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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

RECORD ON APPEAL

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SC Court of Appeals

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**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?**

FILED

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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 & Envtl 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 this order in the above entitled action upon all parties to this cause 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 Anthony 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.

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 5130 Telecopier (803) 898 5147

June 23 2010

Marion C Fairey, Jr , Esquire
PO Box 661
Hampton, SC 29924

Re Department Determination
 Hampton Friends of the Arts, Inc


Dear Mr Fairey

Enclosed is the South Carolina Department of Revenue's Determinations in the above-referenced matter. If you disagree with the Determination, you may request a contested case hearing before an Administrative Law Judge. If you choose to pursue such remedy, you must do so within 30 days of the date of this letter. If you fail to respond within this time limitation, you will lose your right to appeal the Department Determination and your protest will be ended. Should you desire a contested case hearing, you must complete the enclosed request form and mail it, along with a \$100 filing fee, to the Administrative Law Court at the address stated on the form's instruction sheet.

The Administrative Law Court rules require that you also send me a copy of your request. My address is as follows: PO Box 12265, Columbia, SC 29211

Yours truly,

OFFICE OF GENERAL COUNSEL FOR LITIGATION


Sean G Ryan
Counsel for Litigation

SGR:jmo

Enclosures

DEPARTMENT DETERMINATION

Taxpayer

Hampton Friends of the Arts Inc
PO Box 68
Hampton SC 29924

Period Involved

2008 Property Tax

Matter in Dispute

Is the taxpayer's property exempt from property taxes for the 2008 tax year?

Tax	\$1,484 00
Interest	<u>27 57*</u>
	\$1,511 57

*Interest is accrued through May 19 2009

Determination

The taxpayer's property is not exempt from property taxes for the 2008 tax year

Relevant Facts

- 1 The taxpayer is a non-profit eleemosynary corporation
- 2 On March 4, 2008, the taxpayer purchased real property located at 103 Lee Avenue in Hampton, South Carolina, (Lee Avenue property) for the purpose of producing and exhibiting performing arts events. Prior to the taxpayer's purchase, the Lee Avenue property was privately held and not exempt from property taxes.
- 3 On October 27, 2009, the taxpayer filed an Application for Exemption for the Lee Avenue property. The Department of Revenue (Department) granted the taxpayer an exemption for 2009, but did not grant the taxpayer an exemption for 2008. The Department granted the 2009 exemption pursuant to S.C. Code Ann. § 12-37-220(B)(24) (Supp. 2009), because the taxpayer is a non-profit using the property for the promotion of the arts.
- 4 On October 7, 2009, the taxpayer wrote the Department tendering payment in the amount of \$6,544.45 for what the taxpayer termed its 'pro rata share of the

property taxes and penalties for 2008” According to the letter, the taxpayer tendered this payment under protest and requested a refund

Analysis

The Taxpayer’s Property Is Not Exempt

It is undisputed that the taxpayer is exempt from property taxes for year 2009 and the subsequent years it owns the subject property. What is at issue is whether the taxpayer’s property is exempt from property taxes for the portion of 2008 that the taxpayer owned the property. The taxpayer argues that since it qualifies for exemption from property taxes under § 12-37-220(B)(24), once it acquired the property in March of 2008, the property was no longer subject to property taxes. Applicable statutes and case law demonstrate that the taxpayer’s argument is incorrect.

In South Carolina, the taxable status of property is determined on the 31st day of December next preceding the tax year. Atkinson Dredging Co v Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976). Simply stated, if a property is subject to property taxes on December 31st, it is subject to property taxes for the following year. This is based on S.C. Code Ann. § 12-37-900 (Supp. 2009) which states in part:

Every person required by law to list property shall, annually, between the first day of January and the first day of March, make out and deliver to the auditor of the county in which the property is by law to be returned for taxation a statement, verified by his oath, of all the real estate which has been sold or transferred since the last listing of property for which he was responsible and to whom, and of all real and personal property possessed by him, or under his control, on the thirty-first day of December next preceding,

The present matter involves 2008 property taxes for the Lee Avenue property. Pursuant to Atkinson and § 12-37-900, the 2008 tax status of the Lee Avenue property is determined on December 31, 2007. It is undisputed that on December 31, 2007, the Lee Avenue property was subject to property taxes and not tax exempt. Because the Lee Avenue property was not tax exempt on December 31, 2007, the property is subject to 2008 property taxes.

The taxpayer does not dispute that the property is subject to property taxes for the portion of 2008 prior to its purchase of the property. Instead, the taxpayer argues that the 2008 property taxes for the Lee Avenue property should be apportioned between the percentage of the year it owned the property, and the percentage of the year the previous owner owned the property. Under the taxpayer’s theory, the portion of the taxes attributed to the previous owner are collectable, but the portion attributed to when the

taxpayer owned the property are not collectable because the taxpayer qualifies for exemption from property taxes under § 12-37-220(B)(24)

The South Carolina Supreme Court addressed a similar argument in Atkinson. In that case, Atkinson Dredging sought to have the property taxes assessed against its dredging equipment apportioned so that it only paid property taxes for the portion of the year that its equipment was located in South Carolina. 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. 65-1644¹ on possession or control on the 31st day of December next preceding the tax year in question.”

Atkinson, 266 S.C. at 369-370, 223 S.E.2d at 596. As the Atkinson Court recognized, property taxes are determined by the status of the property on December 31 of the previous year, and such taxes are not to be apportioned. Because the Lee Avenue property was not tax exempt on December 31, 2007, the property is subject to taxes for 2008. Furthermore, the taxpayer is not entitled to have the property taxes apportioned so that it is not taxed for the period of time that it owned the property. Id.

June 23, 2010

¹Section 65-1644 is the predecessor to § 12-37-900

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

(Your name)

(The name of the agency you are appealing)

NOTICE OF REQUEST FOR CONTESTED
CASE HEARING
DATE _____
DOCKET NO. ALJ _____
(to be assigned by ALC)

Notice is hereby given that _____ (your name) does hereby appeal the decision issued by the above named agency and received on _____ (date) a copy of which is attached (YOU MUST ATTACH A COPY OF THE DECISION OR DOCUMENT DESCRIBING THE AGENCY ACTION YOU ARE APPEALING IN ORDER TO HAVE YOUR CASE PROCESSED) Please provide a brief statement regarding the issue(s) for which the hearing is requested and the relief requested

Enclosed is a _____ check _____ money order _____ cash in the amount of \$ _____ for the applicable filing fee in this matter

Print your name

Mailing Address

Telephone Number

Sign your name

City State Zip Code

County of residence or of permit/license at issue

Are you represented by an attorney? _____ Yes _____ No

Are you represented by a CPA? _____ Yes _____ No

Attorney's name

Mailing Address

City State Zip code

Telephone Number

CPA's name

Mailing Address

City State Zip Code

Telephone Number

CERTIFICATE OF SERVICE

I hereby certify that I _____ (your name) on the _____ day of _____ 20____ in _____ (city) South Carolina served a copy of the foregoing Request for Contested Case Hearing on all parties to this matter by depositing the same in the United States Mail postage paid and addressed as follows

Name of person/Agency served _____
Address _____
City State Zip Code _____

Name of person/Agency served _____
Address _____
City State Zip Code _____

- 1) You must complete the **Request for Contested Case Hearing** on the reverse side of these instructions and mail it to the Administrative Law Court at the following address with the appropriate filing fee or Request for Waiver Form

Clerk's Office
South Carolina Administrative
Law Court
1205 Pendleton St. Suite 224
Columbia SC 2920

A copy of the Request must also be served on the agency from which you are appealing. If you do not know you should contact the agency to determine the name of the person to be served with this document.

- 2) **In order for your case to be processed by the ALC, a copy of the decision or document that you are appealing must be attached to the Request for Contested Case Hearing.**

State of South Carolina
Department of Revenue
301 Gervais Street, P O Box 125, Columbia, South Carolina 29214

January 25, 2010

Mr Marion C Fairey
The Fairey Law Firm, LLC
304 Lee Avenue
Post Office Box 661
Hampton, SC 29924

REFERENCE SID/SFX 2406555
 Hampton County

Dear Mr Fairey

This is in response to your letter dated January 15, 2010 requesting the status of your request for refund for an exemption from property taxes for property acquired by Hampton Friends of the Arts, Inc

S C Code Section (B)(24) provides for an exemption on all property of nonprofit or eleemosynary community theater companies, symphony orchestras, county and community arts councils and commissions and other such companies, which is used exclusively for the promotion of the arts

We have reviewed the above referenced file and all information provided to date. It is the determination of the Property Division that your request for refund for property tax exemption is denied. After reviewing the application and documentation, we find that Hampton Friends of the Arts, Inc did not obtain ownership in the property until March 6, 2008. However, the controlling date for property taxes is December 31st of the year proceeding the tax year. There are two Supreme Court rulings that state the legal status of the property is December 31st of the year prior to the tax year. The Supreme Court cases are Myrtle Beach v Holliday, 203 S C 25, 26 S E 2d and Atkinson Dredging Co v Thomas, 206 S C 361, 223 S E 2d 592

In order for an exemption to be granted for the 2008 tax year, the organization would have to be the owner of the property as of December 31, 2007

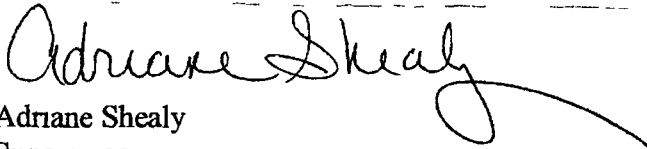
I am sorry for any inconvenience this may cause, but we must follow the guidelines as set forth by law. The exemption has been granted for Hampton Friends of the Arts, Inc beginning with tax year 2009

Marion C Fairey
January 25, 2010
Page 2

If you wish to continue this appeal, please provide written notification to us within 30 days of the date of this letter. Upon timely notification, we will forward this appeal to the General Counsel and a Final Agency Determination will be issued to you. If you disagree with the Final Agency Determination, you may appeal to the Administrative Law Court. Instructions on appealing to the Administrative Law County will be provided with the Final Agency Determination.

Sincerely,

**S C DEPARTMENT OF REVENUE
LOCAL GOVERNMENT SERVICES**

A handwritten signature in black ink that reads "Adriane Shealy". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Adriane Shealy
Supervisor
Exempt Property Section
(803) 898-5480



June 8 2009

Mr Robert Harrelson
Hampton County Arts Council
PO Box 57
Hampton SC 29924

Dear Mr Harrelson

I am writing a reply to your letter dated May 27 2009 and as a follow up to the meeting with you and Ms Tuten on Friday May 29 2009 You requested that the 2008 property taxes on the old Moore building that is now owned by the Hampton Friends of the Arts be waived I have researched this matter and here are my findings

The 2008 property taxes on the old Moore building were properly billed to the owner of record as of December 31 2007 Hampton Friends of the Arts purchased the building in March 2008 and therefore became responsible for the 2008 property taxes While the Hampton Friends of the Arts is a public charity organization exempt under section 501 (c) (3) the former property owner was not exempt The issue of the property taxes should have been resolved during the sale of the property

Unfortunately there is no legal basis by which Hampton County Council can waive or reduce the taxes due Hampton Friends of the Arts remains responsible for payment of the property taxes in question on the old Moore building I m sorry I don t have better news for you It is state law that dictates the answer we must give you The County is not authorized to waive the taxes

Speaking on behalf of Hampton County Council we appreciate and support the service that the Hampton County Arts Council gives to our community We sincerely hope that you will be able to find an alternate resolve to this unfortunate situation

Sincerely

Sabrena P. Graham
Hampton County Administrator

STATE OF SOUTH CAROLINA)
) IN THE ADMINISTRATIVE LAW COURT
COUNTY OF HAMPTON)

Hampton Friends of the Arts,) Docket No 10 ALJ-17 0538-CC
)
Petitioner,) **Petitioner's Pre Hearing Statement**
)
v)
)
South Carolina Department of Revenue,)
)
)
)
Respondent)

TO THE HONORABLE JOHN D McCLOUD, PRESIDING JUDGE

Pursuant to this Court's Order of August 2, 2010 the Petitioner files the following prehearing statement

1 Nature of this proceeding

The Petitioner is appealing the assessment and payment of ad valorem property taxes for the property tax year 2008. The Petitioner is an exempt non profit eleemosynary organization. The Petitioner, who purchased property for use in conjunction with presenting and exhibiting performing arts in Hampton County on March 4 2008 was assessed ad valorem property taxes in October of 2008 for the 2008 tax year. The Petitioner paid its pro rata share of the tax with penalties under protest and appealed the assessment of taxes to the SC Tax Commission. That appeal was denied by the Commission and the Petitioner filed its appeal as a matter of right with this Court pursuant to the Administrative Procedures Act and the South Carolina Revenue Procedure Act. In this appeal the Petitioner contends that it is not liable for taxes for the 2008 tax year and seeks to have the finding the SC Tax Commission overruled and its tax payment for the 2008 tax year refunded with interest.

2 The statutory provisions conferring subject matter jurisdiction to the Court and other applicable statutes and regulations

a This Court has subject matter jurisdiction pursuant to S C Code Anno §12-60-510 of the South Carolina Revenue Procedures Act and §12-37-600 (Cum Supp 2009) of the Administrative Procedures Act

b Other applicable statutes and regulations S C Constitution Art X, §§3, 4 and 6 S C Code Anno §12-37-220 (General Exemption from taxes), S C Code Anno §12-37-610 (Persons liable for taxes and assessments on real property)

3 The issues to be presented for determination, including any claims or defenses expected

Is an exempt, non-profit eleemosynary organization liable for the property taxes for the 2008 tax year where the organization did not own the property on December 31, 2007 and was fully qualified as an organization exempt from property taxes on March 4, 2008 when it did acquire the property and in September of 2008 when the property was assessed for 2008 property taxes?

4 A brief summary of the facts to be presented at the hearing

Hampton Friends of the Arts is a non-profit eleemosynary organization that was chartered in 2007. On March 4, 2008, it purchased a commercial store front from a local family for the purpose of storing props and equipment and conducting rehearsals for arts performances. The Petitioner applied for and was granted an exemption for the 2009 tax year but not the 2008 tax year. The Petitioner was not the owner of the property on December 31, 2007, the date that the Commission asserts is the date when tax liability is established, but was the owner of record as of September 2008, the date when real property was assessed for tax purposes.

5 The action requested of the Court a detailed statement of the law which supports the requested action, including statutory and case citations

The Petitioner asks that the Court overrule the determination of the Commission and order a refund of the \$6,644.45 paid by the Petitioner under protest with interest. Pursuant to *Myrtle Beach v Holliday*, 203 S C 25, 26 S E 2d 12 (1943), when an exempt entity acquires property before the assessment of taxes for that tax year, then the acquiring entity is exempt from paying the property tax even though it acquired an ownership from a non-exempt entity. This case has been consistently followed in past rulings of the S C Tax Commission. See *In re Property Tax*, P D 51, August 11, 1972 (1972 WL 21342), *In re Property Tax P-D 107*, May 18, 1976 (1976 WL 24902). Accordingly, because the assessment for the 2008 property taxes did not occur until

September of 2008 when the Petitioner owned the property and the Petitioner qualified for the exemption at that time it should have been granted an exemption for the 2008 tax year

Alternatively, if the Department is correct and December 31 of the previous year is the determining date for tax status, then Hampton Friends of the Arts, Inc is still not liable for the assessed taxes Pursuant to §12-37 601, the person liable for taxes is the owner in fee of the property as of December 31 of the year preceding the tax year The Department concedes that the Petitioner was not the owner of the property as of December 31, 2007 Accordingly, the Petitioner was assessed in error

6 A summary of motions expected to be raised at the hearing and the appropriate authority underlying the motion

The Petitioner does not anticipate any motions at this time

7 A list of proposed witnesses and exhibits

Witnesses

Robert Hartellson, Director of Hampton Friends of the Arts, Inc

Dr James F Norris, III, Board Member of Hampton Friends of the Arts, Inc

Any other witnesses that may be identified by discovery, if any

Exhibits

Those documents listed by the Respondent

Deeds and Real Estate documents showing the transfer of the property to the Petitioner

Other documents that may be identified by discovery

8 A Statement regarding the necessity for discovery

The Petitioner does not believe discovery is necessary in this matter

9 Whether the party deems it necessary by the undersigned Judge to conduct a Pre Hearing Scheduling Conference or issue an order regarding motions, discovery, etc

The Petitioner does not need a Pre-Hearing Scheduling Conference and would respectfully request that the Court set a hearing date on the merits without any further discovery

10 The estimated time for the hearing

One to two hours

11 A range of proposed hearing dates for which all of the parties are available for a hearing on the merits in this case

October 1, 4, 6, 14-15, Nov 4, 9, 12, 16-17, 19

12 An e-mail address that the Court can use for Correspondence

bfiney@cmbluqm.nl.com

Respectfully submitted,



Marion C. Fairley, Jr.
THE FAIRLEY LAW FIRM, LLC
304 Lee Avenue
Post Office Box 661
Hampton, South Carolina 29924
(803) 943-6444

September 16, 2010
Hampton, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Hampton Friends of the Arts,)	
PO Box 68)	NOTICE OF REQUEST FOR CONTESTED
Hampton, SC)	CASE HEARING
)	
v)	Date <u>June 28, 2010</u>
)	Docket No <u> </u> ALJ- <u> </u> <u> </u>
SC Dept of Revenue)	(to be assigned by ALC)

Notice is hereby given that Hampton Friends of the Arts Inc does hereby appeal the decision issued by the above named agency and dated June 23, 2010, a copy of which is attached Please provide a brief statement regarding the issue(s) for which the hearing is requested and the relief requested

This appeal from a property tax dispute involving real property owned by the Hampton Friends of the Arts, Inc , a non profit corporation and qualified 501(c)(3) entity The HFA, Inc purchased a building in Hampton County to use in its operations on March 4, 2008 In September of 2008 Hampton County assessed the property for taxes and submitted a tax bill to HFA Inc HFA, Inc protested the assessment of property taxes because it is exempt from property taxes under S C Code Anno §12 37 220(A)(4) and the South Carolina Constitution The South Carolina Department of Revenue denied HFA, Inc 's appeal The issues presented are

- 1) 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
- 2) Whether the assessment of property taxes in September of 2008 is the proper trigger for property tax liability such that HFA Inc , as the owner of record of the property on the date of assessment, would exempt it from paying any property tax for the 2008 tax year

Enclosed is a check in the amount of \$100 00 for the applicable filing fee in this matter

Hampton Friends of the Arts
PO Box 68
Hampton, SC 29924

Represented by Attorney

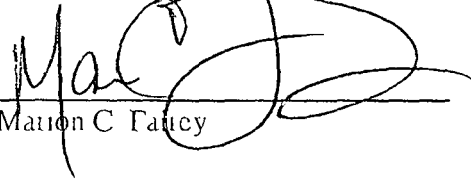
Not represented by CPA

MARION C FAHEY JR
The Fahey Law Firm
PO Box 661
Hampton, SC 29924
803 943 6444

CERTIFICATE OF SERVICE

I hereby certified that I, Maion C. Fancy, Jr. on the 28th day, 2010, in Hampton, South Carolina served a copy of the foregoing Request for Contested Case Hearing on all parties to this matter by depositing the same in the United States Mail postage paid and addressed as follows

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


Maion C. Fancy

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 5130 Telecopier (803) 898 5147

June 23 2010

Marion C Fahey, Jr , Esquire
PO Box 661
Hampton, SC 29924

Re Department Determination
Hampton Friends of the Arts, Inc

Dear Mr Fahey

Enclosed is the South Carolina Department of Revenue's Determinations in the above-referenced matter. If you disagree with the Determination, you may request a contested case hearing before an Administrative Law Judge. If you choose to pursue such remedy, you must do so within 30 days of the date of this letter. If you fail to respond within this time limitation, you will lose your right to appeal the Department Determination and your protest will be ended. Should you desire a contested case hearing, you must complete the enclosed request form and mail it, along with a \$100 filing fee, to the Administrative Law Court at the address stated on the form's instruction sheet.

The Administrative Law Court rules require that you also send me a copy of your request. My address is as follows: PO Box 12265, Columbia, SC 29211.

Yours truly,

OFFICE OF GENERAL COUNSEL FOR LITIGATION


Sean G. Ryan
Counsel for Litigation

SGR:jmo

Enclosures

DEPARTMENT DETERMINATION

Taxpayer

Hampton Friends of the Arts Inc
PO Box 68
Hampton, SC 29924

Period Involved

2008 Property Tax

Matter in Dispute

Is the taxpayer's property exempt from property taxes for the 2008 tax year?

Tax	\$1,484.00
Interest	<u>27.57*</u>
	\$1,511.57

*Interest is accrued through May 19, 2009

Determination

The taxpayer's property is not exempt from property taxes for the 2008 tax year.

Relevant Facts

- 1 The taxpayer is a non profit eleemosynary corporation
- 2 On March 4, 2008 the taxpayer purchased real property located at 103 Lee Avenue in Hampton, South Carolina, (Lee Avenue property) for the purpose of producing and exhibiting performing arts events. Prior to the taxpayer's purchase, the Lee Avenue property was privately held and not exempt from property taxes.
- 3 On October 27, 2009, the taxpayer filed an Application for Exemption for the Lee Avenue property. The Department of Revenue (Department) granted the taxpayer an exemption for 2009, but did not grant the taxpayer an exemption for 2008. The Department granted the 2009 exemption pursuant to S.C. Code Ann. § 12-37-220(B)(24) (Supp. 2009), because the taxpayer is a non profit using the property for the promotion of the arts.
- 4 On October 7, 2009, the taxpayer wrote the Department tendering payment in the amount of \$6,544.45 for what the taxpayer termed its 'pro rata share of the

property taxes and penalties for 2008” According to the letter, the taxpayer tendered this payment under protest and requested a refund

Analysis

The Taxpayer's Property Is Not Exempt

It is undisputed that the taxpayer is exempt from property taxes for year 2009 and the subsequent years it owns the subject property. What is at issue is whether the taxpayer's property is exempt from property taxes for the portion of 2008 that the taxpayer owned the property. The taxpayer argues that since it qualifies for exemption from property taxes under § 12-37-220(B)(24), once it acquired the property in March of 2008, the property was no longer subject to property taxes. Applicable statutes and case law demonstrate that the taxpayer's argument is incorrect.

In South Carolina, the taxable status of property is determined on the 31st day of December next preceding the tax year. Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976). Simply stated, if a property is subject to property taxes on December 31st, it is subject to property taxes for the following year. This is based on S.C. Code Ann. § 12-37-900 (Supp. 2009) which states in part:

Every person required by law to list property shall, annually, between the first day of January and the first day of March, make out and deliver to the auditor of the county in which the property is by law to be returned for taxation a statement, verified by his oath, of all the real estate which has been sold or transferred since the last listing of property for which he was responsible and to whom and of all real and personal property possessed by him, or under his control, on the thirty-first day of December next preceding.

The present matter involves 2008 property taxes for the Lee Avenue property. Pursuant to Atkinson and § 12-37-900, the 2008 tax status of the Lee Avenue property is determined on December 31, 2007. It is undisputed that on December 31, 2007, the Lee Avenue property was subject to property taxes and not tax exempt. Because the Lee Avenue property was not tax exempt on December 31, 2007, the property is subject to 2008 property taxes.

The taxpayer does not dispute that the property is subject to property taxes for the portion of 2008 prior to its purchase of the property. Instead, the taxpayer argues that the 2008 property taxes for the Lee Avenue property should be apportioned between the percentage of the year it owned the property, and the percentage of the year the previous owner owned the property. Under the taxpayer's theory, the portion of the taxes attributed to the previous owner are collectable, but the portion attributed to when the

taxpayer owned the property are not collectable because the taxpayer qualifies for exemption from property taxes under § 12-37 220(B)(24)

The South Carolina Supreme Court addressed a similar argument in Atkinson. In that case, Atkinson Dredging sought to have the property taxes assessed against its dredging equipment apportioned so that it only paid property taxes for the portion of the year that its equipment was located in South Carolina. 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. 65-1644¹ on possession or control on the 31st day of December next preceding the tax year in question."

Atkinson, 266 S.C. at 369-370, 223 S.E.2d at 596. As the Atkinson Court recognized, property taxes are determined by the status of the property on December 31 of the previous year, and such taxes are not to be apportioned. Because the Lee Avenue property was not tax exempt on December 31, 2007, the property is subject to taxes for 2008. Furthermore, the taxpayer is not entitled to have the property taxes apportioned so that it is not taxed for the period of time that it owned the property. Id.

June 23, 2010

¹Section 65-1644 is the predecessor to § 12-37-900.

The Fairey Law Firm, LLC

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

MARION C FAIREY JR

bfairey@embarqmail.com

February 24 2010

Via Facsimile (803) 898 5822 & U S Mail

Adrian Shealy
South Carolina Department of Revenue
301 Gervais Street
Post Office Box 125
Columbia, South Carolina 29214

Re SID/SFX 2406555
Hampton Friends of the Arts, Inc

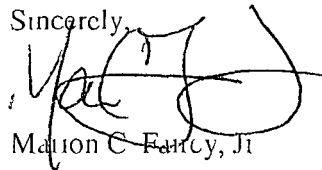
Dear Ms Shealy

This is to formally notify you of our intent to appeal your determination contained in your letter of January 25 2010 in reference to the above-named claim for tax refund. While your letter indicates we must provide you with notification of our intent within thirty days the publication CID-26 from the Department's website entitled "Tax Appeal Procedure for State Assessed Property Tax Refund Claim," Section 1(E) indicates we may file an appeal within ninety days. Nevertheless, as the letter is being sent to you within thirty days, I trust this is a non issue.

I believe we have already submitted all pertinent information, but I have included a copy of our original request for refund for your convenience. I look forward to hearing from you and the Office of General Counsel. We would request a conference.

Please accept my kindest regards

Sincerely,



Marion C. Fairey, Jr

MCF/jcc

APP0043

cc Office of General Counsel, SC Department of Revenue
Rob Hattellson
Jamic Norris

1

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 FAIRLY JR

bfairey@embargmail.com

October 7, 2009

Via United States First Class Mail and Certified Mail, RRR

South Carolina Department of Revenue
Property Division
301 Geivars Street
Post Office Box 125
Columbia South Carolina 29214

Hampton County Tax Collector
Ira B Brooks
Post Office Box 87
201 Jackson Avenue, West
Hampton, South Carolina 29924

Re Hampton Friends of the Arts Property Tax Tax Map 119 07 34 006 Tax Receipt
Number 014696 08 3, 2008 Property Tax Bill

To whom it may concern

I am writing with respect to the above-referenced property tax bill addressed to the Hampton Friends of the Arts for the old B C Moore building that was purchased by the Hampton Friends of the Arts on March 4, 2008. On behalf of the Hampton Friends of the Arts, we are respectfully tendering the \$6544.45, which represents the pro rata share of the property taxes and penalties for 2008 tax year for the above referenced property under protest and are requesting a refund of those taxes under S C Code §12-60-470. Please allow this letter to serve as the Petition of the Hampton Friends of the Arts for a refund.

Statutory Claim Information

Name of Taxpayer	Hampton Friends of the Arts, Inc (FOA)
Fed Taxpayer ID	26 0824879
Tax Period	2008

APP0045

Tax Description	<i>Ad valorem</i> property tax and penalties for Hampton County Tax Map No 119 07-34 0006, Tax Receipt No 14696 08 3
Amount at Issue	\$6544 45
Statement of Facts	<p>FoA is a non profit eleemosynary corporation who has been qualified by the IRS as a 501(c)(3) organization and Registered as a non profit corporation by Mark Hammond, South Carolina Secretary of State as of August 11, 2007</p> <p>On March 4 2008 FoA purchased the above reference property for \$200,000 00 FoA is exempt from property tax under S C Code §12 37 220(A)(4) and at all times FoA has occupied and used the above referenced property for its public and charitable purpose of producing and exhibiting performing arts events Accordingly, FoA should not be subject to or liable for any property tax during the periods it owned the building for the 2008 tax year</p>
Basis for Relief	FoA is entitled to a refund for property taxes and penalties paid under protest for the tax year 2008 on the above-referenced property under S C Code Anno §12 37 220(A)(4)
Proper Classification of Property	Property tax exempt under §12 37 220(A)(4)

In further support of the position of the FoA, please refer to the attached exhibits

- 1 August 11, 2007 South Carolina Certificate of Incorporation of a Non-Profit Corporation
- 2 August 3, 2007 Articles of Incorporation of FoA
- 3 IRS Designation of 501(c)(3) status

Please let us know if there is any additional information you may require and accept my kindest regards

Sincerely,

Marion C Farley, Jr

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@embargmail.com

October 7, 2009

Via United States First Class Mail and Certified Mail, RRR

South Carolina Department of Revenue
Property Division
301 Gervais Street
Post Office Box 125
Columbia, South Carolina 29214

Hampton County Tax Collector
Ira B Brooks
Post Office Box 87
201 Jackson Avenue, West
Hampton, South Carolina 29924

Re Hampton Friends of the Arts Property Tax, Tax Map 119 07-34 006 Tax Receipt
Number 014696-08-3, 2008 Property Tax Bill

To whom it may concern

I am writing with respect to the above referenced property tax bill addressed to the Hampton Friends of the Arts for the old B C Moore building that was purchased by the Hampton Friends of the Arts on March 4, 2008. On behalf of the Hampton Friends of the Arts, we are respectfully tendering the \$6544.45, which represents the pro rata share of the property taxes and penalties for 2008 tax year for the above referenced property under protest and are requesting a refund of those taxes under S C Code §12-60-470. Please allow this letter to serve as the Petition of the Hampton Friends of the Arts for a refund.

Statutory Claim Information

Name of Taxpayer	Hampton Friends of the Arts, Inc ("FoA")
Fed Taxpayer ID	26-0824879
Tax Period	2008

APP0047

Tax Description	<i>Ad valorem</i> property tax and penalties for Hampton County Tax Map No 119-07-34 0006, Tax Receipt No 14696 08 3
Amount at Issue	\$6544 45
Statement of Facts	<p>FoA is a non-profit, eleemosynary corporation who has been qualified by the IRS as a 501(c)(3) organization and Registered as a non-profit corporation by Mark Hammond South Carolina Secretary of State as of August 11, 2007</p> <p>On March 4, 2008, FoA purchased the above-reference property for \$200,000 00 FoA is exempt from property tax under S C Code §12-37-220(A)(4) and at all times FoA has occupied and used the above-referenced property for its public and charitable purpose of producing and exhibiting performing arts events Accordingly, FoA should not be subject to or liable for any property tax during the periods it owned the building for the 2008 tax year</p>
Basis for Relief	FoA is entitled to a refund for property taxes and penalties paid under protest for the tax year 2008 on the above referenced property under S C Code Anno §12 37 220(A)(4)
Proper Classification of Property	Property tax exempt under §12-37 220(A)(4)

In further support of the position of the FoA, please refer to the attached exhibits

- 1 August 11, 2007 South Carolina Certificate of Incorporation of a Non Profit Corporation
- 2 August 3, 2007 Articles of Incorporation of FoA
- 3 IRS Designation of 501(c)(3) status

Please let us know if there is any additional information you may require and accept my kindest regards

Sincerely,

Marion C Fairey, Jr

Transcript of the Testimony of
HAMPTON FRIENDS OF THE ARTS V SCDOR

Date: December 2, 2011

CREEL COURT REPORTING, INC
Condensed Transcript and Word Index

1230 Richland Street
Columbia, SC 29201
Phone (803) 252-3445 / (800) 822-0896
Fax (803) 799-5668
Email contact@creelreporting.com
Internet www.creelreporting.com

1 STATE OF SOUTH CAROLINA
 2 ADMINISTRATIVE LAW COURT DIVISION
 3 Docket No 10-ALJ-17-0538-CC
 4 Hampton Friends of the Arts)
 5 Petitioner)
 6 v)
 7 South Carolina Department of)
 8 Revenue)
 9 Respondent)
 10
 11 ADMINISTRATIVE HEARING
 12
 13 Thursday December 2 2010
 14 10 04 a m - 10 40 a m
 15
 16 The hearing before the Honorable John D McLeod
 17 was taken at the Edgar A Brown Building 1205
 18 Pendleton Street Suite 224 Columbia South
 19 Carolina on the 2nd day of December 2010 before
 20 Christine A Cortright Court Reporter and Notary
 21 Public in and for the State of South Carolina

1 THE COURT This is docket 10 ALJ 17 0538 contested
 2 case, Hampton Friends of the Arts versus South
 3 Carolina Department of Revenue Mr Ryan
 4 excuse me Y'all are reversed today
 5 MR RYAN Good morning Your Honor
 6 THE COURT And Mr Fairey
 7 MR FAIREY Yes Your Honor
 8 THE COURT Gentlemen it seems like to me what we
 9 have is a matter of law I mean it doesn't
 10 seem to be much factual dispute is it?
 11 MR FAIREY We agree We were talking about that
 12 beforehand Your Honor I think the only
 13 the only factual issue that we really had was
 14 whether the tax bill was sent to my clients or
 15 was it sent to the prior owners of the
 16 property And we have an exhibit to submit
 17 Your Honor
 18 THE COURT Well, my time is your time The more
 19 you choose to abbreviate this you know the
 20 more I agree with it I mean I'm all for
 21 that
 22 MR FAIREY I understand
 23 THE COURT How do you wish to proceed?
 24 MR FAIREY Your Honor if and I don't think
 25 there's an objection If we can present the

1 API EARANCES
 2
 3 Marion C Fairey Jr Esquire
 4 FAIREY LAW FIRM
 5 304 Lee Avenue
 6 Hampton South Carolina 29924
 7 Attorney for the Petitioner
 8
 9 Sean G Ryan Esquire
 10 South Carolina Department
 11 of Revenue
 12 301 Gervais Street
 13 P O Box 12265
 14 Columbia South Carolina 29711
 15 Attorney for the Respondent
 16
 17 INDEX PAGE
 18 ORAL ARGUMENT 4
 19 MR FAIRLY 4
 20 MS RYAN 11
 21 MR FAIREY 18
 22 MS RYAN 23
 23 MR FAIRLY 27
 24 Certificate 32
 25
 26 EXHIBITS
 27 Petitioner's Exhibit Number One 4
 28 (Fax Bill)
 29 (This Exhibit was retained by the ALC)
 30
 31 STIPULATIONS
 32 It is stipulated and agreed that this hearing
 33 is being taken pursuant to the rules of the
 34 Administrative Law Court and the South Carolina Rules
 35 of Civil Procedure

1 exhibit I think we can just argue the case
 2 without the presentation of a witness
 3 THE COURT That was sort of what I was heading
 4 towards so -
 5 MR RYAN I have no problem with that exhibit
 6 coming in Your Honor
 7 THE COURT All right You want to have it marked,
 8 please?
 9 MR FAIREY We would We've had them pre marked
 10 COURT REPORTER Petitioner's One Your Honor
 11 THE COURT Petitioner's One is admitted without
 12 objection Is that right?
 13 (Petitioner's Exhibit Number One was admitted into
 14 evidence)
 15 MR RYAN Yes, Your Honor
 16 THE COURT All right Mr Fairey
 17 ORAL ARGUMENT BY MR FAIREY
 18 MR FAIREY May it please the court, Your Honor?
 19 I'm here today I have with me Mr Rob
 20 Harrelson director of Hampton Friends of the
 21 Arts and Reverend Jamie Norris who is a board
 22 member of the Friends of the Arts Friends of
 23 the Arts is a non profit elcemosynary that was
 24 created in 2007 It's undisputed It has
 25 charitable immunity from the IRS It was

Page 5

1 one of the primary reasons it was purchased was
 2 or created was to purchase an abandoned
 3 storefront next door to the theater where the
 4 Arts Council operated to store props to have
 5 Arts practices and other programs And that's
 6 how it's been used since it was purchased The
 7 building was owned by a local family The
 8 Friends of the Arts purchased the arranged
 9 to purchase it in 2007, but for reasons I guess
 10 that the sellers chose the closing didn't
 11 actually occur until March 4 of 2008 And the
 12 deed was recorded shortly thereafter
 13 THE COURT Were not the taxes prorated?
 14 MR FERRY That was not handled That was not part
 15 of the closing Taxes weren't even mentioned
 16 in the closing documents Now since -- to pay
 17 the tax to avoid the problem and that's why we
 18 submitted the exhibit the parties did pay
 19 they after the fact prorated the taxes But
 20 our position is is that under the law that the
 21 tax because it became exempt before the tax
 22 was levied, and there s Supreme Court authority
 23 on this, that the taxes - this property is tax
 24 exempt for the -
 25 THE COURT All right You have two positions

Page 6

1 One, that its tax exempt and failing that
 2 it's exempt for the portion of the year that
 3 you owned it Isn't that right?
 4 MR FAIREY Well yes And there's a third one
 5 And that is is if the taxes are owed at all
 6 they're owed and liable from the sellers
 7 because they were the ones who owned it as of
 8 December 31, 2007 which I think is the
 9 position of the State And under that I
 10 think under any scenario the Hampton Friends of
 11 the Arts would be entitled to a refund of the
 12 taxes that they paid The case that we believe
 13 governs us is Myrtle Beach versus Holiday And
 14 I have copies to hand up And actually I have
 15 a lot of materials to hand up I can do it now
 16 or after the argument
 17 THE COURT Let s just wait until after argument I
 18 would be interested - and I've read the case
 19 MR FAIREY Yes, sir
 20 THE COURT It first struck me that it dealt
 21 specifically with governmental entities and not
 22 non profits And I then read the
 23 interpretations made of that case by the Tax
 24 Commission which allowed, liberally allowed
 25 churches to come within the ambit of that case

Page 7

1 So both of you may want to address that Go
 2 ahead
 3 MR FAIREY And I have those to hand up Your
 4 Honor, those varied opinions from not only the
 5 Tax Commission but the Attorney General as well
 6 interpreting the tax scheme in South Carolina
 7 in the way that the court addressed it in
 8 Holiday And that is that the liability for
 9 the tax may be set as of a date certain and
 10 there are a lot of reasons to do that To ease
 11 the government and the administration in
 12 collecting taxes
 13 THE COURT Date certain being the date of the
 14 actual assessment?
 15 MR FAIREY The date - when I say date certain I
 16 mean the statute says that the person who owns
 17 the property on December 31st is liable for the
 18 tax That's what it says The process of
 19 taxation however is complicated as I'm sure
 20 Your Honor is aware First of all, the
 21 legislature has to approve a budget and then
 22 the comptroller has to determine what the
 23 levies are and then that comes to the county
 24 auditor All this is by statute The county
 25 auditor then has to record the levies in the

Page 8

1 tax book by the property by their appropriate
 2 value and then creates a duplicate which he
 3 then gives by statute to the treasurer who s
 4 charged with collecting the tax And under the
 5 statute and it's been interpreted this way by
 6 the Attorney General's Office historically
 7 it's at that point when the treasurer when
 8 the auditor gives the duplicate to the
 9 treasurer that the treasurer then has a warrant
 10 to go and collect the taxes And taxes are
 11 typically collected from September 15th to
 12 January 15th at the end of the tax year Of
 13 course Holiday went through that whole
 14 scenario It addressed all the statutes and
 15 how the tax procedure in South Carolina worked
 16 to reach that determination that if the
 17 property becomes exempt before the actual tax
 18 is levied, then the property is exempt from the
 19 tax And in this case that works because even
 20 though the liability of the tax rests with the
 21 owner as of December 31st, because the tax
 22 wasn't levied until after the property was
 23 exempt there would be no tax that year So
 24 he s liable for zero tax And that is our
 25 position in a nutshell The decisions I will

1 hand up from the Tax Commission and the AG's
 2 office Your Honor is exactly right In 1972
 3 the Tax Commission exempted a church from
 4 taxation even though they acquired property in
 5 the middle of the year in 1973 The Attorney
 6 General gave the opinion that the when the
 7 Farmers Home Administration acquired property
 8 I assume through foreclosure in the middle of
 9 the year but before the levy of the tax in
 10 September that the tax was - the property was
 11 exempt from taxation in that year October of
 12 1974 the Attorney General in a situation where
 13 a private I think shooting club owned
 14 property and they transferred it to the Nature
 15 Conservancy in the middle of the year but
 16 before the tax was levied in September the
 17 Attorney General gave the opinion that the
 18 property was exempt from taxes for that year
 19 Specifically saying whether or not property is
 20 exempt from taxes for the year is to be
 21 determined as of its taxable status date which
 22 ordinarily is when the assessment is levied and
 23 the tax is due or becomes a lien on the
 24 property Since the word taxation ordinary
 25 includes a determination of the rate of the

1 taxation I have ever heard
 2 MR FAIREY Well thank you Your Honor
 3 THE COURT Yes
 4 MR RYAN Just my luck I get to follow the best one
 5 he's ever heard Good morning Your Honor
 6 Sean Ryan on behalf of the Department of
 7 Revenue
 8 THE COURT Yes
 9 ORAL ARGUMENT BY MR RYAN
 10 MR RYAN As explained, I don't think the facts in
 11 here are in dispute I think there's going to
 12 be some disagreement as to who should be
 13 sitting on this side of the table if he's
 14 discussing refunds and who the tax bills are
 15 sent to We'll get to that What we're here
 16 about is whether or not the purchaser of
 17 property can make property exempt in the middle
 18 of the year because of when they purchased it
 19 Petitioners here purchased property in March
 20 2008 And after purchasing that property they
 21 applied to the Department for an exemption
 22 The Department denied that exemption because
 23 taxable status of the property determines
 24 whether you get an exemption And the taxable
 25 status of the property is determined by

1 levy and the imposition of the levy as an
 2 essential part of the sovereign powering
 3 process it follows that the property will not
 4 ordinarily be deemed as taxed until the tax is
 5 levied 1976 South Carolina Tax Commission
 6 same type of analysis 1979 Attorney General
 7 same analysis And then September 1983 the
 8 same analysis The Office of the Attorney
 9 General at the time former Judge Stevens
 10 writing again for the Attorney General saying
 11 the property becomes a fixed charge upon the
 12 auditor's delivery to the county treasurer of
 13 the tax duplicate as required by the statute
 14 Such delivery must be made not later than
 15 September 30th Upon receipt of the tax
 16 duplicate the treasurer begins collecting
 17 taxes with taxes being due between September
 18 15th and January 15th Thus taxes become fixed
 19 charged when the tax duplicate is delivered to
 20 the treasurer We think the statutory scheme
 21 sets it up so that if it's exempt before the
 22 levy then it's exempted And that's our
 23 position in a nutshell
 24 THE COURT Well, that is beautifully succinct I
 25 must say the best explanation of the process of

1 December 31st of the year preceding the tax
 2 bill And
 3 THE COURT Well how do you explain these other
 4 decisions by the Department that seem to be to
 5 the contrary?
 6 MR RYAN The decisions are the - the decisions he
 7 references mostly are of the Attorney General's
 8 Office And they date back prior to the
 9 decision in Atkinson Dredging which I will
 10 hand up to the court And they are not
 11 consistent with the Supreme Court's holding in
 12 Atkinson Dredging In that case the Supreme
 13 Court said the taxable status of the property
 14 as its determined on 12/31 of the preceding
 15 year it doesn't matter if the property moves
 16 or is sold during the next preceding year the
 17 liability is fixed as of that date And always
 18 the liability fixed, its fixed as to the owner
 19 of that date We do not go ahead Your
 20 Honor
 21 THE COURT Unless Westlaw has lied to me the
 22 Holiday case has not been overruled So it
 23 would seem to me that the Supreme Court would
 24 say that they were overruling Holiday
 25 MR RYAN I do not mean to stand before you and to

Page 13

1 say that Holiday has been overruled because I
 2 don't think it has been overruled I think
 3 your interpretation of Holiday that you first
 4 discussed was correct That case is limited to
 5 government entities and municipal entities
 6 That case went into great detail to discuss the
 7 different standard of review of an exemption
 8 with the government as opposed to a private
 9 entity There would be no need to go into that
 10 analysis if the analysis applied equally to
 11 private and public
 12 THE COURT Well, what about the churches? They are
 13 not governmental entities
 14 MR RYAN Correct I wish I had a better reason
 15 for why the churches in the past decisions got
 16 treated the way they are I think they got, in
 17 this state the right people to do the right
 18 what they wanted And since then, churches
 19 have their own statutory treatment that treats
 20 them different than everybody else
 21 THE COURT Well and that was going to be my next
 22 question or comment for answer by you both
 23 Most of this stuff is pretty old At least
 24 Holiday was in the forties wasn't it?
 25 MR RYAN Yes Your Honor

Page 14

1 THE COURT And there have been substantial changes
 2 in the taxing statutes since then I believe
 3 the five year rotation on reassessment is
 4 relatively new Is it not? That's just one of
 5 the things But that that may come into
 6 play There may be some statute that has
 7 changed the whole playing field Go ahead
 8 But both of you keep that in mind and try to
 9 address it
 10 MR RYAN Your Honor I'm going to carry on with
 11 the church exemption statute Which is 12 37
 12 227 part (d) That clearly says that churches
 13 in the middle of the year get the exemption and
 14 the prior owner is not liable
 15 THE COURT Well wait a minute And that's
 16 something I missed So there's a statute that
 17 specifically awards to churches an exemption of
 18 the type he's seeking?
 19 MR RYAN Correct Your Honor As Your Honor well
 20 knows we cannot interpret the code in a way
 21 that would render any act of the legislature's
 22 superfluous And to follow their argument
 23 would render that statute that section 12 37
 24 220(d), to be unnecessary because everyone
 25 would get in the middle of the year

Page 15

1 THE COURT All right Well let me address Mr
 2 Fairey just a minute Keep your seat That's
 3 something that comes in to the construction of
 4 the statute where they have specifically said
 5 that in regard to churches and hadn't
 6 specifically said it in respect to other non
 7 profits May blow against you Mr Fairey so
 8 you be prepared to address that in your reply
 9 Thank you
 10 MR RYAN All right In order to understand why
 11 our case is the way it is, it's important to
 12 understand what this how the process
 13 functions That is the county has to figure
 14 out a milage rate And a milage rate helps
 15 determine how much property taxes everybody
 16 owns everybody owes The milage rate
 17 reflects the amount of taxable property that's
 18 within the county The county needs to know
 19 have a fixed date how much property is going
 20 to be subject to tax because they need to
 21 figure out a percentage of that tax a
 22 percentage of that property value to assess as
 23 property taxes Under the petitioner's theory
 24 what property is subject to tax is always in
 25 flux The county will never know exactly which

Page 16

1 property is going to be included in their total
 2 value Under that theory if that be the case
 3 come September they would be issuing bills on
 4 a milage rate that would most likely be
 5 inaccurate A property would no longer be
 6 subject to tax, they depended on that property
 7 from that tax in determining how much is owed
 8 and now the tax is the county is not going
 9 to have enough money to operate
 10 THE COURT All right Let me stop you there and
 11 I'll say this again to Mr Fairey so he may
 12 wish to counter it But I do have the thought
 13 and have long had the thought that there's got
 14 to be some stability in the taxing system As
 15 much as I despise taxes like everybody else
 16 there's got to be stability in the system that
 17 allows the counties and the state, but
 18 primarily the counties to plan their year So
 19 that's consideration to me and you may to
 20 address that
 21 MR RYAN Your Honor we don't dispute that 2008
 22 property taxes are not their personal
 23 liability It's not the liability of Hampton
 24 Arts It's the liability of the owner on 12/37
 25 12/31/2007 The people who they purchased

Page 17		Page 19	
1	the property from are the ones personally	1	at the same time there is no specific provision
2	liable Unfortunately there is a decision the	2	in the exemption statute that deals with
3	Oconee County decision which I will hand up to	3	governments municipalities what Holiday dealt
4	the court from when Judge Stephens over here	4	with Nor are there other charitable
5	The property itself is still subject to those	5	organizations that the Attorney General's
6	taxes But they personally are not liable If	6	opinions dealt with such as the Nature
7	they have a dispute on taxes they paid because	7	Conservancy Those are things that are not
8	they paid somebody else's taxes which they	8	specifically addressed as to proration or as
9	did their dispute is either with the prior	9	the church exemption is So my argument would
10	owner or if they want a refund of those taxes	10	be is I'm not sure exactly when section (d) was
11	that's a matter for the county The Department	11	added or if that's been in the code since the
12	has no role in issuing a refund of county	12	beginning of time But you know but that's
13	taxes The Department also has no role in who	13	something that the history of this is very
14	receives the county tax bill That's the	14	convoluted with respect to the exemption
15	county determines if they dispute that who	15	statutes But the history of the statutes that
16	the - if the county tax bill is sent to the	16	relate to when a tax is levied when the
17	wrong party that's not an issue for the	17	when it becomes a charge on the property those
18	Department The only issue the Department gets	18	statutes have basically been unchanged since
19	to rule on is are you entitled to an exemption	19	the early thirties I do want to shortly
20	The Department says you're not entitled to an	20	address the Atkinson decision because I thought
21	exemption because that has to be set on a fixed	21	Your Honor made a very good point That did
22	date in order for this whole process to	22	not overrule Holiday Atkinson is a different
23	function That fixed date as its consistency	23	decision And Atkinson doesn't dictate a
24	been is 12/31 the preceding year It's not in	24	different result If Holiday was before the
25	dispute that on 12/31 of the preceding year	25	court today they could I think find the exact
Page 18		Page 20	
1	this property was not tax exempt Thank you	1	same way today and not be at odds with
2	THE COURT That is an aspect of this that I did not	2	Atkinson Atkinson dealt with personal
3	pick up in my review of it And it's another	3	property, not real property The issue in
4	thing that gives me pause I certainly won't	4	Atkinson was the situs of the property on the
5	make a quick decision in this matter Mr	5	date December 31 not its exempt status The
6	Fairey?	6	property in Atkinson didn't become exempt
7	ORAL ARGUMENT BY MR FAIREY	7	during the year It simply moved to another
8	MR FAIREY Your Honor first to address the and	8	state And the issue in Atkinson I think the
9	you're right these are old statutes and these	9	owner of the property in the case said well we
10	are old cases But the statutes that are	10	moved our prop we moved from Charleston in
11	discussed in the Holiday case are the same	11	February to Virginia Beach And Virginia Beach
12	statue I mean you can look at the history	12	taxed us because it was there on July 31st and
13	You can see they go back to 1942 to 1932	13	Charleston taxed us because it was there on
14	There are no real changes here What I did	14	December 31st the year before, and so we paid
15	note was - and I wish I were a little more	15	double taxes And that was the argument that
16	prepared to deal with the issue about the	16	was at issue in Atkinson I think Atkinson is
17	churches But the exemption statute, I mean	17	totally consistent with Holiday All Atkinson
18	this is the - this is the annotations and	18	says is, is that yes there has to be stability
19	amendments of the exemption statute And it	19	to the tax code There has to be a date
20	appears that just from the history that this	20	certain when we say on this date certain
21	thing has been amended and amended and	21	this is the date upon which we fix liability
22	amended and amended But what I would say is	22	And there's actually a very I think, well put
23	this The specific reference to churches and	23	hypothetical in the Atkinson case that
24	I understand you know it maybe cuts against	24	basically says it's unfair because if somebody
25	it as far as statutory interpretation goes but	25	purchases a car on Christmas Day and loses it

1 in a fire before the first of the year there
 2 are no taxes. But if it burns up two days
 3 after the first of the year he owes the full
 4 tax for the year. There certainly are things
 5 that are in the code that act that way to
 6 stability, for planning purpose so there is
 7 some you know cohesiveness in the
 8 administration of the tax code. All Holiday
 9 says it doesn't really change that result.
 10 All Holiday says is we know on this date if you
 11 own the property you're liable for the tax.
 12 It doesn't. Atkinson doesn't address what
 13 happens if the tax becomes if the property
 14 becomes exempt before the actual tax is levied.
 15 The other issue I will bring up to Your Honor
 16 exemption is not just based on statute in South
 17 Carolina it's constitutional. These people
 18 have a constitutional exemption from taxes.
 19 And which raises a question as to whether it's
 20 a violation of the constitution to have to pay
 21 tax on exempt property. But in any event the
 22 - as Holiday recognizes the statute which
 23 definitely fixes a date or time when tax
 24 liability shall attach doesn't do away with the
 25 government having to take the necessary steps

1 in the process to levy the tax. This is an
 2 unusual situation. This is not a situation
 3 where, and I wholly agree with Your Honor, if
 4 somebody sells property on January 1st and
 5 doesn't account for the taxes in their
 6 contract, they owe the tax for the year. I
 7 don't think there's any question about that.
 8 But they owe it because on the date that the
 9 tax was levied the property was still taxable.
 10 Unless you have this very unique and specific
 11 situation where the property is transferred to
 12 a non-profit to a state or local government,
 13 to the US government, as the case is to some
 14 other non-profit like the Nature Conservancy
 15 before the tax is levied. That's the only type
 16 of situation where this problem is going to
 17 arise. But because the sovereign doesn't have
 18 the power to tax until it does all the
 19 necessary steps to issue the tax, if the
 20 property becomes exempt before that time we
 21 think that it should be exempt from the tax.
 22 And that's totally consistent with Holiday and
 23 we think that can be read. And I think the
 24 Supreme Court would say if you have two
 25 decisions that seem to be in conflict they

1 need to be interpreted in a way so that they
 2 both carry their authority. And I think that's
 3 exactly what we have here. And I think I've
 4 addressed all Your Honor's points. If I
 5 haven't I'll be happy to be reminded.
 6 THE COURT: Well you're going to get another
 7 chance.
 8 MR FAIREY: Okay.
 9 ORAL ARGUMENT BY MR RYAN
 10 MR RYAN: I'll have to remember to address all your
 11 arguments. I'll start with one that you just
 12 gave us and that is the constitutional
 13 argument, is it constitutional for us to tax
 14 them. And as I stated originally, we are not
 15 holding them liable for this tax so they are
 16 not being unconstitutionally taxed. In fact
 17 it goes to the fact that they're not being
 18 taxed is why it doesn't matter if they're tax
 19 exempt or not. These are the taxes of
 20 12/31/2007 owner. They paid them. We didn't
 21 you know why they paid them is not at
 22 issue. But we're not holding them liable for
 23 it. That's important to understand. Also,
 24 going back to the Holiday decision. Again I
 25 don't think it's been overruled. And if you

1 read page, I believe it's page 13 of the
 2 opinion, it says as stated by the plaintiffs in
 3 its brief if the present owners of the
 4 property or a private citizen or a
 5 corporation sections 2569 and 2571 of the 1942
 6 code would undoubtedly apply. Those sections
 7 deal with taxes again the taxes, being a lien
 8 on the property and the property being subject
 9 to sale at tax sale. By that saying that
 10 doesn't apply I think that section is holding
 11 out that this only applies when this is a
 12 municipality that we're dealing with. I'll
 13 take that to - why this - this case and the
 14 holding of that can function in our system. If
 15 it's a municipality that's going to buy the
 16 property and it's going to take it off the tax
 17 rolls of what's taxable the municipality knows
 18 what's coming. They know to plan for that in
 19 this process and it won't be taken by surprise.
 20 Unlike on the plaintiff's theory where on
 21 August 31st let's say I have a - I own a ten
 22 million dollar piece of property and I have
 23 been paying taxes on that piece of property
 24 the county is dependent on my taxes. I sell it
 25 to their group. Under his theory those taxes

1 are no longer due But by that point the
 2 county has already determined its milage rate,
 3 they've already closed their books, they
 4 probably already printed their tax bills But
 5 all of that is dependent upon the the rate
 6 that they chose and the amount of tax everyone
 7 is receiving is assuming they're going to get
 8 and dependent upon that they're going to get
 9 the taxes from my ten million dollar property
 10 Under the plaintiff's theory my ten million
 11 dollar property is no longer subject to tax
 12 The county is now going to run at a deficit
 13 It's not going to have enough money to fund its
 14 own budget On the other hand if it were set
 15 on 12/31 as the Department asserts which is
 16 an absolute matter of necessary that problem
 17 is not at issue They knew at 12/31 the owner
 18 of 12/31 was me my ten million dollar
 19 property I'd still be hable for the tax The
 20 code is replete with use of the 12/31 date If
 21 you own property and you have a duty under 12
 22 37 900 to file a return between January and
 23 March for all property you own on 12/31/07,
 24 selling that anywhere in that period doesn't
 25 change that I mean the code says you owe duty

1 what he thinks is a unique situation could
 2 actually reek havoc on the whole property
 3 system and I would not be overstating to say
 4 that it could devastate the property system in
 5 the counties of this state
 6 THE COURT Well increasing the value of the
 7 property ten million dollars certainly brings
 8 it into focus because it would be a substantial
 9 amount of taxes due on that And that county
 10 could well be hamstrung by missing that amount
 11 of tax
 12 ORAL ARGUMENT BY MR FAIREY
 13 MR FAIREY Your Honor just to quickly address
 14 that This is not I know Holiday dealt with
 15 municipalities but it's been interpreted much
 16 wider than that And the issue about
 17 interfering with the planning of the counties
 18 I'll just say this And I'll use one example
 19 from the Attorney General's opinions The
 20 small business and this is the most recent
 21 one Small Business Administration issue loans
 22 to small businesses They default In the
 23 middle of the year the Small Business
 24 Administration forecloses They become the
 25 owner of the property before the tax is levied

1 if you own it on 12/31 you're liable for
 2 it you have to file a return about it That
 3 is inconsistent in saying well it doesn't
 4 matter if its not actually been attached to the
 5 tax yet Your Honor, there s just no way this
 6 property system can function with the way their
 7 argument goes and unfortunately is not limited
 8 to this - this isn't as rare an instance as
 9 you would think Because the Department
 10 uniformly applies tax laws to all exemptions
 11 There is an exemption if you are declared fully
 12 disabled I'm not sure if it's military
 13 disability or full disability Let's say 12/31
 14 you own property but you're not fully disabled,
 15 so you owe property taxes You're declared
 16 January 1st that you're now fully disabled
 17 You're no longer subject to property taxes
 18 Under their argument you now don't owe any
 19 property taxes for the year But under the
 20 proper interpretation of the statute on 12/31
 21 of the preceding year you were, so the tax on
 22 the property is subject to tax for the full
 23 remaining year It's the only way We need
 24 the consistency for the system to function and
 25 we apply it across the board So to allow them

1 Local government can t plan for that They
 2 don't know that that's going on They can t
 3 deal with that They county government can't
 4 deal with that either But yet the Attorney
 5 General interpreted the statute in that
 6 particular case, too, in the same way that
 7 we're asking it to be interpreted Until --
 8 THE COURT That would be consistent in Holiday
 9 MR FAIREY It would be consistent with Holiday
 10 They cited Holiday
 11 THE COURT But that's a governmental entity
 12 MR FAIREY It is a governmental entity But it's
 13 not a governmental entity that s the example
 14 that counsel gave was if a municipality buys
 15 property they know what they're doing They
 16 know what tax liability they're going to lose
 17 But that's not the case in all of these
 18 situations That's not a justification to
 19 overlook Holiday or have it apply differently
 20 For one entity under the same statute the
 21 exemption statute, it's the same statute It
 22 says exempt number one municipalities in
 23 state entities Number two hospitals and
 24 charitable charitable hospitals That type
 25 of thing Number three charitable

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1 eleemosynary foundations like this I mean it
 2 doesn't differentiate any further than that
 3 And there's no rational basis to differentiate
 4 from them And, in fact, the Tax Commission
 5 and the Attorney General have not
 6 differentiated them in the past until this
 7 recent interpretation in this particular case
 8 I understand the need to have a uniform system
 9 of taxation I don't think this disrupts that
 10 at all I think it may cause a hiccup here or
 11 there But it's being applied in a consistent
 12 way And it's also being applied in a way that
 13 it's true to the statutory scheme with which we
 14 have to deal with And that is liability may
 15 be set on a certain date but the tax isn't
 16 levied until the statutory requirements are
 17 met The state has to go through the procedure
 18 to do that And when the levy happens, the
 19 property is exempt then it should be exempt
 20 THE COURT Thank you All right Well I'll tell
 21 you what I'm going to ask you to do please
 22 And I don't mean right this minute, although
 23 there's a room out there if y'all want to sit
 24 down after you get out of the courtroom and
 25 confer But I want you to agree upon the

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1 issues I want you to list them Then I want
 2 each of you to prepare me a brief in the form
 3 of a proposed order treating those issues in
 4 the same sequence that you've listed them so
 5 that I can easily compare the two I won't
 6 promise you a real prompt decision I have two
 7 or three things on my plate right now that have
 8 got me stumped And I want you all to be more
 9 helpful than these other attorneys have and
 10 give me a good brief I don't want you to be
 11 too argumentative I want you to write it as
 12 if it was going to be the order I just
 13 finished going through one where it was just
 14 simply too much argument in it Be very
 15 careful to stay within the facts You all have
 16 stipulated those and I think you all will swap
 17 these these proposed orders as they come to
 18 me If anybody's got any qualms about the
 19 facts, then you should get back in touch and
 20 agree on those too Is there anything else we
 21 need to do housekeeping wise?
 22 MR RYAN Just Your Honor a time line 30 45
 23 days?
 24 THE COURT I'll leave that to you gentlemen Okay?
 25 Anything else?

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1 MR FAIREY None
 2 THE COURT All right We'll be adjourned then
 3 (There being nothing further, the hearing concluded
 4 at 10 40 a m)

The Fairey Law Firm, LLC

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Post Office Box 661
Hampton South Carolina 29921
(803) 943 6114
fax (803) 943 5517

MARION C FAIREY JR

jfairey@emba.com

October 7 2009

Via United States First Class Mail and Certified Mail, RRR

South Carolina Department of Revenue
Property Division
301 Gervais Street
Post Office Box 125
Columbia South Carolina 29214

Hampton County Tax Collector
Ira B Brooks
Post Office Box 87
201 Jackson Avenue, West
Hampton South Carolina 29924

Re Hampton Friends of the Arts Property Tax Tax Map 119-07 34-006 Tax Receipt
Number 014696-08-2008 Property Tax Bill

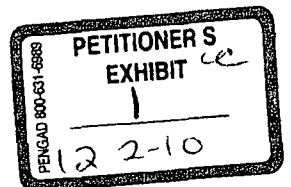
To whom it may concern

I am writing with respect to the above referenced property tax bill addressed to the Hampton Friends of the Arts for the old B C Moore building that was purchased by the Hampton Friends of the Arts on March 4 2008. On behalf of the Hampton Friends of the Arts we are respectfully tendering the \$6544.45 which represents the pro rata share of the property taxes and penalties for 2008 tax year for the above referenced property under protest and are requesting a refund of those taxes under S.C. Code §12-60-470. Please allow this letter to serve as the Petition of the Hampton Friends of the Arts for a refund.

Statutory Claim Information

Name of Taxpayer	Hampton Friends of the Arts Inc (FOA)
Fed Taxpayer ID	26 0824879
Tax Period	2008

APP0058



Tax Description	<i>Ad valorem</i> property tax and penalties for Hampton County Tax Map No. 119-07-4-0006 Tax Receipt No. 14696-08.
Amount at Issue	\$6544.45
Statement of Facts	<p>FoA is a non-profit, eleemosynary corporation who has been qualified by the IRS as a 501(c)(3) organization and Registered as a non-profit corporation by Mark Hammond, South Carolina Secretary of State as of August 11, 2007.</p> <p>On March 4, 2008, FoA purchased the above referenced property for \$200,000.00. FoA is exempt from property tax under S.C. Code §12-37-220(A)(4) and at all times FoA has occupied and used the above-referenced property for its public and charitable purpose of producing and exhibiting performing arts events. Accordingly, FoA should not be subject to or liable for any property tax during the periods it owned the building for the 2008 tax year.</p>
Basis for Relief	FoA is entitled to a refund for property taxes and penalties paid under protest for the tax year 2008 on the above referenced property under S.C. Code Anno. §12-37-220(A)(4).
Proper Classification of Property	Property tax exempt under §12-37-220(A)(4)

In further support of the position of the FoA, please refer to the attached exhibits:

1. August 11, 2007 South Carolina Certificate of Incorporation of a Non-Profit Corporation
2. August 3, 2007 Articles of Incorporation of FoA
3. IRS Designation of 501(c)(3) status

Please let us know if there is any additional information you may require and accept my kindest regards.

Sincerely,

Milton C. Furey, Jr.

The Stanley Company
PO Box 68
Hampton SC 29924

Mr Wilson P Tuten Jr
Hampton County Treasurer
PO Box 87
Hampton SC 29924

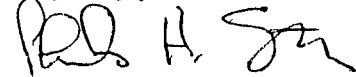
RE Property Taxes
101-103 Lee Avenue
Hampton SC 29924
Tax reference # 014573-07-3

Dear Mr Tuten

Enclosed please find our check in the amount of \$1 378 79 (\$1 198 94 taxes + 179 85 interest and penalties) representing our pro-rated portion of the 2008 property taxes due on the above referenced location

This property was sold by The Stanley Company to the Hampton Friends of the Arts Inc on March 4, 2008 We trust that this satisfies our obligation in this matter

Very truly yours



Philip H Stanley
The Stanley Company

cc Hampton Friends of the Arts Inc

/phs

HAMPTON COUNTY TAX COLLECTOR
 PO BOX 245 HAMPTON SC 29924
 F100 DELINQUENT OFFICE - WALKIN
 Enter Function

014696-08-3 Code P-PAID

STANLEY ALLAN F & ETAL
 *NW OWNRLOR 119-07-34-006
 -HAMPTON FRIENDS OF THE ARTS BC MOORES STORE
 PO BOX 57
 HAMPTON SC 29924

	Net	=	Tax	-	Homestead
County	6 225 81	=	6 225 81	-	00
City	1 060 03	=	1 060 03	-	00

LOST Cr 430 85

=====					
Total	6 854 99				
Penalty	1 028 25	15 00%	Pen Dt		
===== +					
	7 883 24	+	40 00	=	Total Due 7 923 24

TAX RECEIPT
 KEEP THIS COPY FOR YOUR RECORDS
 10/07/2009

Date 10/07/09 STB Prt P
 Date LYr 08
 1064-3541

R
 AD#09-01299 Issue Dt
 00/00/00
 Town HA Code LOR
 71 0 Certfy
 Replaced By
 Replaces
 Asst Abated
 Asst Added

CK# 106443541

8213

APP0061

HAMPTON COUNTY TAX COLLECTOR
 PO BOX 2 A1 291 SC 29924

TAX RECEIPT
 KEEP THIS COPY FOR YOUR RECORDS

RECEIPT NUMBER	PROPERTY ASSESSMENT	TAX LEVY	PROPERTY TAX	LOST	LESS EXEMPTION	NET TAX
014696-08-3	14,930	417 0	6225 81	301 17	00	5924 64
HAMPTON COUNTY						
CITY/TOWN OF HAMPTON	14,930	71 0	1060 03	129 68	00	930 35

APP0062

DISTRICT	NO ACRES	NO LOTS	NO BLDGS	REAL ASSESSMENT	PERSONAL ASSESSMENT
N		1	1	14 930	

SCHOOL TAX	SCHOOL BONDS	COUNTY TAX	FIRE PROTECTION	C/S SHORT	MUNICIPAL TAX
3015 86 +	313 53 +	2896 42 +	00 +	00 +	1060 03

PAY THIS AMOUNT BY JAN 15 2009 ▶

6854 99
PENALTY 15 -
1028 25
COST TO DATE
40 00
TOTAL PAID
7923 24

NAME AND ADDRESS OF PROPERTY OWNER(S)
 STANLEY ALLAN F & ETAL
 *HAMPTON FRIENDS OF THE ARTS
 PO BOX 57
 HAMPTON SC 29924

CK # 106443541

STB

PROPERTY LOCATION / DESCRIPTION
 MAP# 119-07-34-006
 BC MOORES STORE AD#09 01299
 6- 248900

RCPT DATE 10/07/2009 PAID
 IRA BROOKS - TAX COLLECTOR
 *** NOT FOR VEHICLE TAXES ***2008

2005 WL 2560796 (S C Admin Law Judge Div)

Administrative Law Court
State of South Carolina

*1 J R COTTINGHAM, PETITIONER
vs
OCONEE COUNTY ASSESSOR, RESPONDENT

Docket No 05-ALJ-17-0101-CC

September 19, 2005

APPEARANCES

n/a

FINAL ORDER AND DECISION

I Introduction

J R Cottingham (taxpayer) challenges the Oconee County Assessor's (assessor) determination that Cottingham is liable for property taxes for the 2004 tax year on two lots acquired at a tax sale. After exhausting the administrative review process before Oconee County, Cottingham paid the taxes under protest and brought the current matter before the Administrative Law Court.

II Analysis

Simply stated, the issue is whether Cottingham is liable for the 2004 taxes on the two properties he acquired at the Oconee County tax sale.

A *Applicable Facts*

The facts are essentially undisputed. At the October 2003 tax sale held by Oconee County, Cottingham purchased two lots. Following the expiration of the one year right of redemption period, Cottingham received in October 2004, deeds from the county to both properties. However, in addition, Cottingham also received notice that he was liable for the property tax on the two properties for the 2004 tax year. Cottingham disagreed and brought this contested case challenging the 2004 taxes.

B *Applicable Law Applied to Facts*

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 CJS Taxation § 60 (1954) By statute, South Carolina sets the event of liability as ownership on a 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 ^[FN1]

However, while dispositive of this case, such a conclusion fails to state the legally obvious To wit, the lack of personal liability in Cottingham does not mean the property itself is free of liability On the contrary, since the taxes for the 2004 year were assessed, due, and unpaid as of October 2004, the property came into Cottingham's ownership encumbered by a lien for the unpaid 2004 taxes See S C Code Ann § 12-39-140 and Town of Myrtle Beach v Holliday, 203 S C 25, 26 S E 2d 12 (1943) (once the tax books for the county close on September 30 of the tax year the taxes become a fixed charge transforming the inchoate lien created on December 31 of the prior year into an enforceable lien for collection of the unpaid taxes)

*2 Accordingly, as long as the taxes remain unpaid, the lien existing on Cottingham's property authorizes the county to sell the property in due course at a tax sale to collect the unpaid 2004 taxes See S C Code Ann Sec 12-45-180 (“If the taxes, assessments, and penalties are not paid before the seventeenth day of March [of the year following the tax year], the county treasurer shall issue his tax execution to the officer authorized and directed to collect delinquent taxes, assessments, penalties, and costs for their collection as provided in Chapter 51 of this title and they must be collected as required by that chapter”) Therefore, while no personal duty existed in Cottingham to pay the 2004 taxes, until payment is made by some party the property remains subject to sale for unpaid taxes

III Order

Accordingly, should Cottingham still desire a refund, the county shall refund the taxes paid based on the party's previously agreed upon valuation conclusion However, if the refund is made, the county may pursue collection for the unpaid taxes in the manner allowed by law

AND IT IS SO ORDERED

Ray N Stevens
Administrative Law Judge

FN1 When property is sold at a tax sale and is followed in due course by the issuance of a deed to

the new owner, no statutory authority requires the new owner to pay taxes based on prorating the tax according to the length of time of ownership for any intervening tax years. Instead, the full amount of the taxes are owed by the owner of the property on the applicable December 31 date.

2005 WL 2560796 (S C Admin Law Judge Div)
END OF DOCUMENT

INFORMATION GUIDE

Tax Appeal Procedures for State Assessed Property Tax Refund Claims



**South Carolina
Department of Revenue**

CID-26 (Rev 8/17/07) 9030

PURPOSE

This information guide explains the South Carolina Tax Appeals Procedure for state assessed property tax refund claims

I Initial Process

A You may seek a refund of property taxes by filing a claim for refund with the Department of Revenue (Department) The claim must be filed within three years of the time the return was filed or two years from the date of payment whichever is later If no return was filed the claim must be filed within two years from the date of payment

B A refund can only be sought if the Department originally assessed the property or you believes the property is exempt A refund cannot be had in a valuation matter

C The refund claim must specify

- 1 the taxpayer's name address and telephone number
- 2 the appropriate taxpayer identification number or numbers
- 3 the tax period or date for which the tax was paid
- 4 the nature and kind of tax paid
- 5 the amount which the taxpayer claims was erroneously paid
- 6 a statement of facts supporting the taxpayer's position
- 7 a statement outlining the reasons for the claim including any law or other authority upon which the taxpayer relies and the fair market value special use value if applicable and
- 8 the classification of the property the taxpayer believes is correct

D The Property Division of the Department will decide what refund is due if any and give you written notice of its decision

E If your refund claim is denied you can appeal by filing a written protest with the Department The protest must be within 90 days from the date of the denial The protest must also provide any information that was previously omitted but required by Section I C of this Information Guide

II Review By The Department of Revenue

A After you appeal you will be offered a conference with the person who denied your refund claim and if requested that person's supervisor The purpose of the conference is to give you a better understanding of the facts and issues and to also afford you the opportunity to present additional information At the Department's discretion the conference may be conducted by telephone After the conference if your protest is not resolved your file will be transferred to the Department's Office of General Counsel for Litigation

B The General Counsel's Office for Litigation will review your file and prepare a written Department Determination addressing the issues raised by your appeal Once the Department's Director approves the Determination it will be mailed to you

III Contested Case Hearing Before The Administrative Law Court

A You can request a contested case hearing before the Administrative Law Court if you disagree with the Department Determination

B The request for a contested case hearing must be made in writing within 30 days after the date of the Determination

C The rules of the Administrative Law Court will control from this point forward

D Your refund denial will become final if you do not request a contested case hearing within 30 days

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,

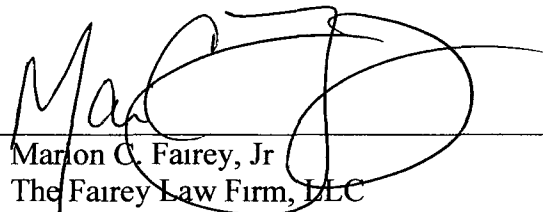
v

South Carolina Department of Revenue

Respondent

CERTIFICATION OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties



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bfairev@faireylaw.com

January 30, 2012
Hampton, South Carolina

STATE OF SOUTH CAROLINA

)

CERTIFICATE OF SERVICE

)

COUNTY OF HAMPTON

)

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

PERSONNALLY APPEARED before me Valorie Crews, who being duly sworn,
deposes and says that she is employed at the office of The Fairey Law Firm, attorney for the
above referenced entity, that she served and caused to be served the original and fifteen (15)
copies of the Record on Appeal for the above referenced case, US Postal Service, first class mail
postage prepaid, addressed to

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

Sean G Ryan
301 Gervais Street
P O Box 12265
Columbia, SC 29211

Valorie Crews
Valorie Crews

Sworn to before me this
30th day of January 2012

Amber Adams

Notary Public for South Carolina
My Commission Expires 11/22/2020

