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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable John D McLeod
Administrative Law Judge

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DOCKET NO 10-ALJ-17-0538-CC

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Hampton Friends of the Arts, Appellant,

v

South Carolina Department of Revenue, Respondent

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# FINAL BRIEF OF RESPONDENT

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Sean G Ryan (Bar No 76585)
Managing Counsel for Litigation
Milton G Kimpson (Bar No 7917)
General Counsel for Litigation
Harry T Cooper, Jr (Bar No 1383)
Deputy Director
PO Box 12265
Columbia, SC 29211
803-898-5375/803-898-5147 (Fax)
Attorneys for Department of Revenue

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PO Box 12265
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803-898-5375/803-898-5147 (Fax)
Attorneys for Department of Revenue

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## STATEMENT OF THE CASE

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

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

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

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

## STATEMENT OF FACTS

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

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

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[1]ALC Order, p 2, para 2 (R , p 2)

[2]ALC Order, p 2, para 3 (R , p 2)

[3]ALC Order, p 2, para 5 (R , p 2)

[4]ALC Order, p 2, para 7 (R , p 2)

[5]ALC Order, p 2, para 8 (R , p 2)

[6]ALC Order, p 2, para 9 (R , p 2)

On October 7, 2009, the taxpayer wrote the Department appealing the denial of an exemption for 2008 [7] 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 [8] The Department Determination denied the exemption because the taxability of property is determined on December 31 of the preceding year [9] The Lee Avenue property was privately held and subject to property taxes on December 31, 2007, therefore the Department determined the property was not exempt from 2008 ad valorem property taxes [10]

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

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

> 1-23-610 Quasi-judicial and judicial review of decisions of administrative law judge
>
> * * *
>
> (B) The review of the administrative law judge's order must be confined to the record The reviewing tribunal may affirm the decision or remand the case for further proceedings, or it may reverse or modify the decision if the

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[7] ALC Order, p 2, para 10 (R , p 2)

[8] ALC Order, p 2, para 11 (R , p 2)

[9] ALC Order, p 2, para 11 (R , p 2)

[10] ALC Order, p 2, para 11 (R , p 2)

> substantive rights of the petitioner has been prejudiced because of the finding, conclusion, or decision is
>
> (a) in violation of constitutional or statutory provisions,
>
> (b) in excess of the statutory authority of the agency,
>
> (c) made upon unlawful procedure,
>
> (d) affected by other error of law,
>
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion

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

> This court may not substitute its judgment for that of the ALC as to the weight of the evidence on questions of fact This court may affirm the decision, remand the case for further proceedings, or "reverse or modify the decision if the substantive rights of the petitioner have been prejudiced

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

## ARGUMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature Chem-Nuclear Sys , LLC v S C Bd of Health & 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)

As the ALC recognized, the South Carolina Code creates tax requirements and liabilities for owners of real property and the Code specifically places those requirements and liabilities on the person or entity that owns the property on December 31 [11] 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-

[11] ALC Order, p 7 (R , p 7)

37-610 so that it now reads as follows

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

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

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

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[12]ALC Order, p 8 (R , p 8)

[13]ALC Order, p 8 (R , p 8)

during the ensuing year [14] This lien attaches to all real and personal property and such constitutes a first lien

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

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

The ALC correctly recognized that South Carolina case law supports determining the taxability of property on December 31 of the year preceding the tax [15] In Atkinson Dredging Co v Thomas, 266 S C 361, 223 S E 2d 592 (1976), the Supreme Court held that the taxable status of property is determined on December 31 of the year preceding the tax In Atkinson Dredging Co , the owner of dredging equipment disputed 1971

[14]ALC Order, p 8 (R , p 8)

[15]ALC Order, pp 8-10 (R , pp 8-10)

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

> While there is some appeal to Atkinson's argument that its taxes should be apportioned on the basis of the time its dredge and other equipment were physically in the County during 1971, such an argument is available to many citizens of this and other states as illustrated by the following example contained in the lower court's order
>
> > "If a Charleston taxpayer had bought an automobile on Christmas Day, 1974, and that automobile had been totally destroyed on New Year's Day, he would, none the less, be liable to pay property tax for the entire year 1975 On the other hand, if he had bought an automobile on January 2, 1975, he would owe no personal property tax on that for the year 1975 In an ideal state, it would probably be well to levy the personal property tax on a daily basis However, this would be an administrative impossibility Under our taxing system, there have always been inequalities and inequities resulting from the fact that **the tax for an entire year is contingent under Sec 65-1644 on possession or control on the 31st day of December next preceding the tax year in question** "

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

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

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

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

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

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

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

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

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

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

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

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

when that property is acquired by a municipality [16] The Holliday opinion does not address property acquired by private or nonmunicipal tax exempt entities Because the property in the present matter was not acquired by a municipality, the Holliday holding is not applicable

As the ALC recognized, Holliday goes into detail to explain the strict construction applicable to exemptions for private property as opposed to the liberal construction applicable to exemptions for municipal property Holliday, at 25, 26 S E 2d at 14 [17] The taxpayer's interpretation of Holliday makes no distinction between municipalities and all other tax exempt entities If such interpretation were correct, there would be no need for the Holliday Court to explain the standard applicable to exemptions for private property as opposed to exemptions for municipal property The present matter involves an exemption to private property, therefore the exemption at issue in this matter is subject to strict construction Id Because the Holliday decision is based upon the liberal construction given to municipalities and the present matter requires a strict construction, the Holliday decision is not applicable to the present matter

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

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

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

[17]ALC Order, p 12 (R , p 12)

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

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

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

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

[18] ALC Order, pp 13-16 (R , pp 13-16)

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

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

[19] ALC Order, pp 13-15 (R , pp 13-15)

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

In addition the ALC properly recognized that the citations within the Holliday decision further demonstrate that the holding of that case applies only to property acquired by municipalities[20] As the ALC Order discusses, the Holliday opinion explicitly acknowledges the presumption that tax laws operate on private land and not public land[21] Moreover, the Holliday Court chose to quote language from the State v Snohomish County, 71 Wash 320, 128 P 667 (1912), decision recognizing that public policy and constitutional declaration prevent taxation of municipal property As the ALC recognized, the Holliday Court utilized Snohomish solely for its analysis of property acquired by a municipality[22] The Snohomish decision includes a discussion of when taxes are due and payable, yet our Supreme Court did not include that discussion in its citation Instead, the Holliday Court focused solely on the language of Snohomish addressing the ability to tax municipally held property If the Holliday Court intended its opinion to address private tax exempt entities, and if its opinion were truly based upon whether taxes were due and payable as the taxpayer asserts, it would undoubtedly utilized different or additional language from the Snohomish decision

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

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[20]ALC Order, pp 15-16 (R , pp 15-16)

[21]ALC Order, p 15 (R , p 15)

[22]ALC Order, p 15 (R , p 15)

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

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

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

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

The taxpayer asserts the taxability of property immediately ceases when that property is sold to a tax exempt entity As the ALC recognized, if the taxpayer's assertion were correct, there would be no need for § 12-37-220(D) of the South Carolina Code [23] 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,

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[23] ALC Order, pp 16-17 (R , pp 16-17)

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

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

As the ALC recognized, the taxpayer's argument requires an interpretation that renders § 12-37-220(D) superfluous and unnecessary[24] In interpreting statutes, courts must presume the Legislature did not intend a futile act, but rather intended its statutes to accomplish something TNS Mills, Inc v South Carolina Dept of Revenue, State ex rel McLeod v Montgomery, 244 S C 308, 314, 136 S E 2d 778, 782 (1964) Moreover, when the Legislature adopts an amendment to a statute, it is presumed that the Legislature intended to change the existing law Key Corp Capital, Inc v County of Beaufort, 373 S C 55, 60, 644 S E 2d 675, 678 (2007) As explained earlier, the taxpayer's argument stems from its incorrect interpretation of the Holliday case If the taxpayer's interpretation were correct, the relief it seeks would have been the law of this State from at least 1943, when Holliday was issued, forward If the law of this State already provided such relief, the Legislature would not have needed to enact subsection (D) and that subsection would not be a change to existing law The Legislature's 1999 amendment of § 12-37-220 to add subsection (D) demonstrates that the Legislature

[24]ALC Order, pp 17-18 (R , pp 17-18)

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

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

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

[25] Appellant's Initial Brief, p 14

220(D) that does not contradict its position in this matter Contrary to the taxpayer's assertion, § 12-37-220(D) is not a taxing statute and it does not create a new tax liability The only proper and reasonable interpretation of § 12-37-220(D) is that it creates a new exemption treatment for churches, wherein property acquired by a church becomes exempt immediately upon acquisition and not the following December 31 [26] This interpretation of § 12-37-220(D) demonstrates that the taxpayer's position in this matter is not correct As the ALC found, the taxpayer's position in this matter, if correct, would render § 12-37-220(D) superfluous and unnecessary [27] Moreover, under the taxpayer's position, enacting § 12-37-220(D) would not have changed existing law, as churches would have already received the treatment that § 12-37-220 provides, therefore such is not a permissible interpretation of South Carolina law

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

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

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

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

[27]ALC Order, pp 17-18 (R , pp 17-18)

[28]ALC Order, pp 18-20 (R , pp 18-20)

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

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

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

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

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

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

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

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

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

[29]ALC Order, p 20 (R , p 20)

[30]ALC Order, p 20 (R , p 20)

this decision misinterprets Holliday, and because this opinion does not address the standards applicable to exemptions, the ALC properly found that such case is not persuasive in this matter [31]

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

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

[31] ALC Order, p 20 (R , p 20)

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

The ALC properly ruled that the opinions and decisions relied upon by the taxpayer are not persuasive because they are not consistent with current South Carolina law [32] The taxpayer's brief puts forth the same opinions and decisions presented to the ALC For the same reasons the ALC found, these opinions and decisions are either inapplicable and/or inconsistent with current South Carolina law Therefore, as the ALC found, such are not persuasive and do not entitle the taxpayer to the relief it seeks

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

The ALC properly recognized that the taxpayer's theory in this case would have devastating consequence to the property tax system in South Carolina [33] Under the taxpayer's theory, the sale of property to any tax exempt entity eliminates that year's tax liability so long as the sale occurs prior to the property tax bills being mailed in

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[32] ALC Order, pp 18-20 (R , pp 18-20)

[33] ALC Order, pp 20-21 (R , pp 20-21)

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

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

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

[34]ALC Order, p 21 (R , p 21)

taxpayer's theory [35] By utilizing December 31 of the year preceding the tax, each county is able to definitively know which property will be subject to tax and which property will be tax exempt The counties are able to accurately determine millage and properly fund their operations Such accuracy is fundamental to the survival of the property tax system in this State The serious implications allowed under the taxpayer's theory demonstrate why such theory cannot be the law of this State The consistency, accuracy, and predictability ensured through the Department's method demonstrate that the Department's method is proper

## CONCLUSION

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

Sean G Ryan (Bar No 76585)
Managing Counsel for Litigation
Milton G Kimpson (Bar No 7917)
General Counsel for Litigation
Harry T Cooper, Jr (Bar No 1383)
Deputy Director
PO Box 12265
Columbia, SC 29211
803-898-5375/803-898-5147 (Fax)
Attorneys for Department of Revenue
ryans@sctax org
courtorders@sctax org

Columbia, South Carolina
February 7, 2012

[35] ALC Order, p 21 (R , p 21)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

The Honorable John D McLeod
Administrative Law Judge



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DOCKET NO 10-ALJ-17-0538-CC

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Hampton Friends of the Arts, Appellant,

v

South Carolina Department of Revenue, Respondent

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CERTIFICATE OF COUNSEL

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The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR

Sean G Ryan (Bar No 76585)
Managing Counsel for Litigation
Milton G Kimpson (Bar No 7917)
General Counsel for Litigation
Harry T Cooper, Jr (Bar No 1383)
Deputy Director
PO Box 12265
Columbia, SC 29211
803-898-5375/803-898-5147 (Fax)
Attorneys for Department of Revenue
ryans@sctax org
courtorders@sctax org

Columbia, South Carolina
February 7, 2012

**PROOF OF SERVICE**

I, Wanda C Grubbs, do hereby certify that I have caused to be mailed, postage prepaid, a copy of the Brief of Respondent in Hampton Friends of the Arts v South Carolina Department of Revenue, Docket No 10-ALJ-17-0358-CC, to Marion C Fairey, Jr , Esquire, The Fairey Law Firm, LLC, PO Box 661, Hampton, SC 29924, this 9 day of February 2012

Wanda C Grubbs

Wanda C Grubbs