South Carolina

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SC Court of Appeals

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Statement of Issues on Appeal

I WAS IT ERROR FOR THE COURT TO FAIL TO ORDER A
REFUND OF THE 2008 PROPERTY TAXES PAID BY HAMPTON
FRIENDS OF THE ARTS AFTER FINDING THAT HAMPTON
FRIENDS OF THE ARTS WAS NOT LIABLE FOR THOSE TAXES

II IS PROPERTY AQUIRED BY A NON-PROFIT EELYMOSINARY
CORPORATION IN MARCH OF 2008 EXEMPT FROM 2008
PROPERTY TAXES

Statement of the Case

This is an appeal from the assessment, levy, bill and payment of \$6544 45 in property taxes against Hampton Friends of the Arts (hereinafter “Friends of the Arts”) for the 2008 tax year for a storefront building located next to the Palmetto Theater on Lee Avenue in Hampton, South Carolina (hereinafter “the Lee Avenue property”) Friends of the Arts is exempt from paying property taxes pursuant to the South Carolina Constitution, Art X, §3(d), and S C Code Anno §12-37-220(A)(4) Nevertheless, Friends of the Arts was billed for the taxes in spite of its tax exempt status and even though it was not the owner of the property on December 31 of the year prior to the tax year After initially questioning the tax, the county issued its determination that Hampton Friends of the Arts was responsible for the 2008 property taxes (June 8, 2009 Letter from Sabrena Graham)

Friends of the Arts intitated this appeal on October 7, 2009 by tendering the disputed amount and initiating a tax appeal (October 7, 2009 Protest Letter) The appeal was initially denied by the Department of Revenue on January 25, 2010 (January 25, 2010 Letter from Adriane Shealy) Hampton Friends of the Arts then sought review from the Department of Revenue’s Office of General Counsel on February 24, 2010 (February 24, 2010 Appeal Letter) On June 23, 2010, the Office of General Counsel issued its determination that the property was not exempt for the 2008 tax year and that the tax was owed (June 23, 2010 Determination)

On June 28, 2010 Friends of the Arts then sought review by the Administrative Law Court (June 28, 2010 Notice of Appeal) The Administrative Law Court heard this matter on December 2, 2010 and on March 22, 2011, issued an order affirming the decision of the Revenue Department OGC (March 22, 2011 Order) This appeal ensued

Statement of Facts

The facts in this matter are not in dispute. Friends of the Arts is a tax exempt non-profit eleemosynary organization and has been since 2007 (March 22, Order, p. 2, December 2, 2010 Tr., p. 4). It was founded for the primary purpose of promoting and producing performing arts productions and programs in Hampton County and the surrounding area on a non-profit basis (March 22, 2011 Order, p. 2).

Prior to 2007, Friends of the Arts utilized the Palmetto Theater in Hampton County for its productions and operations. However, in 2007 the opportunity arose for the Friends of the Arts to purchase a department store building (the "Lee Avenue property") adjacent to the Palmetto Theater. Friends of the Arts raised the money for the purchase and in 2007, entered into a contract to purchase the Lee Avenue property. At all times, Friends of the Arts intended and has used the Lee Avenue property for storing props and costumes, conducting arts programs and rehearsals and other uses in support of the performing arts in Hampton County.

Although Friends of the Arts was ready willing and able to complete the sale by December 31, 2007, at the request of the sellers, the deed was not executed until March 4, 2008 (March 22, 2011 Order, p. 2). When the deed was recorded, the Hampton County Tax Collector noted the change of ownership and when tax notices were issued in September of 2008, the tax bill for the Lee Avenue property was sent to Friends of the Arts (December 2, 2010, Petitioner's Ex. 1). Friends of the Arts questioned the County Administrator about the tax bill since it had been qualified as a tax exempt organization in 2007 (June 8, 2009 Letter from Sabrena Graham). The County Administrator informed Friends of the Arts that they were liable for the tax because the owner of record on December 31, 2007 was not a tax exempt organization. (Id.)

Friends of the Arts paid the tax under protest and pursued its administrative remedies through the Administrative Law Court (March 22, 2011 Order, pp 2-3)

Standard of Review

The appropriate standard of review for this appeal is governed by the Administrative Procedures Act *Original Blue Ribbon Taxi Corp v South Carolina Department of Motor Vehicles*, 308 S C 600, 605, 670 S E 2d 674, 676 (Ct App 2008) Pursuant to S C Code Anno §1-23-610(B),

The review of the administrative law judge's order must be confined to the record The reviewing tribunal 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 has been prejudiced because of the finding, conclusion, or decision is

(a) in violation of constitutional or statutory provisions,

(d) affected by other error of law or

(f) arbitrary or capricious or characterized by abuse of discretion or clear unwarranted exercise of discretion

The decision of an administrative law judge may be overturned if it is unsupported by substantial evidence or controlled by some error of law *Original Blue Ribbon Taxi*, 308 S C at 605, 670 S E 2d at 676, *Olson v South Carolina Dept of Health and Env Control* , 379 S C 57, 63, 663 S E 2d 497, 500-501 (Ct App 2008) The appellate court may reverse or modify the decision if the appellant's substantive rights have been prejudiced because the decision is affected by an error of law *SGM-Moonglo, Inc v South Carolina Dept of Revenue*, 378 S C 293, 295, 662 S E 2d 487, 488 (Ct App 2008)

ARGUMENT

I WAS IT ERROR FOR THE COURT TO FAIL TO ORDER A
REFUND OF THE 2008 PROPERTY TAXES PAID BY HAMPTON
FRIENDS OF THE ARTS AFTER FINDING THAT HAMPTON
FRIENDS OF THE ARTS WAS NOT LIABLE FOR THOSE TAXES

Friends of the Arts was assessed and billed for property taxes on the Lee Avenue property for the 2008 tax year (Petitioner's Exhibit 1) The county determined that even though Friends of the Arts did not own the property on December 31 of 2007, it was responsible for the 2008 property taxes on the Lee Avenue property (June 8, 2009 Letter from Sabrena Graham) On October 7, 2009, the Hampton Friends of the Arts tendered under protest \$6544 45 in property taxes and penalties for the 2008 tax year on the Lee Avenue property and sought a refund of those taxes (October 7, 2009 Protest Letter)

The Department conceded and the Administrative Law Court found that the Friends of the Arts was not liable for the 2008 taxes it paid under protest (March 22, 2011 Order, p 22, December 2, 2010 Tr , p 16) Specifically, the court found that S C Code Anno §12-37-610 sets liability for the tax, if collectable, on the property owner of record as of December 31, 2007 (March 22, 2011 Order, p 22, *citing, J R Cottingham v Oconee County Assessor*, Docket No 05-ALJ-17-0101-CC (September 19, 2005)) As it was undisputed that Hampton Friends of the Arts "did not own the Lee Avenue property on December 31, 2007," the court properly held that it was "not personally liable for the 2008 property taxes associated with the property" (March 22, 2011 Order, p 22) even though Hampton Friends of the Arts had been billed and paid \$6544 45 in taxes and penalties for the 2008 tax year (Petitioner's Ex 1, June 8, 2009 Letter from Sabrena Graham, October 7, 2009 Protest Letter) In so holding, however, the court failed to issue a mandate for a refund to Friends of the Arts for the taxes it paid under protest

If Friends of the Arts was not liable for the 2008 property taxes, then it has a right to a refund of the taxes erroneously assessed and billed against them and paid by them *Cottingham v Oconee County Assessor*, Docket No 05-ALJ-17-0101-CC The court's failure to order a refund was error

II IS PROPERTY ACQUIRED BY A NON-PROFIT EELYMOSINARY CORPORATION IN MARCH OF 2008 EXEMPT FROM 2008 PROPERTY TAXES

When the Friends of the Arts acquired the Lee Avenue property on March 4, 2008, the building became exempt from 2008 property taxes because the taxes for the 2008 tax year had not nor could not have been levied It was error for the Administrative Law Court to hold otherwise

Since 1942, the statutory authority to levy *ad valorem* taxes on real property has remained virtually unchanged The procedure for the levy and collection of *ad valorem* taxes begins with S C Code Anno §12-39-180, which provides that the county auditor determines the tax liability for a tax year "after receiving statements of the rates and sums to be levied for the current year from the department" and enters them into the county tax book Accordingly, the county auditor cannot determine the tax levy on any property and enter it into the tax book in the county until he or she receives the statements of rates from the department Typically, this information cannot be determined by the Department until the State's budget has been adopted by the Legislature and approved by the Governor

Once the county auditor receives this information, he or she then creates a duplicate tax book and delivers it to the county treasurer Pursuant to S C Code Anno §12-45-60, county treasurers "are prohibited from collecting any tax except such as has been first entered upon the tax duplicates of their respective counties or upon the order of the auditors of such counties "

The duplicate tax book is the “warrant”¹ or legal authority for the collection of taxes which is delivered to the treasurer no later than September 30 of each year S C Code Anno §12-39-150 The treasurer then takes the tax book and issues tax notices which may be paid between September 15 and January 15 S C Code Anno §12-45-70 Under the South Carolina Tax Code, the taxes do not become a fixed charge on the property until the tax duplicate is delivered to the treasurer Accordingly, Hampton Friends of the Arts, which was exempt from paying property taxes pursuant to the South Carolina Constitution, Art X, §3(d), and S C Code Anno §12-37-220(A)(4) already owned the building at the time the 2008 *ad valorem* taxes property became a fixed charge on the property Since the property was exempt before the taxes became a fixed charge for the tax year, the property should have been exempt from *ad valorem* taxes for the 2008 tax year

After examining the tax code at length, the South Carolina Supreme Court reached the same conclusion in *Myrtle Beach v Holliday*, 203 S C 25, 26 S E 2d 12 (1943) In *Holliday*, the court was faced with a challenge to the 1941 *ad valorem* taxes levied against a piece of property (real and personal) conveyed to the Town of Myrtle Beach from the South Carolina Utilities Company The property was conveyed on May 29 1941 from the un-exempt utilities company to the exempt Town of Myrtle Beach After the county tax collector and the South Carolina Tax Commission attempted to execute on the property for the payment of taxes, the Town of Myrtle Beach appealed the tax In holding the property was exempt for the 1941 tax year, the Supreme Court walked through the same statutory tax scheme at issue in this case and reasoned

How could there be any effective levy made against the property when the property was conveyed to plaintiff before the tax levies for the year became effective? It is quite true that if there is a valid levy the lien would relate back to the beginning of the year under the code But unless there was a valid levy there is nothing to relate back ‘While a statute which definitely fixes the date or time when the lien shall attach, does not do away with the necessity of the necessary steps to be taken before such can become effectual,

the lien dates back and takes effect by relation from the date or time fixed by the statute

For the purpose of determining whether or not property is exempt from taxation for any year, its status in jurisdictions where all taxable property is required to be assessed at a particular date is to be taken as of that date, so that when a constitutional or statutory provision exempting property from taxation goes into operation on a certain day in the year before the taxes for that year have been assessed, or before the day when by law they become a fixed charge on the property, the exempted property is free from the taxes for the current year

Id, 26 S E 2d at 13-14 (Citations omitted)

Also instructive is *Raye Electric v Cook*, 195 Ga 734, 25 S E 2d 574 (1943) In *Raye*, the Georgia Supreme Court was faced with a constitutional amendment ratified on June 3, 1941 which exempted non-profit cooperatives from property taxes In spite of the amendment, the state department of revenue issued an execution on property owned by an electric cooperative for the 1941 tax year The commission argued that because the property was subject to taxation on January 1, 1941, the property was taxable for the 1941 tax year In dismissing the commission's position, the Georgia Supreme Court held

Since the word 'taxation' ordinarily includes a determination of the rate of levy and the imposition of the levy, as an essential part of the sovereign power and process , it follows that property will not ordinarily be deemed as taxed until the tax has been levied Thus, even if it be assumed that the language of the amendment as and when adopted, 'hereby' exempting certain properties from 'all taxation,' would not have been effective if the process of 'taxation' had already been fully consummated, it appears reasonably plain and certain that the language 'hereby' exempting certain properties from 'all taxation' must be taken to include all properties where the process of taxation, though begun, had not been fully consummated

Id, 25 S E 2d at 575

Similarly, the predecessor of the department, the South Carolina Tax Commission, along with the South Carolina Attorney General has consistently followed the reasoning of *Holliday* and *Raye* for all types of tax exempt entities, whether they be governmental or charitable

In an August 11, 1972 opinion, the South Carolina Tax Commission relied on *Holliday* to conclude that property that was acquired during the tax year by a church was exempt from taxation because the church acquired the property before the taxes became a fixed charge S C Tax Commission P-D 51, August 11, 1972 (1972 WL 21342) ¹

In an October 30, 1973 opinion, the Attorney General's office relied on *Holliday* to conclude that property acquired by the Farmer's Home Administration, a property tax exempt branch of the United States Government, was exempt from property taxes if it was acquired between January 1 and September 30 The AG's office concluded that the property must be considered exempt if it is exempt prior to the tax becoming a fixed charge on the property 1973 S C Op Atty Gen 340 (1973 WL 21105)

In an October 15, 1974 opinion from the South Carolina Attorney General's office, the AG relied on *Holliday* and *Raye* to conclude that property that was conveyed by private shooting club to a non-profit nature conservancy on July 23, 1974 was exempt from property taxes for the 1974 tax year In reaching this conclusion, the AG stated

Whether or not property is exempt from taxes for the year is to be determined as of its taxable status date, which ordinarily is when the assessment is levied and the tax is due or becomes a lien on the property Since the word taxation ordinarily includes a determination of the rate of levy and the imposition of the levy, as an essential part of the sovereign power and process it follows that property will not ordinarily be deemed as taxed until the tax has been levied

1974 S C Op Atty Gen 290 (1974 WL 21368)

¹ In 1999, the legislature amended the tax code to provide a pro-rated exemption for property that is deeded to a church in the middle of the year (See, S C Senate Journal, June 2, 1999 (Proposed Amendment No 1 to H 3359) Prior to 1999, non-exempt owners who transferred property to a church prior to the levy of property taxes could claim an exemption under *Holliday* The 1999 amendment allowed counties to capture on a pro-rata basis property taxes on property transferred to a church during the tax year

On May 19, 1976, the South Carolina Tax Commission determined that 14 acres which a church acquired in 1973 was exempt from taxes for the 1975 tax year, even though construction of the church did not begin until 1976. In reaching this conclusion the Commission relied on *Holliday* to conclude that the exemption was applicable for the 1975 tax year when the congregation had begun clearing the property for occupation. 1976 WL 24092 (S C Tax Com)

On January 10, 1979 the South Carolina Attorney General's office again relied on *Holliday* to conclude that property purchased during the middle of the tax year by Dillon County was exempt from property taxes because it had been acquired by an exempt entity prior to the taxes becoming a "fixed charge" on the property. 1979 S C Op Atty Gen 20 (1979 WL 29015)

On September 25, 1983, Assistant Attorney General and subsequent Director of the South Carolina Department of Revenue, Ray N Stevens, relied on *Holliday* to conclude that property acquired on April 19, 1982 by foreclosure by the Small Business Administration was exempt from property taxes in 1982. In reaching this result, the Assistant Attorney General concluded that

Taxes become a fixed charge upon the auditor's delivery to the county treasurer of the tax duplicate as required by §12-39-150. Such delivery must be made not later than September 30. Upon the receipt of the tax duplicate, the treasurer begins collecting property taxes (§12-45-40) with taxes being due and payable between September 15 and December 31 (§12-45-70). Since property acquired on April 19, 1982, by the Small Business Administration was acquired prior to the *ad valorem* tax becoming a fixed charge and the Small Business Administration is a tax exempt governmental entity, the subject property is tax exempt from the 1982 tax year.

1983 WL 182006 (S C A G)

Nevertheless, the Administrative Law Court relied on *Atkinson Dredging Co v W O Thomas*, 266 S C 361, 223 S E 2d 592 (1976) to hold that property taxes are set as of December

31 of the prior year. However, *Atkinson*⁴ addressed a different issue than *Holliday* and, more importantly, did not overrule *Holliday*.

In *Atkinson*, the taxpayer was the owner of dredging equipment that was moved to the Charleston Harbor to perform dredge work from September 8, 1970 to February 5, 1971. Because the personal property was located within Charleston County on December 31, 1971, the Charleston County tax collector assessed property taxes on the equipment against the owner of the equipment.

The Supreme Court's analysis in *Atkinson* focused on the plaintiff's constitutional challenge to being taxed on a non-apportioned basis for the equipment both in Charleston County and in Chesapeake, Virginia, where it had moved the property after completing its work in Charleston. The parties did not raise, nor did the Supreme Court address the central issue in *Holliday*, to wit, that the property had been acquired by a tax exempt entity during the course of the tax year.

All the Supreme Court recognized in *Atkinson* was that if personal property had been properly taxed for the tax year 1971, the predecessor to S C Code Anno §12-37-610 dictated the liability for the tax on the person or entity that owned the property on December 31, of the prior tax year. Section 12-37-610 provides:

Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee,

The Office of the Attorney General explained this distinction in its September 26, 1983 opinion:

liability for *ad valorem* taxes is that of the owner of the property as of December 31 preceding the tax year, notwithstanding that the property owner may transfer the property subsequent to such date [citing *Atkinson*]. However, if the subsequent transfer is to a governmental agency exempt from tax and such transfer occurs prior to the tax becoming a fixed charge, the property is exempt for the year [citing *Holliday*].

1983 WL 182006 (S C A G) Accordingly, *Atkinson* merely addressed which taxpayer is liable for property taxes if those taxes are properly levied *Holliday* holds that if the property is acquired by an exempt entity before the levy, the property itself becomes exempt

The Administrative Law Court also relied upon the addition of section (D) to S C Code Anno §12-37-220 to derive a legislative intent against Friends of the Arts' argument and *Holliday* Section (D) provides that if a church (but not another type of non-profit organization) acquires property that will become exempt under §12-37-220, then the seller shall be liable for the property taxes that accrued up to the date of the church's acquisition, the tax being payable within thirty (30) days of the sale The section then goes on to establish the procedure for determining and applying the proper millage, even if the millage has not yet been set The court reasoned that because the legislature only provided for property acquired by church in section (D), then the legislature intended that only churches could claim an exemption on property acquired during the middle of a tax year The court further reasoned that the argument pressed by Friends of the Arts would render section (D) to this statute superfluous, and thus was an unreasonable interpretation (March 22, 2011 Order, p 17)

First, it is of note that section (D) was added to §12-37-220 by the legislature in 1999 (See, S C Senate Journal, June 2, 1999 (Proposed Amendment No 1 to H 3359)) This code section was added fifty-six years after *Holliday* was decided and over twenty years after the South Carolina Tax Commission and the Attorney General had issued numerous opinions based on *Holliday* Accordingly, the legislature had full knowledge that that the Supreme Court, the Department and the Attorney General had all interpreted the exemption statute to exempt real property from taxation that was transferred to an exempt entity prior to the tax becoming a fixed charge *Wigfall v Tideland Utilities Inc* , 354 S C 100, 380 S E 2d 100, 111 ("Buttressing a

plain reading of the statute is the Legislature's inactivity on the issue over the last forty years. The Legislature is presumed to be aware of this Court's interpretation of its statutes") (citations omitted)

Second, it is important to note that when the Legislature, having full knowledge of the Court's decision in *Holliday*, did act in 1999, it changed the law only for churches. Since *Holliday*, the law has been that if a property is purchased by an exempt organization prior to the tax becoming a fixed charge, then the property is not taxable in that year. This is so even if the owner of record on December 31 of the prior year was non-exempt.

A plain reading of section (D) shows that this section was enacted to place tax liability, though only on a proportional basis, on non-exempt entities who transfer property to a church during the tax year. The law as previously interpreted under *Holliday*, relieved non-exempt entities from tax liability if the transfer occurred prior to the tax becoming a fixed charge under the statutory scheme. See, 1974 S C Op Atty Gen 290 (1974 WL 21368), 1976 WL 24092 (S C Tax Com). Based upon *Holliday* and the prior rulings and opinions of the Tax Commission and the Attorney General, if property was transferred to an exempt entity like a church prior to the tax levy, then no tax was due. Section (D) merely provides for the collection of taxes on a pro-rata basis from non-exempt entities who owned property as of December 31 of the prior tax year where the property is conveyed to a church later during the tax year. The legislature enacted section (D) in an attempt to *generate* tax liability and revenue where none had previously existed.

It is illogical to presume that the Legislature's decision to place tax liability on entities who sell or convey real property for use by a church where none previously existed is a clear indication of its intent to legislatively overrule *Holliday* and impute tax liability on property

acquired by non-church exempt entities during the tax year. Indeed, the rules of statutory construction would suggest the opposite – that the Legislature’s inaction on non-church exempt entities coupled with the fifty-six years of the precedent of *Holliday*, suggests that the Legislature only intended to add tax liability on entities selling property to churches. *Wigfall*, 380 S E 2d at 111.

Finally, it is also of note that section (D) provides the county auditor with instructions on how to calculate millage rates if the sale of property to the church occurs prior to the millage information being available for the year. This is necessary because S C Code Anno §12-39-180 provides that the county auditor can only calculate the tax levy “after receiving statements of the rates and sums to be levied for the current year from the department.” In order for the Legislature to impose this tax liability on a property seller, it had to provide instructions to the county auditor on how to calculate the levy if the sale occurred before the auditor had all of the information available to legally levy the tax. The inclusion of these instructions in the statute was necessary because the statutory scheme otherwise fails to provide the authority to calculate and levy property tax until September 15 of the tax year. Had the legislature intended to create a special pro-rated levy for property taxes for sales to exempt organizations other than churches, it could have certainly expanded section (D)’s application. Since it did not, it must be presumed that the Legislature intended to leave the law as decided in *Holliday* and interpreted by the Tax Commission and the Attorney General unchanged for non-church exempt entities.

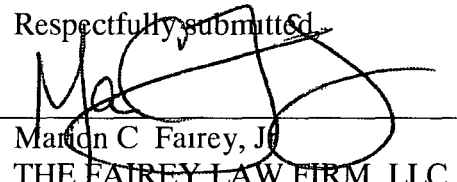
The property tax statutes as interpreted in *Holliday*, and by the South Carolina Tax Commission and the Attorney General, make it clear that the levy of property tax cannot occur until the statutory prerequisites have been met. Until that time, the property tax is only theoretical and not a fixed charge on the property. If the property has become exempt prior to

the date the tax becomes a fixed charge on the property, then the tax cannot be levied. Since Friends of the Arts acquired the Lee Avenue property prior to the tax levy for the 2008 tax year, the property was exempt at the time of the levy and therefore not collectible. Accordingly, Friends of the Arts is entitled to a refund of the taxes it paid for the 2008 tax year, along with interest. S.C. Code Anno. §12-54-25(C)(1)

Conclusion

Prior to the 2008 tax year, Hampton Friends of the Arts was a qualified tax exempt organization under both the South Carolina Constitution and S.C. Code Anno. §12-37-220(A)(4). It acquired the Lee Avenue property on March 4 of the 2008 tax year. On the date of acquisition, the *ad valorem* taxes had not become a fixed charge on the property because the county treasurer did not have the authority or the “warrant” to collect the taxes. Because the property was owned by a qualified tax exempt organization on the date the authority or “warrant” to levy became fixed, the property was exempt from *ad valorem* taxes for the 2008 tax year. Moreover, even if the property was taxable, Friends of the Arts was not liable for the taxes under S.C. Code Anno. §12-37-610 and it was error for the Administrative Law Court to not mandate a refund. Friends of the Arts is entitled to a refund of the tax paid under protest along with interest.

Respectfully submitted,



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September 28, 2011
Hampton, South Carolina



The South Carolina Court of Appeals

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August 29, 2011

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Re Hampton Friends v SC Dept Rev
2011190669

Dear Counsel

Enclosed is a copy of an Order of the Court regarding your Motions in the above case

Please be advised the Appellant's Initial Brief and Designation of Matter must be served and filed no later than September 28, 2011

Very truly yours,

V Claire Allen, Deputy
CLERK

TAG/laf

The South Carolina Court of Appeals

Hampton Friends of the Arts,

Appellant,

v

South Carolina Department of
Revenue,

Respondent

The Honorable John McLeod
Richland County
Trial Court Case No 2010-AL-17-00538

ORDER

Respondent's motion to dismiss is denied, and Appellant's motion for an extension is granted. Appellant shall serve and file its initial brief and designation of matter within thirty days of the filing date of this order.

IT IS SO ORDERED



Columbia, South Carolina

cc Marion Clyde Faurey, Jr, Esquire
Sean Gordon Ryan, Esquire
Jana Shealy

FILED
8/27/11

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D. McLeod, Judge
South Carolina Administrative Law Court

Case No. 10-ALJ-17-0538-CC

Hampton Friends of the Arts

Appellant,

v

South Carolina Department of Revenue

Respondent

APPELLANT'S MOTION FOR AN EXTENSION OF TIME OR ALTERNATIVE
TO REINSTATE ITS APPEAL

The Appellant respectfully submits this motion for an extension of time, *nunc pro tunc*, or in the alternative, that its appeal be reinstated with new deadlines

The Respondent has moved to dismiss this appeal pursuant to Rule 208(a)(1), SCACR because the Appellant's failed to file and serve its initial brief within thirty (30) days of receiving the transcript of record. Upon investigation after receiving Respondent's Motion, Appellant's counsel acknowledges that his office received a copy of the transcript from Creel Reporting no later than May 31, 2011 which would have made his initial brief due on June 30, 2011.

RECEIVED

JUL 21 2011

SC COURT OF APPEALS

However, the transcript was misfiled and counsel was not aware of its receipt until investigating the basis of Respondent's motion last week

Hampton Friends of the Arts ("HFoA") is a non-profit eleemosynary corporation that is being represented by the undersigned *pro bono* in a \$6,000.00 property tax dispute with Hampton County. The dispute arose over the county's decision that the HFoA, who purchased a commercial building in March of 2007 next to an existing theater, was liable for 2007 property taxes. HFoA used the building as a storage room for props and costumes, as a studio to build sets and props, and as classroom to conduct arts seminars and programs for children and as a back stage area during productions at the adjoining theater. This appeal involves the liability of the Appellant as a non-profit eleemosynary corporation for the 2007 property taxes of this building. The HFoA sought review of the levy by Hampton County at the South Carolina Department of Revenue. When the Department sided with the County, HFoA sought review before the Administrative Law Court who held that the 2007 taxes were owed, but that HFoA was not the liable taxpayer.

HFoA filed this notice of appeal on April 21, 2011 and ordered a copy of the transcript on May 3, 2011 for which counsel pre-paid. Apparently the transcript was completed on or about May 25, 2011. However, when the transcript arrived at counsel's office, it was misfiled without counsel's knowledge that it had been delivered, and therefore, counsel for the Appellant failed to calendar the deadline for filing its initial brief. Moreover, because the court reporter has sixty days to deliver a transcript requested for an appeal under Rule 206(b)(2), SCACR, counsel for the Appellant had not had time to miss the transcript, although it had apparently been delivered. While the mishandling of documents in counsel's office probably does not rise to the level of excusable neglect and the consequences therefrom are certainly attributable to the undersigned

(see, Rules, 1 1 (Competence), 5 3 (Responsibility Regarding Non-lawyer Assistants), SC Rules of Professional Responsibility), counsel for the Appellant respectfully requests that he either be granted an extension of time to file the initial brief of the Appellant, *nunc pro tunc*, or that this Court reinstated this appeal pursuant to Rule 260(a), SCACR for good cause shown

Courts have given liberal construction to “good cause” because public policy favor the disposition of cases “on their merits rather than on technicalities ” *Microtronics, Inc v South Carolina Department of Revenue*, 345 S C 506, 511, 548 S E 2d 223, 226 (Ct App 2001), *citing, Columbia Pools, Inc v Galvin*, 288 S C 59, 339 S E 2d 524 (Ct App 1986) “Good cause” is generally determined by the following factors (1) the timing of the request for relief, (2) whether there is a meritorious defense, and (3) the degree of prejudice to the opposing party if relief is granted *Wham v Shearson Lehman Bros , Inc* , 298 S C 462, 465, 381 S E 2d 499, 501 (Ct App 1989) Moreover, appellate courts have the discretion permit appeals to go forward even where a party has failed to comply with the South Carolina Appellate Court Rules *Henning v Kaye*, 307 S C 436, 415 S E 2d 794 (1992)

Here all factors support permitting the appeal to go forward Within days of learning of the problem, HFoA filed this motion for relief The delay caused by counsel’s mishandling is essentially the same as if counsel had properly handled the transcript and requested an extension to file Appellant’s initial brief Moreover, the degree of prejudice suffered by the Department would likewise be small and certainly no greater than had HFoA timely asked for and received an extension of time to file its initial brief

Additionally, it is clear from the order appealed from that the there is a meritorious issue at the heart of this appeal HFoA contends that it is not liable for the 2007 tax because of the Supreme Court’s decision in *Myrtle Beach v Holliday*, 203 S C 25, 26, S E 2d 12 (1943) while

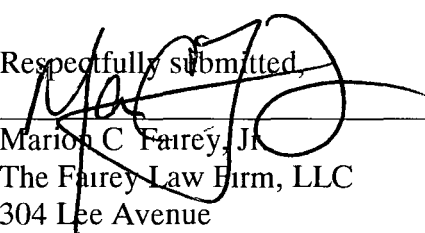
the Department of Revenue claims that *Atkinson Dredging Co v W O Thomas*, 266 S C 361, 223 S E 2d 692 (1976) controls The South Carolina Attorney General explains the distinction articulately at 1983 WL 182006 (S C A G)

liability for ad valorem taxes is that of the owner of the property as of December 31 preceding the tax year, notwithstanding that the property owner may transfer the property subsequent to such date [citing *Atkinson*] However, if the subsequent transfer is to governmental agency exempt from tax and such transfer occurs prior to the tax becoming a fixed charge, the property is exempt for the year [citing *Holliday*]

Although HFoA is not a tax exempt governmental agency, it is a tax exempt eleemosynary corporation The heart of the dispute is whether the South Carolina Tax Code is to be construed one way for governmental entities and another for other tax exempt entities Accordingly, HFoA believes that there is a meritorious issue involved in this appeal

It is for these reasons that HFoA, through counsel respectfully pray for an order, *nunc pro tunc*, extending the time in which to file an initial brief by thirty days from the date of the order, or in the alternative, for an order reinstating the appeal for good cause pursuant to Rule 260(a), SCACR and setting a briefing schedule

Respectfully submitted,


Marion C. Fahey, Jr.
The Fahey Law Firm, LLC
304 Lee Avenue
Post Office Box 661
Hampton, South Carolina 29924
(803) 943-6444
bfahey@faheyllaw.com

July 18, 2011
Hampton, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D. McLeod, Judge
South Carolina Administrative Law Court

Case No. 10-ALJ-17-0538-CC

Hampton Friends of the Arts

Appellant,

v

South Carolina Department of Revenue

Respondent

RETURN TO MOTION TO DISMISS

The Appellant respectfully submits this return to the Respondent's Motion to Dismiss

The Respondent has moved to dismiss this appeal pursuant to Rule 208(a)(1), SCACR because the Appellant failed to file and serve its initial brief within thirty (30) days of receiving the transcript of record. The Respondent has correctly cited the law. Rule 208(a)(a), SCACR provides that an appeal shall be dismissed by the clerk of the appellate court upon the failure to file and serve a brief within the time prescribed. Upon investigation after receiving Respondent's Motion, Appellant's counsel acknowledges that his office did receive a copy of the transcript from Creel Reporting no later than May 31, 2011 which would have made his initial

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JUL 21 2011

SC Court of Appeals

brief due on June 30, 2011. However, the transcript was misfiled and counsel was not aware of its receipt until investigating the basis of Respondent's motion last week.

Hampton Friends of the Arts ("HFoA") is a non-profit eleemosynary corporation that is being represented by the undersigned *pr bono* in \$6,000.00 property tax dispute with Hampton County. The dispute arose over the county's decision that the HFoA, who purchased a commercial building in March of 2007 next to an existing theater, was liable for 2007 property taxes. HFoA used the building as a storage room for props and costumes, as a studio to build sets and props, and as a classroom to conduct arts seminars and programs for children and as a back stage area during productions at the adjoining theater. This appeal involves the liability of the Appellant as a non-profit eleemosynary corporation for the 2007 property taxes of this building. The Appellant sought review of the levy by Hampton County at the South Carolina Department of Revenue. When the Department sided with the County, HFoA sought review before the Administrative Law Court who held that the 2007 taxes were owed, that HFoA was not the liable taxpayer, but failed to include a mandate for the refund of the taxes and collection from the property party.

HFoA filed this notice of appeal on April 21, 2011 and ordered a copy of the transcript on May 3, 2011 for which counsel pre-paid. Apparently the transcript was completed on or about May 25, 2011. However, when the transcript arrived at counsel's office, it was misfiled without counsel's knowledge that it had been delivered, and therefore, counsel for the Appellant failed to calendar the deadline for filing its initial brief. Moreover, because the court reporter has sixty days to deliver a transcript requested for an appeal under Rule 206(b)(2), SCACR, counsel for the Appellant had not had time to miss the transcript, although it had been delivered. While the mishandling of documents in counsel's office probably does not rise to the level of excusable

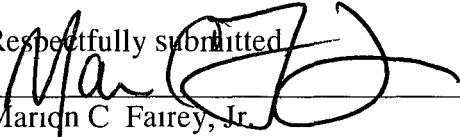
neglect and the consequences therefrom are certainly attributable to the undersigned (see, Rules, 1 1 (Competence), 5 3 (Responsibility Regarding Non-lawyer Assistants), SC Rules of Professional Responsibility), counsel for the Appellant has respectfully requested that he either be granted an extension of time to file the initial brief of the Appellant, *nunc pro tunc*, or that this Court reinstated this appeal pursuant to Rule 260(a), SCACR for good cause shown

Courts have given liberal construction to “good cause” because public policy favor the disposition of cases “on their merits rather than on technicalities ” *Microtronics, Inc v South Carolina Department of Revenue*, 345 S C 506, 511, 548 S E 2d 223, 226 (Ct App 2001), *citing, Columbia Pools, Inc v Galvin*, 288 S C 59, 339 S E 2d 524 (Ct App 1986) “Good cause” is generally determined by the following factors (1) the timing of the request for relief, (2) whether there is a meritorious defense, and (3) the degree of prejudice to the opposing party if relief is granted *Wham v Shearson Lehman Bros , Inc* , 298 S C 462, 465, 381 S E 2d 499, 501 (Ct App 1989) *See also, Henning v Kaye*, 307 S C 436, 415 S E 2d 794 (1992)

The Appellant has, simultaneously with this return filed and served a motion for an order, extending the time in which to file its initial brief *nunc pro tunc*, or, in the alternative, a motion under Rule 260, SCACR to reinstate the appeal for good cause shown As stated therein, all factors support permitting HFoA relief from its counsel’s mishandling of the transcript Accordingly, HFoA respectfully prays that this court graciously exercise its discretion and allow the appeal to go forward by granting HFoA relief

<signature page to follow>

Respectfully submitted


Marion C. Fahey, Jr.

The Fahey Law Firm, LLC

304 Lee Avenue

Post Office Box 661

Hampton, South Carolina 29924

(803) 943-6444

bfahcy@faircylaw.com

July 18, 2011

Hampton, South Carolina

The Fairey Law Firm, LLC
304 Lee Avenue
Post Office Box 661
Hampton, South Carolina 29924
(803) 943-6444
(803) 943-5517 (fax)

MARION C FAIREY JR

bfairy@embarqmail.com

July 18, 2011

Via U S Mail

South Carolina Clerk of Court
Tanya Gee
1015 Sumter Street
P O Box 11629
Columbia, SC 29211

RE Hampton Friends of the Arts v South Carolina Department of Revenue

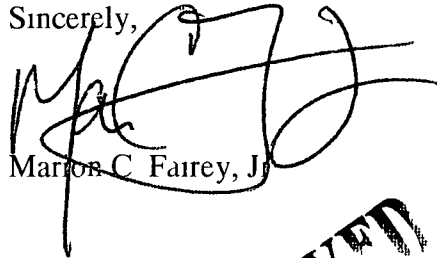
Dear Ms Gee

Please find enclosed the Return to Respondent's Motion to Dismiss Plaintiff's Motion for Extension of Time, Nunc Pro Tunc or in the alternate Motion to Reinstate to Appeal in the above referenced case Also enclosed is a Proof of Service

If you have any questions, please do not hesitate to call

Please accept my kindest regards

Sincerely,



Marion C. Fairey, Jr.

/vc

cc Sean G Ryan

RECEIVED
JUL 21 2011
SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D. McLeod, Judge
South Carolina Administrative Law Court

Case No. 10-ALJ-17-0538 CC

Hampton Friends of the Arts

Appellant,

v

South Carolina Department of Revenue

Respondent

PROOF OF SERVICE

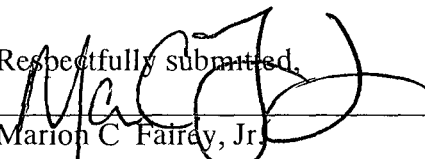
I certify that on July 18, 2011, I have served an original and six copies of Appellant's
Return to Respondent's Motion to Dismiss, and Appellant's Motion for an Extension of Time,
Nunc Pro Tunc, or Alternatively, Motion to Reinstate the Appeal for Good Cause Shown, on

Sean G. Ryan
South Carolina Department of Revenue
Office of General Counsel for Litigation
301 Gervais, St., Post Office Box 12265
Columbia, South Carolina 29211

<signature page to follow>

RECEIVED
JUL 25 2011
SC Court of Appeals

Respectfully submitted,


Marion C. Faurey, Jr.
The Faurey Law Firm, LLC
304 Lee Avenue
Post Office Box 661
Hampton, South Carolina 29924
(803) 943-6444
bfarey@faureylaw.com

July 18, 2011
Hampton, South Carolina

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JUL 25 2011

16 COURT OF APPEALS

The Fahey Law Firm, LLC

704 Lee Avenue
Post Office Box 661
Hampton, South Carolina 29924
(803) 943-6444
(803) 943-5511 (fax)

MARION C FAHEY JR

blfahey@combarqmail.com

July 22, 2011

Via U S Mail

South Carolina Clerk of Court
Tinya Gee
1015 Sumter Street
P O Box 11629
Columbia, SC 29211

RE Hampton Friends of the Arts v South Carolina Department of Revenue

Dear Ms Gee

Please find enclosed the Proof of Service for the Return to Respondents Motion to Dismiss Plaintiffs Motion for Extension of Time, Nunc Pro Tunc or in the alternate Motion to Reinstate to Appeal in the above referenced case

If you have any questions, please do not hesitate to call

Please accept my kindest regards

Sincerely,

Valorie Crews

Valorie Crews
Marion C Fahey, Jr

cc: Sean G Ryan

Enclosed for the Court are the following documents:

Very truly yours,

RECEIVED
JUL 25 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable John D McLeod
Administrative Law Judge

DOCKET NO 10-ALJ-17-0538-CC

RECEIVED

JUL 05 2011

SC Court of Appeals

Appellant,

Hampton Friends of the Arts,

v

South Carolina Department of Revenue Respondent,

Respondent

MOTION TO DISMISS

COMES NOW, Respondent, the South Carolina Department of Revenue, and pursuant to Rule 208(a)(4), SCACR, hereby moves this Court for an Order dismissing the foregoing appeal

BACKGROUND

On April 21, 2011, the Appellant filed its Notice of Appeal to the Order of the Honorable John D McLeod of the South Carolina Administrative Law Court In response, on April 28, 2011, the Clerk of the South Carolina Court of Appeals sent counsel for Appellant a letter in which Counsel was asked to advise the Court in writing upon receipt of the transcript for this matter On May 3, 2011, Counsel for Appellant sent the Respondent and this Court a letter acknowledging that Appellant ordered a transcript of the hearing On May 25, 2011, Creel Court Reporting, Inc mailed the Appellant a transcript of the hearing As of the date of this Motion,

the Appellant has not notified the Court of any failure to receive the transcript, nor has the Appellant notified the Court that he received the transcript

ARGUMENT

Rule 208(a)(1), SCACR, provides that, within thirty days after receiving the transcript, an appellant shall serve one copy of its brief on all parties and file one copy with the Clerk of this Court. Rule 208(a)(4), SCACR, provides that upon failure of the appellant to file and serve his brief within the prescribed, the Clerk of this Court shall sign an order dismissing the appeal.

Creel Court Reporting, Inc. mailed the Appellant a copy of the transcript on May 25, 2011. On the same date, Creel Court Reporting, Inc. delivered a copy of that transcript to the Respondent. As of the date of this Motion, July 5th, 2011, the Appellant has not filed its brief, nor has the Appellant notified the Court of any failure to receive the transcript. It has now been forty-one days since Creel Court Reporting, Inc. sent the Appellant a copy of the transcript. Even in the most unusual of circumstances, the Appellant would have received the transcript within three days of its being sent. The Appellant did not notify this Court of any delay in receiving the transcript and therefore it is clear the Appellant received the transcript.

Pursuant to Rule 208(a)(1), SCACR, the Appellant had thirty days to file its brief after receiving the transcript. The Appellant did not file its brief within the time provided under the Rules. Therefore, pursuant to Rule 208(a)(4), SCACR, the Appellant's appeal shall be dismissed.

WHEREFORE, Respondent, the South Carolina Department of Revenue moves this Court for an Order dismissing Appellant's appeal pursuant to Rule 208(a)(4), SCACR.

[Signature Page to Follow]

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Kimpson', with a long, sweeping horizontal line extending to the right.

Milton G Kimpson (Bar No 7917)

Managing Counsel for Litigation

Sean G Ryan (Bar No 76585)

Managing Counsel for Litigation

PO Box 12265

Columbia, SC 29211

(803) 898-5375 Fax (803) 898-5147

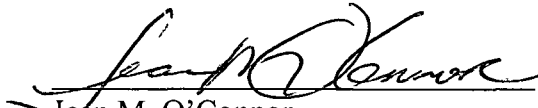
myans@sctax.org

courtorders@sctax.org

Columbia, South Carolina
July 5, 2011

CERTIFICATE OF SERVICE

I, Jean M O'Connor, do hereby certify that I have and caused to be mailed, postage prepaid, a copy of the South Carolina Department of Revenue's Motion to Dismiss in Hampton Friends of the Arts v South Carolina Department of Revenue, Docket No 10-ALJ-17-0358-CC to Marion C Faurey, Jr, Esquire, PO Box 661, Hampton, SC 29924, this 5th day of July 2011



Jean M O'Connor

State of South Carolina
Department of Revenue
Office of General Counsel for Litigation
301 Gervais Street, P O Box 12265, Columbia, South Carolina 29211
Telephone (803) 898-5375 FAXr (803) 898-5147

VIA HAND DELIVERY

July 5, 2011

The Honorable Tanya Gee, Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re Hampton Friends of the Arts v South Carolina Department of Revenue
Docket No 10-ALJ-17-0538-CC
Tracking No 2011190669

Dear Ms Gee

Enclosed please find the Department's Motion to Dismiss in the above-referenced matter
Also enclosed is a Proof of Service

If you have any questions, please feel free to contact me at (803) 898-5375 or via e-mail
at ryans@sctax.org

Yours very truly,

OFFICE OF THE GENERAL COUNSEL


Sean G Ryan
Managing Counsel for Litigation

SGR:jmo

Enclosures

c Marion C Fahey, Jr, Esquire (via USPS)

RECEIVED

JUL 05 2011

SC Court of Appeals

The Fairey Law Firm, LLC

304 Lee Avenue
Post Office Box 661
Hampton South Carolina 29924
(803) 943 6444
Fax (803) 943 5517

MARION C FAIREY JR

bfairey@embarqmail.com

May 3, 2011

Via U S Mail

Christine Cortright
Creel Court Reporting, INC
1230 Richland Street
Columbia, SC 29201

RECEIVED

MAY 06 2011

SC Court of Appeals

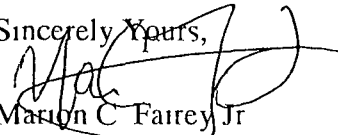
RE Hampton Friends of the Arts v South Carolina Department of Revenue, 10-ALJ-17
0538 CC

Dear Christine

This letter will confirm your conversation and e-mail with my paralegal today in which we ordered a copy of the transcript from the December 2, 2010 hearing in the above referenced case. It is my understanding that the cost of preparing a transcript will be approximately \$200 and that you will bill my office directly for this cost. This matter is currently on appeal and we are ordering this transcript pursuant to Rule 207(b)(1), SCACR.

Please accept my kindest regards

Sincerely Yours,



Marion C. Fairey Jr

cc The Honorable Tanya Gee, Clerk of Court for the South Carolina Court of Appeals
Sean Ryan, Esq



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

April 28, 2011

/ Marion Clyde Fahey, Jr, Esquire
The Fahey Law Firm, LLC
304 Lee Ave
Hampton, SC 29924-3442

Re Hampton Friends v SC Dept Rev
2011190669

Dear Mr. Fahey

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address 1015 Sumter Street, Columbia, S C 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S C Code Ann Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases.

- 1) any final judgment from the circuit court which includes a sentence of death,
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58,
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance,
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure,
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

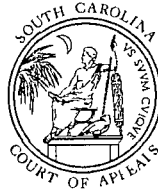
Very truly yours,

Tanya A. Gee

Tanya A Gee
CLERK

TAG/laf

cc Sean Gordon Ryan, Esquire
Jana Shealy



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

April 28, 2011

Marion Clyde Fairey, Jr, Esquire
The Fairey Law Firm, LLC
304 Lee Ave
Hampton, SC 29924-3442

Re Hampton Friends v SC Dept Rev
2011190669

Dear Mr Fairey

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc Sean Gordon Ryan, Esquire
Jana Shealy

The Supreme Court of South Carolina

RE Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings

ORDER

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S C 1, 630 S E 2d 464 (2006), Davis v Jennings, 304 S C 502, 405 S E 2d 601 (1991). Therefore, with some few exceptions,¹ documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts, and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts:

Parties shall not include or will partially redact where inclusion is necessary the following personal data identifiers from documents filed with an appellate court ²:

1. Social Security Numbers. If a social security number must be included, only the last four digits of that number should be used.

2. Names of Minor Children. If a minor is the victim of a sexual assault or is involved in an abuse or neglect case, the minor's name will be completely redacted and a term such as "victim" or "child" should be used. In all other cases, only the minor's first name and first initial of the last name (i.e., John S.) should be used.

3. Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

4. Home Addresses. If a home address must be included, only the city and state should be used.

Parties wishing to file documents containing the personal data identifiers listed above may file unredacted documents under seal together with redacted versions for the public file. The sealed unredacted documents shall be filed in a separate Appendix and the bottom of each page of the Appendix shall be marked "Sealed." No order of the appellate court will be required to file this sealed Appendix. The number of copies of the Appendix to be served and filed shall be the same as that required for the brief, record on appeal, motion or other filing that includes the redacted documents.

If the caption of the case contains any of the personal data identifiers listed above the parties should file a motion to amend the caption to redact the identifier. This should be done contemporaneously with the filing of the notice of appeal or the commencement of the case with the appellate court. Without a motion to the appellate court, the caption of a juvenile delinquency matter from the family court shall be redacted to only use the juvenile's first name and first letter of the juvenile's last name (i.e. In the Interest of John S., a Juvenile).

A party seeking to seal material beyond those personal identifiers listed above must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings, *supra*, must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed, the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED

s/Jean H. Toal C J

s/James E. Moore J

s/John H. Waller, Jr. J

s/E. C. Burnett, III J

s/Costa M. Pleicones J

Columbia, South Carolina

August 13, 2007

¹ See e.g. Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR, Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR, Rule 402(n), SCACR, and Rule 403(l), SCACR.

² This restriction shall not apply when this information is required or requested by the appellate court. For example, the application for admission to practice law under Rule 402, SCACR, requires many of these personal identifiers to be disclosed.

PM 4-21-11
POS 4-22-11

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D McLeod, Judge
South Carolina Administrative Law Court

Case No 10-ALJ-17-0538-CC

 Hampton Friends of the Arts

Appellant,

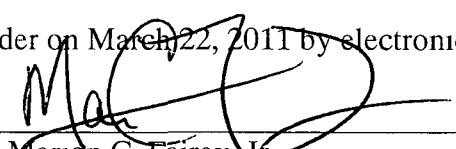
v

South Carolina Department of Revenue

Respondent

NOTICE OF APPEAL

Pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules, Appellant Hampton Friends of the Arts ("Appellant") hereby appeals the Order of the Honorable John D McLeod (a copy of which is attached hereto) dated March 22, 2011 and filed that same day Appellant received notice of the entry of that Order on March 22, 2011 by electronic mail



Marion C. Faurey, Jr.
The Faurey Law Firm, LLC
304 Lee Avenue
Post Office Box 661
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April 21, 2011
Hampton, South Carolina

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APR 26 2011
S.C. Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Administrative Law Court

The Honorable John D McLeod, Judge
South Carolina Administrative Law Court

Case No 10-ALJ-17-0538-CC

Hampton Friends of the Arts

Appellant,

v

South Carolina Department of Revenue

Respondent

PROOF OF SERVICE

I certify that on April 22, 2011, I have served a copy of the Notice of Appeal by United
States Mail, postage prepaid, addressed to

Sean G Ryan
South Carolina Department of Revenue
Office of General Counsel for Litigation
301 Gervais, St , Post Office Box 12265
Columbia, South Carolina 29211

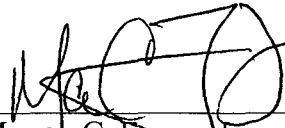
Jana E Shealy
Clerk, SC Administrative Law Court
Edgar A Brown Building
1205 Pendleton St , Suite 224
Columbia, South Carolina 29201

<signature page to follow>

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SC Court of Appeals



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April 21, 2011
Hampton, South Carolina

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MARION C FAIREY JR

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April 21, 2011

Via First Class US Mail, Postage Pre-paid

The Honorable Tanya Gee
Clerk of South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

**RE Hampton Friends of the Arts V South Carolina Department of Revenue,
Docket Number 10-ALJ-17-0538-CC**

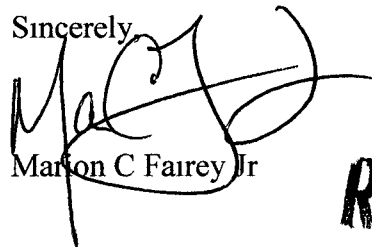
Dear Ms Gee

Enclosed please find the original and one copy of the notice of appeal by appellant regarding the above referenced matter Also enclosed are the following

- (1) Proof of service of the notice of appeal,
- (2) Copy of the order which is to be challenged on appeal,
- (3) Our check for the \$100 filing fee

If it would be greatly appreciated if you would please file the original notice of appeal and return a clocked copy to me in the enclosed self addressed stamped envelope Thank you for your assistance with this matter and please contact me if you have any questions

Sincerely,



Marion C Fairey Jr

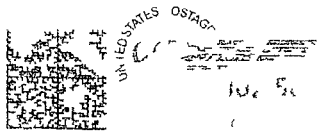
Enclosures

CC Sean G Ryan, Esq

Janet E Shealy, South Carolina Administrative Law Court

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SC Court of Appeals

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The Honorable Timmy Goo
Clerk of South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia SC 29211

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Hampton Friends of the Arts,	)	Docket No 10-ALJ-17-0538-CC
	)	
Petitioner,	)	
	)	
v	)	ORDER
	)	
South Carolina Department of	)	
Revenue,	)	
	)	
Respondent	)	
_____	)	

APPEARANCES For the Petitioner Marion C Fairey, Jr , Esquire
 For the Respondent Sean G Ryan, Esquire

STATEMENT OF THE CASE

This matter comes before the Administrative Law Court (ALC or Court) pursuant to S C Code Ann § 12-60-2130 (2000) It began when the Hampton Friends of the Arts (taxpayer) applied for a property tax exemption for the 2008 tax year The Department of Revenue (Department) determined the taxpayer is not entitled to a property tax exemption for 2008 and therefore denied the taxpayer s application The taxpayer requested a contested case hearing before this Court to dispute the Department's determination A hearing was held before me on December 2 2010, at the offices of the ALC

ISSUES

- I Is Property Acquired By A Not For Profit Eleemosynary Corporation In 2008 Entitled To An Exemption From 2008 Property Taxes?**

- II Is A Not For Profit Eleemosynary Corporation Which Acquires Property In 2008 Liable For Property Taxes For The 2008 Tax Year When It Was Not The Owner Of Record Of The Property On December 31, 2007 Or Is The Prior Owner Of Record Liable For The Taxes?**

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SC Court of Appeals

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MAR 22 2011

SC ADMIN LAW COURT

FINDINGS OF FACT

Having heard arguments from both parties and taking into consideration the burden of proof, I make the following findings of fact by a preponderance of evidence

- 1 Notice of the date time, place, and nature of this hearing was timely given to all parties
- 2 The taxpayer is a non-profit eleemosynary corporation engaged in promoting the arts
- 3 On March 4, 2008, the taxpayer purchased real property located at 103 Lee Avenue in Hampton, South Carolina, (Lee Avenue property)
- 4 The taxpayer did not own the Lee Avenue property on December 31, 2007
- 5 Prior to the taxpayer's purchase on March 4, 2008, the Lee Avenue property was privately held and not exempt from ad valorem property taxes
- 6 The taxpayer uses the Lee Avenue property exclusively for the promotion of the arts
- 7 On October 27, 2008, the taxpayer filed a PT-401 Application for Exemption for the Lee Avenue property pursuant to S C Code Ann § 12-37-220(B)(24) (Supp 2008)
- 8 On November 25, 2008, the Department approved an exemption for the taxpayer's property for 2009 The Department denied an exemption for the Lee Avenue property for 2008 The Department denied the exemption because it determines the taxability of property on December 31 of the year preceding the tax On December 31, 2007, the Lee Avenue property was privately held and subject to tax, therefore the property was subject to 2008 ad valorem property taxes
- 9 The 2008 ad valorem property taxes for the Lee Avenue property have been paid in full
- 10 On October 7, 2009, the taxpayer wrote the Department appealing the denial of an exemption for 2008
- 11 On June 23, 2010, the Department issued its Department Determination finding that the Lee Avenue property was not exempt from ad valorem property taxes for

2008 The Department's Determination denied the exemption because the taxability of property is determined on December 31 of the preceding year The Lee Avenue property was subject to property taxes on December 31, 2007, therefore the Department determined the property was not exempt from 2008 ad valorem property taxes

12 The taxpayer appealed the Department's Determination to this Court

CONCLUSIONS OF LAW

Based upon the above facts, I conclude the following as a matter of law

S C Code Ann § 12-60-30 (Supp 2008) grants jurisdiction to this Court to hear contested cases under the Administrative Procedures Act Specifically, § 12-60-2130 grants this Court the authority to conduct contested case hearings in matters concerning property taxes The burden of proof is with the party asserting the affirmative in an adjudicatory administrative proceeding 2 Am Jur 2d Administrative Law § 354 (2004) In the instant matter, it is the taxpayer who requested a contested case hearing to challenge the Department's Determination Thus, the taxpayer asserts the affirmative and must carry the burden of proving the Department's Determination is incorrect Id , cf Cloyd v Mabry, 295 S C 86, 367 S E 2d 171 (Ct App 1988)

The present matter involves exempting privately held property from ad valorem property taxes It is well established in South Carolina that exemptions of private property are strictly construed, because in such cases taxation is the rule and exemption is the exception State v Columbia, 115 S C 108, 104 S E 337 (1920)

I PROPERTY ACQUIRED BY A NOT FOR PROFIT ELEEMOSYNARY CORPORATION IN 2008 IS NOT ENTITLED TO AN EXEMPTION FROM 2008 PROPERTY TAXES

The first issue in dispute is whether property acquired by a not for profit eleemosynary corporation is exempt from ad valorem property taxes for the year in which the property is acquired The taxpayer purchased the Lee Avenue property in March of 2008 and thereafter applied for an exemption from 2008 property taxes It is undisputed

that the taxpayer is a not for profit eleemosynary corporation that will utilize the Lee Avenue property exclusively for the promotion of the arts. The taxpayer asserts the Lee Avenue property is exempt from 2008 ad valorem property taxes because § 12-37-220(B)(24) provides an exemption for all property of an eleemosynary corporation used exclusively for the promotion of the arts.

Pursuant to S.C. Code Ann. § 12-4-710 (2000), the Department is the agency charged with determining whether property qualifies for an exemption from property taxes under § 12-37-220. The Department determines property tax exemptions based upon the tax status of that property, that being whether the property is subject to tax or tax exempt, on December 31 of the year preceding the tax. If property is owned by a taxable entity on December 31, that property is subject to property taxes for the following year, regardless of transfer of ownership during the year. If property is owned by a tax exempt entity on December 31, that property is exempt and not subject to property taxes for the following year, regardless of transfer of ownership. In the present matter, the subject property was privately owned and subject to property taxes on December 31, 2007. Because the property was taxable on December 31, 2007, that property is not exempt from 2008 property taxes.

The taxpayer asserts that when it acquired the Lee Avenue property in March of 2008, that property immediately became tax exempt and no longer subject to taxation. The taxpayer asserts that 2008 property taxes were not payable until September of 2008 and the taxability of the property can change and become non-taxable at any point prior to property tax bills being issued. The taxpayer relies upon the case of Town of Myrtle Beach v. Holliday, 203 S.C. 25, 26 S.E.2d 21 (1943) to support its assertions. For the reasons set forth herein, the taxpayer's argument is not correct and not supported by South Carolina law.

A Property Taxes In South Carolina

Understanding the property tax system in this State demonstrates why the taxability of property must be determined by a fixed date. The counties in this State depend upon property taxes in order to fund county government. Ad valorem property taxes are determined by multiplying the fair market value of property by an assessment

ratio, and then multiplying that amount by the millage rate¹ The millage rate is the amount of mills levied in order to meet the budget of the county One mill equals 1/1000 of a dollar or 1/10 of a cent In order to collect the property tax revenue necessary to fund county operations counties need to know which property is subject to tax and which property is not subject to tax If property is not subject to tax, the county does not include that property in its calculations of its millage rates

In order for the property tax process to function, the counties must know which properties are subject to tax If a county does not know which properties to include in its calculations and which properties to exclude from its calculations, the county will be unable to accurately determine millage rates Inaccurate millage rates could cause the county to collect less property tax revenue than required to fully fund the county budget In order to avoid this devastating consequence, all of the counties of this State utilize December 31 of the preceding year as a fixed date for determining the taxability of property If a piece of property is subject to tax on December 31 of the preceding year, the county includes that property in calculating the millage rates and that property is subject to property taxes Conversely, if property is not subject to tax on December 31, the county does not include that property in its millage calculations and that property is not subject to property taxes

If property that is subject to tax on December 31 is sold during the following year to a tax exempt organization, such sale does not impact the taxability of the property for that year and that property remains subject to tax Similarly, if property that is not subject to tax on December 31 is sold to a taxable entity during the next year, that property remains tax exempt for that year, regardless of the sale Sale of the property has no impact on the taxability of the property for the year of acquisition, as the taxability of that property is determined on December 31 In both of the foregoing situations, the

¹According to the South Carolina Supreme Court, “[t]he pertinent date to determine the value of property for a given tax year is December 31st of the preceding year” Lindsey v South Carolina Tax Comm'n, 302 S C 274, 395 S E 2d 184, 186 (1990), citing S C Code Ann § 12-37-900 (1976) and Atkinson Dredging Co v Thomas, 266 S C 361, 223 S E 2d 592 (1976) Determining the value of property on December 31 of the preceding year is consistent with, and supports, the Department’s utilization of such date to determine taxability of property on that date

taxability of the property changes on December 31 subsequent to the acquisition and not on the date of acquisition

B The South Carolina Code Demonstrates That The Taxability of Property Is Determined On December 31 Of The Preceding Year

Title 12 of the South Carolina Code supports utilization of December 31 of the preceding year as the date for determining the taxability of property. Analysis of Title 12 demonstrates that December 31 is a date used throughout the property tax code and the Legislature clearly intended that such date be utilized in determining the taxability of property.

S C Code Ann § 12-37-210 (2000) provides “[a]ll real and personal property in this State shall be subject to taxation” unless explicitly exempted. General exemptions to property tax are delineated in § 12-37-220. It is well settled that exemptions from taxing statutes exist through legislative grace, and a taxpayer asserting an exemption must bring itself squarely within the statute authorizing the exemption. Southern Weaving Co v Query, 206 S C 307, 313, 34 S E 2d 51, 54 (1945). This construction simply means that the statutory language creating such exemptions will not be strained or liberally construed in the taxpayer’s favor. Charleston County Aviation Authority v Wasson, 277 S C 480, 289 S E 2d 416 (1982).

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Chem-Nuclear Sys , LLC v S C Bd of Health & Env’tl Control, 374 S C 201, 205, 648 S E 2d 601, 603 (2007). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.” McClanahan v Richland County Council, 350 S C 433, 438, 567 S E 2d 240, 242 (2002). Thus, whether the exemption applies to the taxpayer’s situation must be determined by examining the statute in light of legislative intent. Legislative intent should be ascertained primarily from the plain language of the statute. State v Landis, 362 S C 97, 102, 606 S E 2d 503, 505 (Ct App 2004). Moreover, while a statute’s text is the best evidence of legislative intent, the real purpose and intent of the lawmakers will prevail over the literal import of the words. Floyd v

Nationwide Mut Ins Co., 367 S C 253, 260, 626 S E 2d 6, 10 (2005), Bayle v S C Dep't of Transp., 344 S C 115, 122, 542 S E 2d 736, 740 (Ct App 2001)

The South Carolina Code creates tax requirements and liabilities for owners of real property. The South Carolina Code specifically places those requirements and liabilities on the person or entity that owns the property on December 31. Pursuant to S C Code Ann § 12-37-900 (Supp 2010), each property owner in this State is required to provide his or her county auditor with a list of all real property owned on December 31 of the preceding year. The foregoing list must be provided to the county auditor between January 1 and March 1 of the next year, regardless of whether or not that person still owns the listed property. 1968 S C Op Atty Gen No 2508, p 193, 1968 WL 8904 (Sept 12, 1968)

The owner of property on December 31 must not only list that property with the county, that owner is also statutorily liable for the next year's property taxes. Pursuant to S C Code Ann § 12-37-610 (Supp 2010), each person in this State is liable for taxes and assessments on the real property that he or she owns on December 31 of the year preceding the tax. Even if the property is sold during that next year, the owner on December 31 of the preceding year remains liable for the property taxes. 1973 S C Op Atty Gen No 3548, p 185, 1973 WL 21005 (June 21, 1973), 1968 S C Op Atty Gen No 2508, p 193, 1968 WL 8904 (Sept 12, 1968)

Prior to 2000, § 12-37-610 read as follows "[e]very person is liable to pay taxes and assessments on the real estate which he owns or may have the care of as guardian, executor, trustee, or committee." In 2000, the South Carolina Legislature amended § 12-37-610 so that it now reads as follows

Each person is liable to pay taxes and assessments on the real property that, **as of December thirty-first of the year preceding the tax year**, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, or on the real property that, as of December thirty-first of the year preceding the tax year, he has care of as guardian, executor, or committee or may have the care of as guardian, executor, trustee, or committee

(Emphasis added) The significant change created by the 2000 amendment is the addition of language specifying that it is the owner of property on December 31 of the preceding year that is liable for the tax. Id. Prior to this amendment the statute provided no specificity as to what period of ownership bore the liability for taxes. The current version of § 12-37-610 explicitly states that it is the owner on December 31 of the preceding year that is liable for property taxes. Because ownership on December 31 determines liability for property taxes, logic dictates that such date also determines the taxability of the property. The 2000 amendment to § 12-37-610 clearly demonstrates that the Legislature intended for the taxability of property to be determined based upon the ownership of that property on December 31 of the year preceding the tax.

In addition to requiring the listing of property owned on December 31, and placing liability for taxes on the owner on December 31, the Code also places a lien for the subsequent year's taxes on all of the property owned by the December 31 owner. Pursuant to S.C. Code Ann. § 12-49-20 (2000), a lien is created on December 31 of the preceding year for the taxes to be paid during the ensuing year. This lien attaches to all real and personal property and such constitutes a first lien.

Pursuant to the forgoing statutes, the owner of property on December 31 has to list that property with the county, that person is personally liable for taxes related to that property regardless of sale, and a lien covering the amount of the property taxes attaches to all of the December 31 owner's property. Simply stated, the obligations and liabilities associated with real property are placed upon the owner on December 31 of the preceding year. Because the obligations and liabilities associated with property taxes are determined based upon ownership on December 31, such date is used to determine the tax status of the property. Moreover, because the obligations and liabilities for property taxes are placed on the December 31 owner, a transfer of ownership during the foregoing year has no impact on the tax status of the property, as taxability and liability were already determined on December 31.

C Case Law Supports The Department's Position In This Matter

South Carolina case law supports determining the taxability of property on December 31 of the year preceding the tax. In Atkinson Dredging Co. v. Thomas, the

Supreme Court held that the taxable status of property is determined on December 31 of the year preceding the tax. In Atkinson Dredging Co., the owner of dredging equipment disputed 1971 property taxes assessed against its equipment. The dredging equipment was located in Charleston on December 31, 1970, therefore Charleston County assessed 1971 property taxes against the equipment. The taxpayer removed the equipment from South Carolina in February of 1971. Because the property was in South Carolina for less than two months, the taxpayer argued that the property taxes should be apportioned to reflect the percentage of the year the property was located in this State. The Supreme Court rejected this argument and stated:

While there is some appeal to Atkinson's argument that its taxes should be apportioned on the basis of the time its dredge and other equipment were physically in the County during 1971, such an argument is available to many citizens of this and other states as illustrated by the following example contained in the lower court's order:

"If a Charleston taxpayer had bought an automobile on Christmas Day, 1974, and that automobile had been totally destroyed on New Year's Day, he would, none the less, be liable to pay property tax for the entire year 1975. On the other hand, if he had bought an automobile on January 2, 1975, he would owe no personal property tax on that for the year 1975. In an ideal state, it would probably be well to levy the personal property tax on a daily basis. However, this would be an administrative impossibility. Under our taxing system, there have always been inequalities and inequities resulting from the fact that **the tax for an entire year is contingent under Sec 65-1644 on possession or control on the 31st day of December next preceding the tax year in question**."

(Emphasis added) Atkinson Dredging Co., 266 S.C. at 369, 223 S.E.2d at 597. Since the Atkinson Dredging Co. decision, courts of this State have consistently and routinely held that the tax status of real property is determined on December 31 of the year

preceding the tax See Northbridge Associates, LLC v Charleston County Assessor, Docket No 06-ALJ-17-0863-CC (November 25, 2008), Mt Vintage Plantation Golf Club, LLC v Edgefield County Assessor Docket No 07-ALJ 17-0569-CC (May, 13, 2008), Richard Westfall v Richland County Assessor, Docket Number 06-ALJ-17-0041-CC (November 14, 2006) (Honorable John D McLeod presiding)

Pursuant to the Supreme Court's holding in Atkinson Dredging Co., and the litany of cases that cite this decision, it is clear that December 31 is the date that determines whether property is subject to taxation Just as removing the dredging equipment from the Charleston County in February of 1971 did not alter the 1971 property taxes on the dredging equipment, the sale of the Lee Avenue property in March of 2008 does not alter the 2008 property taxes on that property

In 1978, the South Carolina Attorney General's office issued Opinion No 78-184 addressing whether the sale of real property from a tax exempt organization to a non-tax exempt purchaser rendered the property subject to property taxes for the year of the sale and whether the purchaser could be held liable for such taxes 1978 S C Op Atty Gen No 78-184, p 211, 1978 WL 22652, (Nov 3, 1978) The opinion found that property tax liability attaches on December 31 of the preceding year and the owner on December 31 is the party liable for the taxes In that matter, the property was owned by a tax exempt organization on December 31, but was sold to a taxable entity during the next year The opinion found that the sale of the property during the next year to a taxable entity did not alter the taxability of the property Therefore, the property could not be taxed for the year it was purchased, nor could the purchaser be held liable for taxes for the year it was purchased This opinion supports the Department's position and is contrary to the position put forth by the taxpayer in the present matter If the sale of a piece of property not subject to tax on December 31 does not make the property taxable, than the sale of taxable property to a tax exempt organization does not make the property nontaxable

D The Case Of Town Of Myrtle Beach v Holliday Does Not Support The Taxpayer's Position In This Matter

The taxpayer asserts that taxation of real property ceases the instant property is

transferred to a tax exempt organization. The taxpayer relies upon Town of Myrtle Beach v. Holliday, 203 S.C. 25, 26 S.E.2d 12 (1943), to support this assertion. Contrary to the taxpayer's assertion, the Holliday case does not support the taxpayer's position in this matter. Holliday addressed whether taxes then or thereafter due on property are immediately cancelled when that property is acquired by a municipality.² The Holliday opinion does not address property acquired by private or non-municipal tax exempt entities.

In Holliday, the Town of Myrtle Beach obtained title to real and personal property which constituted the Town's water works system. After the Town acquired the property, the tax collector for Horry County sought to assess property taxes against that property. The Town requested an abatement of those taxes arguing that the taxes for that property were immediately canceled when the Town acquired such.

Before analyzing the issue, our Supreme Court quoted State v. City of Columbia, 115 S.C. 108, 104 S.E. 337 (1920), to establish the standard of review it would apply. The quoted language states:

The general rule is that exemptions of private property are strictly construed, because in such cases taxation is the rule and exemption the exception, but exemptions of the property of municipal corporations are liberally construed, for exemptions of such property is the rule and taxation the exception. With us municipal corporations are merely agencies of the state for governmental purposes, and it has never been the policy of this state to tax its own agencies or instrumentalities of government. From which we conclude that the provision should be construed liberally in favor of the exemption claimed.

Holliday, 26 S.E.2d at 14. Based upon the liberal construction given to municipalities, the Holliday Court held that taxes assessed against property for the year in which it is acquired by a political subdivision cease to be demandable. Id. at 14. Therefore the

²For simplicity, this Order will utilize the word municipality to collectively refer to the state, counties, municipalities, school districts, and other political subdivisions within the state. This Order will utilize municipal property to refer to property held by the state, counties, municipalities, school districts, or other political subdivision, and used for a public purpose.

Court ordered an abatement of the taxes on that property for the year such was acquired by the Town of Myrtle Beach Id at 16

The taxpayer interprets Holliday as holding that if any tax exempt entity acquires property before taxes are due and payable, the status of the property changes and the property taxes for the year of acquisition are eliminated. The taxpayer's theory makes no distinction between municipalities and all other tax exempt entities.

Under the taxpayer's theory, exemptions are treated the same regardless of whether a municipality is involved. If such position were correct, there would be no need for the Holliday Court to explain the standard applicable to exemptions for private property as opposed to exemptions for municipal property. On the contrary, the Court went into detail to explain the liberal construction given to municipalities and it expressly stated that its holding is based upon that liberal construction. Holliday, 203 S C at 25, 26 S E 2d at 14. Because the Holliday decision is based upon the liberal construction given to municipalities and the present matter requires a strict construction, that decision is not applicable to the present matter.

A quote within Holliday demonstrates that the Court was solely addressing property acquired by a municipality. Within Holliday, the Court stated

As stated by plaintiff in its brief, if the present owner of the property were a private citizen or corporation, Sections 2569 and 2571 of the Code of 1942 would undoubtedly apply, but it is contended by plaintiff that said sections have no application to the question at issue, and we are in accord with this contention.

203 S C at 25, 26 S E 2d at 14. Section 2569 of the 1942 Code provides that all taxes assessments, and penalties are a first lien upon the property taxed. Said lien attaches to property at the beginning of the fiscal year and the county treasurer can enforce the lien through execution on the property. Section 2569 of the 1942 Code is a predecessor to S C Code Ann § 12-49-10 of the current South Carolina Code. Section 2571 of the 1942 Code provides that as soon as property is listed with the county auditor, taxes for that property become a first lien on the property and said property is subject to execution to satisfy the taxes. Section 2571 is a predecessor to § 12-49-20 of the current South

Carolina Code

According to the quote above, the Holliday Court agreed that if the matter involved a private taxpayer and not a municipality, the property would be subject to liens and enforcement actions. More specifically, § 2569 would apply and a lien would attach at the beginning of the year. Only because the matter involved a municipality did these sections not apply. This clearly establishes that the holding in Holliday applies only to municipalities and cannot be applied to non-municipal tax exempt entities.

Analyzing the cases cited in Holliday, and the language used in explaining those citations, demonstrates that the Holliday holding is limited to municipalities. At the beginning of its analysis of case law from other jurisdictions the Holliday Court stated

Not having a precedent in this State, we have naturally resorted to a study of text books, and the decisions of the appellate courts of other states, and find that with the exception of the State of Michigan, the rule is that taxes assessed against property for the year in which it is acquired by a political sub-division of the State, and is being used by such governmental agency for public purposes, the taxes so assessed in favor of the State upon the same cease to be exigible.

Holliday, 203 S.C. at 25, 26 S.E.2d at 14. As the Court explicitly states, the issue addressed is taxability of property acquired by a political sub-division of the State, i.e. a municipal entity. If Holliday were as the taxpayer asserts, the Court would have addressed property acquired by a tax exempt entity and not limited itself to political subdivisions of the state. The fact the Court explicitly stated that the issue addressed is property acquired by a political subdivision demonstrates that the Court did not intend for the Holliday holding to be applied to all tax exempt entities.

The Holliday Court states that it resorted to a study of text books and decisions of other jurisdictions, yet it only cited case law involving municipalities despite the fact case law addressing this issue, but involving private entities, existed at the time of the opinion. See First Congregational Church v. County of Linn, 70 Iowa 396, 30 N.W. 650 (1886), and other cases cited below. Moreover, the Holliday Court stated that it reviewed the authority of other states and only Michigan had contrary authority. Holliday, 203 S.C. at

25, 26 S E 2d at 14 This statement is correct if the issue being addressed is limited to municipal property This statement is not correct if the issue being addressed is property acquired by non-municipal tax exempt entities At the time of the Holliday opinion, several states other than just Michigan had contrary law when the matter involved property acquired by a private tax exempt entity See, Louisiana- Young Men s Christian Ass'n v City of New Orleans, 11 La App 360, 123 So 360 (La App 1929), Illinois- People ex rel McCullough v Ladies of Loretto, 246 Ill 403, 92 N E 908 (Ill 1910) People ex rel Thompson v St Francis Xavier Female Academy, 233 Ill 26, 84 N E 55 (Ill 1908), (Both cases address property acquired by tax exempt religious education corporations The cases hold that taxability of property is determined on April 1 and acquisition by a tax exempt entity after that date does not change the taxability The court held such despite the fact taxes for a given year are not paid until the following year), Idaho- Clearwater Timber Co v Nez Perce County, 155 F 633 (C C D Idaho 1907), (In case involving land transferred to private timber company, the Court held that exemption from taxation is determined based upon the ownership of property on the second Monday in January Transfer of title after that date has no impact on the taxability In so holding, the Court stated "It is, of course, not necessary for the assessor upon that date actually to determine to whom the property should be assessed and to fix the value thereon and to enter the assessment in the assessment book Obviously that would be impossible' 55 F at 636-637), Mississippi- McHenry Baptist Church v McNeal, 86 Miss 22, 38 So 195 (1905), (Under Mississippi law, taxes for each current year attach on the 1st day of February On this date the land in controversy was subject to taxation, the fact that it was acquired by a private tax exempt entity after that date did not relieve it from the liability for taxes for the current year) , Minnesota- Martin County v Drake, 40 Minn 137, 41 N W 942 (1889), (Statutes set May 1st as date for determining ownership and value for the purposes of taxation and if property is taxable on May 1st, it's taxable for the rest of the year regardless of transfer to a tax exempt entity), Iowa- First Congregational Church v County of Linn, 70 Iowa 396, 30 N W 650 (1886), (denying exemption to land acquired by tax exempt church in August despite the fact taxes were not levied until September) If the Holliday Court intended for its holding

to be applied to all tax exempt entities, it would not have stated that only one state had contrary authority, as its analysis undoubtedly would have demonstrated that other states reached contrary conclusions when private tax exempt entities were involved. The fact the Holliday Court neither recognized nor addressed these opinions clearly demonstrates that the Court was only addressing property acquired by a municipality.

Rather than address cases involving private tax exempt entities, the Holliday Court relied on two cases which address property acquired by a municipality. Analysis of the two cases utilized by our Supreme Court further demonstrates that the holding in Holliday only addresses property acquired by a municipality.

The Holliday Court first cites to State v. Snohomish County, 71 Wash 320, 128 P 667 (1912). Of all the language of that case, the Holliday Court chose to state the following:

The Court, after stating the general rule that the general tax laws of the state are presumed to operate upon private and not upon public property, said: 'It seems equally plain that the creation of a valid tax implies the existence of a susceptible subject of taxation at every stage of the process of such creation. Since, on general principles of public policy and by both constitutional declaration and statutory enactment, lands while held in public ownership are exempt from taxation, the land here in question was not, during any step in the proceedings creating the tax after August 9, 1907, when it passed to the state, a susceptible subject of taxation.'

Holliday, 26 S E 2d at 14. The Snohomish decision includes a discussion of when taxes are due and payable, yet our Supreme Court did not include that discussion in its citation. Instead, the Holliday Court focused solely on the language of Snohomish addressing the ability to tax municipally held property. Our Court explicitly acknowledges the presumption that tax laws operate on private land and not public land. Moreover, the Holliday Court chose the language recognizing that public policy and constitutional declaration prevent taxation of municipal property. Clearly, the Holliday Court utilized Snohomish solely for its analysis of property acquired by a municipality. If the Holliday Court intended its opinion to address private tax exempt entities, and if its opinion were

truly based upon whether taxes were due and payable, it would undoubtedly utilized different or additional language from the Snohomish decision. The fact the Holliday Court only addressed ability to tax municipal property further demonstrates that the Holliday holding is limited to property acquired by a municipality and not all tax exempt entities.

The Holliday Court placed its greatest emphasis on the Louisiana case of Gachet v. City of New Orleans, 52 La. Ann. 813, 27 So. 348 (LA 1900). The Gachet case, just like the Holliday case, involved property acquired by a municipality. At the time our Supreme Court wrote the Holliday opinion, other Louisiana case law addressed the acquisition of property by a private tax exempt organization. In the 1929 case of Young Men's Christian Ass'n v. City of New Orleans, the Louisiana Court of Appeals held that property acquired by a tax exempt entity on June 30, 1920 remained subject to 1920 property taxes. The court held that a property's status on January 1 of any given year determines its taxability. Because the property was subject to tax on January 1, 1920, it remained subject to tax regardless of it being transferred to a tax exempt entity. Id. Unlike the Gachet case, the Young Men's Christian Ass'n court made no distinction between whether the taxes had become due and payable prior to or after the June 30, 1920 sale. Young Men's Christian Ass'n did not address Gachet nor overturn Gachet, on the contrary Gachet remained good law. The fundamental distinction between Young Men's Christian Ass'n and Gachet is whether the property involved is acquired by a municipality or acquired by a private tax exempt entity.

When the Holliday Court wrote its opinion, both Gachet and Young Men's Christian Ass'n were published. It is clear the Supreme Court analyzed the case law of Louisiana and likely knew of both decisions. The fact our Supreme Court elected to base its decision upon a Louisiana case that even in Louisiana only applied to municipalities, demonstrates that the Holliday opinion was not intended to apply to all tax exempt entities.

E The Taxpayer's Position In This Matter Requires An Impermissible Interpretation Of The South Carolina Code

The taxpayer asserts the taxability of property immediately ceases when that

property is sold to a tax exempt entity. If the taxpayer's assertion were correct, there would be no need for § 12-37-220(D) of the South Carolina Code. In 1999, the South Carolina Legislature amended § 12-37-220 and added subsection (D) which states

(D) If a church acquires ownership of real property which will be exempt under this section when owned by the church, the transferor's liability for property taxes on the property ceases on the church acquiring the property, and any exemptions provided in this section then apply, subject to the requirements of Section 12-4-720. The property taxes accruing up to the date of the acquisition by the church, if any, must be paid to the county where the property is located within thirty days of the acquisition date. If the millage has not yet been set for the year when the acquisition occurs, the county auditor shall apply the previous year's millage in determining any taxes owed. If the millage has been determined, the auditor shall apply the current year's millage in determining any taxes owed. All taxes, assessments, penalties, and interest on the property acquired by a church are a first lien on the property taxed, the lien attaching December thirty-first of the year immediately preceding the calendar year during which the tax is levied.

Pursuant to this subsection, when a church acquires property, that property immediately becomes exempt from taxation. Churches were already tax exempt entities prior to the enactment of § 12-37-220(D). By enacting § 12-37-220(D), the Legislature chose to treat property acquired by a church differently than property acquired by the numerous other tax exempt entities provided in § 12-37-220. Unlike all other exempt private property, the exemption for church property takes effect immediately upon acquisition by a church and not the following December 31.

The taxpayer asserts that taxation of property ceases on the date such property is acquired by a tax exempt organization. Simply stated, the taxpayer asserts that under South Carolina law, it and all other tax exempt entities are entitled to the treatment churches receive pursuant to § 12-37-220(D). If the taxpayer's assertion were correct, there would be no need for the Legislature to enact § 12-37-220(D), as churches would already be entitled to the treatment provided in § 12-37-220(D).

The taxpayer's argument requires this Court to interpret § 12-37-220 in a way that

renders § 12-37-220(D) superfluous and unnecessary. In interpreting statutes, this Court must presume the Legislature did not intend a futile act, but rather intended its statutes to accomplish something. TNS Mills, Inc. v. South Carolina Dept. of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998), State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964). Moreover, when the Legislature adopts an amendment to a statute, it is presumed that the Legislature intended to change the existing law. Key Corp. Capital, Inc. v. County of Beaufort, 373 S.C. 55, 60, 644 S.E.2d 675, 678 (2007). As explained earlier, the taxpayer's argument stems from its interpretation of the Holiday case, which was issued in 1943. If the taxpayer's interpretation were correct, the relief it seeks would have been the law of this State from at least 1943 forward. If the law of this State already provided such relief, the Legislature would not have needed to enact subsection (D) and that subsection would not be a change to existing law. The Legislature's 1999 amendment of § 12-37-220 to add subsection (D) demonstrates that the Legislature intended to change the existing property tax law. Moreover, this amendment demonstrates that the taxpayer's interpretation is not correct, as such interpretation renders subsection (D) superfluous and unnecessary.

F The Opinions And Decisions Relied Upon By The Taxpayer Are Not Persuasive

The taxpayer relies upon opinions issued by the South Carolina Attorney General's office and decisions of the South Carolina Tax Commission to support its position. For the reasons set forth more fully herein, the opinions and decisions relied upon by the taxpayer are not persuasive in this matter.

When the opinions and decisions relied upon by the taxpayer were issued, § 12-37-610 placed liability for property taxes simply on the owner of property. The Code provided no specificity as to what period of ownership determined liability for property taxes. As discussed previously herein, in 2000 the South Carolina Legislature amended § 12-37-610. Under the amended § 12-37-610, it is the owner of property on December 31 of the year preceding the tax that is liable for property taxes. The opinions and decisions relied upon by the taxpayer were all written prior to the 2000 amendment to § 12-37-610. These opinions and decisions address the liability of the purchaser for property acquired

at some point during the year Pursuant to the current version of § 12-37-610, liability is statutorily fixed on the December 31 owner, therefore the analysis provided in the opinions and decisions is no longer applicable or necessary Because the applicable law changed subsequent to the issuance of the relied upon opinions and decisions, such are not persuasive in this matter

In addition to not addressing the current version of § 12-37-610, the opinions and decisions relied upon by the taxpayer do not address the implications of § 12-37-220(D) As explained herein, to allow all property tax exemption to go into effect on the date property is acquired regardless of whether such is a church would render § 12-37-220(D) superfluous and unnecessary Such interpretation is not permissible The opinions and decisions relied upon by the taxpayer were written prior to the enactment of § 12-37-220(D) and do not address this impermissible result Because these opinions and decisions do not address this impermissible interpretation of the Code, such opinions and decisions are not persuasive in this matter

Several of the opinions relied upon by the taxpayer involve property acquired by a municipality, be it a local, state, or federal municipality See 1983 WL 182006, 1979 S C Op Atty Gen No 79-9, p 20 (1979), 1976 S C Op Atty Gen No 4268, p 84 (1976), 1973 S C Op Atty Gen No 3654, p 340 (1973) Contrary to the taxpayer's assertions and as explained previously, private tax exempt entities do not receive the same treatment as municipalities under South Carolina law These opinions support granting an immediate exemption to municipalities, but like the Holliday case, these opinions neither address nor are they applicable to private tax exempt entities Therefore such opinions are not persuasive in this matter

Furthermore, the opinions and decisions relied upon by the taxpayer were issued prior to our Supreme Court's ruling in Atkinson Dredging As explained previously, Atkinson Dredging firmly established that the taxable status of property is determined on December 31 of the year preceding the tax To the extent any of the opinions and decisions relied upon by the taxpayer differ from that holding, such do not reflect the law of this State after Atkinson Dredging and therefore are not persuasive

At least one of the decisions relied upon by the taxpayer incorrectly interprets

Holliday The 1972 Tax Commission decision relied upon by the taxpayer cites Holliday, but fails to acknowledge any distinction between the treatment of municipalities and private tax exempt entities See 1972 WL 21342 (S C Tax Com 1972) As explained previously herein, a full analysis of Holliday demonstrates that its holding applies only to municipalities Moreover, the decision provides no explanation as to how a holding based upon the broad standard for exemptions given to municipal property can be equally applied to non-municipal exemptions where a strict standard applies The decision provides no explanation for the Holliday Court's analysis of other jurisdictions and how such analysis is inaccurate when addressing all tax exempt entities and not just municipalities Any decision or opinion lacking explanations to such issues are not persuasive in this matter

Lastly, the taxpayer mistakenly relies upon a 1976 South Carolina Tax Commission decision involving property acquired by a church See 1976 WL 24902 (S C Tax Com 1976) A careful reading of the facts demonstrates why this decision is not persuasive At issue was whether the church was entitled to an exemption to 1975 property taxes Unlike the taxpayer here, in that decision the church owned the property on the December 31, 1974 In fact, the church owned the property since May of 1973 This decision does not address changing the tax status of property in the middle of a year because of acquisition by a private tax exempt entity On the contrary, this case solely addresses whether the church actually occupied its property, an issue of no relevance to the present matter

For all of the foregoing reasons, the opinions and decisions relied upon by the taxpayer are not persuasive in this matter

G The Taxpayer's Theory Could Cause Devastating Consequences Throughout South Carolina

Under the taxpayer's theory in this case, the sale of property during a tax year can eliminate the tax liability associated with that property The taxpayer argues that its purchase of the Lee Avenue property eliminates the 2008 property taxes associated with that property The devastating consequence this theory allows demonstrates why such theory is not the law in South Carolina An example put forth by the Department during

the hearing demonstrates the devastating consequences the taxpayer's theory allows. The Department's example involved a piece of real property worth \$10,000,000. On December 31 of 2007 that property was privately held and subject to tax. In late August of 2008, the owner sold that \$10,000,000 property to a tax exempt organization. By this point, the county had already determined its millage rate and prepared its 2008 tax bills. In determining its millage rate the county included the tax revenue it expected to get from the \$10,000,000 property. Under the taxpayer's theory, the sale of that property eliminated the 2008 tax liability for that property. As a result, the millage rate utilized by the county is inaccurate and the county will collect less revenue than required to fund the county budget. The impact of this theory is increased exponentially when one considers the thousands of property transactions that occur every year in any given county. Under the taxpayer's theory, there is no limit to the amount of property taxes that could be eliminated in the middle of the year, thereby rendering a county incapable of funding county operations. Moreover, the counties have no means to plan for such consequence as it has no control over the sale of private property.

Utilization of December 31 of the year preceding the tax to determine taxability eliminates the devastating consequences allowed for under the taxpayer's theory. By utilizing December 31 of the year preceding the tax, each county is able to definitively know which property will be subject to tax and which property will be tax exempt. The counties are able to accurately determine millage and properly fund their operations. Such accuracy is fundamental to the survival of the property tax system in this State. The serious implications allowed under the taxpayer's theory demonstrate why such theory cannot be the law of this State. The consistency, accuracy, and predictability ensured through the Department's method demonstrate that the Department's method is proper.

II THE OWNER OF RECORD ON DECEMBER 31 2007 IS LIABLE FOR THE 2008 PROPERTY TAXES FOR THE LEE AVENUE PROPERTY

The second issue in this matter is whether the taxpayer is personally liable for the 2008 property taxes for the Lee Avenue property. Pursuant to the South Carolina Code and applicable case law, the owner of record on December 31 of the year preceding the tax is liable for the next year's property taxes. In the present matter, the taxpayer did not

own the Lee Avenue property on December 31, 2007, therefore it is not personally liable for the 2008 property taxes

As discussed previously, § 12-37-610 states

Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, or on the real property that, as of December thirty-first of the year preceding the tax year, he has care of as guardian, executor, or committee or may have the care of as guardian, executor, trustee, or committee

As stated within § 12-37-610, the owner of property on December 31 of the year preceding the tax is liable for the taxes associated with that property. In the present matter, the taxpayer did not own the Lee Avenue property on December 31, 2007. Because the taxpayer did not own the property on December 31, 2007, the taxpayer is not personally liable for 2008 property taxes associated with the property.³

South Carolina case law supports placing liability for property taxes upon the December 31 owner. In J R Cottingham v Oconee County Assessor, Docket No 05-ALJ-17-0101-CC (September 19, 2005), the ALC addressed whether someone could be held personally liable for property taxes for property he did not own on December 31. In that case, J R Cottingham received title to real property in October of 2004. The County sought to hold Mr Cottingham liable for 2004 property taxes despite the fact he did not hold title to the land on December 31, 2003. In ruling for Mr Cottingham, the Court held that liability for property taxes is based upon ownership on December 31 of the year preceding the tax. In so holding, the Court stated

Liability for property tax is a creature of statute and the legislature is free to select a date or an event creating the liability. 84 C J S Taxation § 60 (1954). By statute, South Carolina sets the event of liability as ownership on a

³ While the taxpayer is not personally liable for the taxes, the property would be subject to liens and tax sale had the 2008 property taxes not been paid. Pursuant to § 12-49-20, a lien for the 2008 taxes attached to the property on December 31, 2007. Had the taxes not been paid, the land would have been subject to tax sale to satisfy the 2008 taxes.

specific date. More precisely [e]ach person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, " S C Code Ann Sec 12-37-610

Thus, the issue of determining who is liable for the taxes owed for the 2004 tax year is answered by asking who owned the property on December 31, 2003. Under the facts here, Cottingham did not own the properties on December 31, 2003. Rather, his ownership began in October 2004. Accordingly, Cottingham is not personally liable for the 2004 taxes and cannot be made to pay the taxes owed.

Just as Cottingham could not be held personally liable for property taxes on property he did not own on December 31 of the preceding year, the taxpayer in this matter is not personally liable for the 2008 property taxes on the Lee Avenue property.⁴

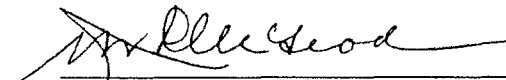
WHEREFORE, for the reasons set forth more fully herein, the taxpayer has not established entitlement to a property tax exemption for the year in which it acquired the Lee Avenue property and that property remains subject to 2008 property taxes. Furthermore, the owner of the Lee Avenue property on December 31, 2007 is liable for the 2008 property taxes associated with that property.

Columbia, SC
March 22, 2011

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served it in order in the above entitled action upon all parties to this case by depositing a copy hereof in the United States mail postage paid or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 22 day of March, 2011
By Antoinette R. Goldman
Judicial Law Clerk


John D. McLeod, Judge
S C Administrative Law Court

⁴The Court herein is only addressing whether the taxpayer is statutorily liable for the 2008 property taxes for the Lee Avenue property. If there was an agreement between the taxpayer and the prior owner regarding payment of the 2008 taxes, the Court is unaware of such and this ruling is not addressing any such agreement.