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November 10, 2014

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Frank R. Mead, III vs. Beaufort County Assessor
Civil Action No.: 13-ALJ-17-0585-CC
Our File No: 11340 SPH
Appellate Case No: 2014-002355

Dear Ms. Kitchings:

Pursuant to your instructions, please find enclosed herewith a copy of the Order of the Honorable John D. McLeod, dated August 19, 2014, together with a copy of the Beaufort County Assessor's Motion for Reconsideration, filed August 28, 2014, from which the above captioned appeal this taken. Please be advised that our Motion for Reconsideration was not ruled on by formal order, but was denied pursuant to Rule 29 (D) SCALC.

By copy hereof to the Administrative Law Court and Burnett R. Maybank, III, attorney for Respondent, I am serving them with copies of the same.

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

Stephen P. Hughes

SPH/cab
Enclosure
cc: Burnet R. Maybank, III – w/ enclosure
Hon. John D. McLeod – w/ enclosure

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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Frank R. Mead, III,	)	Docket No. 13-ALJ-17-0585-CC
Petitioner,	)	
vs.	)	**ORDER**
Beaufort County Assessor,	)	
Respondent.	)	

STATEMENT OF THE CASE

Petitioner's Motion and Respondent's cross-motion for Summary Judgment involves whether Petitioner is eligible for the homestead exemption available under S.C. Constitution Art. X, § 3(i) and S.C. Code Ann. §§ 12-37-220(9), 12-37-250, and 12-37-252(A) (collectively, the "Homestead Exemption") for his property located at 89 Dune Lane, Hilton Head Island, South Carolina (hereinafter the "Subject Property") for the 2011 Tax Year and thereafter. In January 2011, Respondent Beaufort County Assessor determined that Petitioner was no longer eligible for the Homestead Exemption because he rented out the Subject Property for more than fourteen days in the prior year, and is thus not eligible for primary residence status under different code sections.

Petitioner and Respondent agree that the sole legal issue is whether "The homestead exemption under section 12-37-250 is only available to property that also qualifies for the preferential residential assessment ratio made available by section 12-43-220(c)." (Respondent's Memorandum of Law at pg. 2.)

Respondent argues that qualifying for the homestead exemption under the Constitutional (Art. X, § 3(i)) and statutory provisions (principally §§ 12-37-220(A)(9), 12-37-250, 12-37-252(A) and 12-37-290) relating to the homestead exemption is not sufficient. Respondent argues Petitioner must also meet the primary residence constitutional (Art. X, § 1(3)) and statutory provisions (§ 12-43-220(c)) as well. Petitioner contends that meeting the qualifications contained in the Homestead exemption constitutional provision and statutes suffices.

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FINDINGS OF FACT

Having carefully considered all testimony, exhibits, and arguments present at the hearing of this matter, and taking into account the credibility and accuracy of the evidence, I make the following findings of fact by a preponderance of evidence:

1. This Court has procedural and subject matter jurisdiction over this case.

2. The parties have exhausted their pre-hearing remedies. Furthermore, notice of the date, time, place and subject matter of the hearing was timely given to all parties.

3. Petitioner is the owner of a home on Hilton Head Island in Beaufort, South Caroline and is a resident of and is domiciled in Beaufort County. The home is his legal residence and has been since he purchased it in 1976. The ownership of the home has remained unchanged since 1976. Before 2011, Petitioner's residence was assessed at the 4% ratio applicable to both primary residences and Homestead exemption.

4. Petitioner was born in 1939. He has been over 65 years of age since 2004.

5. Petitioner qualified for the Homestead Exemption in 2005 and received the Homestead Exemption on his property from 2005 through 2010.

6. In 2011 Petitioner rented his house for more than 14 days and, as a result was no longer eligible for the primary residence 4% ratio.

7. The Beaufort County Auditor revoked the Homestead exemption for 2011 on the grounds that because Petitioner had lost his primary residence 4% assessment ratio by virtue of renting his property for more than fourteen days, his property also no longer qualified for the Homestead Exemption. In other words, she stated that a property owner has to qualify for primary residence status in order to qualify for the Homestead Exemption.

8. Mead appealed and the revocation was upheld by the County Board, and this appeal followed.

CONCLUSIONS OF LAW

Rule 68, SCALC, allows this Court to use the South Carolina Rules of Civil Procedure when there is no corresponding Court Rule. Therefore, Motions for Summary Judgment are governed by Rule 56 of the South Carolina Rules of Civil Procedure. Rule 56(c), SCRCP, provides that summary judgment shall be granted if it is shown "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Summary judgment should be granted "when plain, palpable and undisputed facts exist on which

reasonable minds cannot differ." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *NHC Homecare – South Carolina, LLC v. S.C. Dep't of Health & Envtl. Control*, 2013 WL 1804102 (S.C. Admin. Law Ct. 2013) (citing *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005)).

I. General

The South Carolina Constitution and statutes provide a host of property tax exemptions and special rules for farmers, manufacturers, individuals and others. The major exemptions or incentives for individuals are (1) agricultural use; (2) primary residence; and (3) Homestead Exemption. Each has its own separate requirements and each provides different incentives. For example, the agricultural use incentive requires an individual to own at least 5 acres of timber, and the incentive is a special fair market valuation which is usually well below the true fair market value of the property.

II. Homestead Exemption

Article X, § 3(i) of the South Carolina Constitution establishes a "homestead exemption" for persons sixty-five years of age and older, totally and permanently disabled or blind. Article X, § 3 provides nine exemptions, only two of which are for individuals. (The other is for household goods.) There is no exemption or other tax incentive provided in this Constitutional provision for primary residences.

S.C. Const. Art. X, §3(j) further provides that "[h]omestead exemptions from ad valorem taxation not specifically provided for in this section may be provided for by the General Assembly by general law." With authority granted by this Article of the Constitution, the General Assembly codified the Homestead Exemption principally in S.C. Code Ann. §§ 12-37-220(A)(9), 12-37-250, and 12-37-290. Under these three code sections, a person's dwelling place qualifies for the Homestead exemption when he or she (1) has been a resident of this State for at least one year and has reached the age of sixty-five years on or before December thirty-first; (2) has been classified as totally and permanently disabled by a state or federal agency having the function of classifying persons; or (3) is legally blind preceding the tax year in which the exemption is claimed.

Under § 12-37-250(A)(4)(a), "[t]he application for the exemption must be made to the auditor of the county and to the governing body of the municipality in which the dwelling place is located upon forms provided by the county and municipality and approved by the department." Once the initial application for the Homestead Exemption has been approved, the exemption "continues to be effective for successive years in which *the ownership of the homestead...remain unchanged.*" S.C. Code Ann. § 12-37-252(A) (emphasis added). As stated above, the appellant was granted the Homestead exemption in 2005 on the basis of his age. Ownership of the residence has remained unchanged.

The Homestead Exemption provides two incentives. Section 12-37-250(A)(1) exempts the first $50,000 of the fair market value of the "dwelling place." "Dwelling place" is defined in subsection (5) as "the permanent home and legal residence of the applicant." The second benefit is found in § 12-37-252(A) which provides: "***Notwithstanding any other provision of law***, property that qualifies for the homestead exemption *pursuant to section 12-37-250* is classified and taxed as residential on an assessment equal to four percent on the property's fair market value." (Emphasis added). This section was added in 1980

It is clear that Petitioner meets the requirements for the Homestead Exemption contained in § 12-37-250. He has been a resident of South Carolina for at least one year and is over sixty-five years of age. He applied for and was granted the Homestead Exemption in 2005, and he has done nothing since then that could be considered "a change affecting eligibility, and "the ownership of the homestead . . . [has] remain[ed] unchanged." *Id.*

Furthermore, [t]he exemption includes the dwelling place when...owned in complete fee simple...." The Subject Property, Petitioner's primary and permanent residence, is his dwelling place. Although there is no express definition for "dwelling place", whether property is considered a "dwelling place" is determined based on the facts. Petitioner has resided at the subject property since 1976. Every time the property is rented out, Petitioner temporarily rents an apartment to live in, always intending to return to the subject property once the rental period is over. The subject property is listed as Petitioner's address on his driver's license, and is where he receives his bills. He does not hold out any other property to be his primary residence, nor has he applied for the 4% legal residence assessment ratio for any other property.

III. Homestead Exemption vs. Primary Residence

Respondent's position is that Petitioner is not entitled to the Homestead Exemption because he no longer qualifies for the 4% primary residence classification. Stated another way, Beaufort County contends that in order to be eligible for the Homestead exemption, the property owner has to meet all of the qualifications for both the primary residence statute as well as the Homestead exemption statute. Simply put, as stated below, the Homestead Exemption and the primary residence classification are two ships in the night. The following summarizes the differences between the two.

A. <u>Different Constitutional Provision and Statutes</u>

The Homestead Exemption is created in the S.C. Constitution Article X, § 3 and is primarily codified in §§ 12-37-220(A)(9), 12-37-250, 12-37-252(A), and 12-37-290.

The primary residence preferential assessment ratio is found in a different constitutional provision, Article X, § 1. It is codified in a different Chapter of Title 12. (The Homestead exemption is in Chapter 37; primary residence is in Chapter 43.) It is codified in § 12-43-220(c). The "Fourteen Day Rental" rule is found in § 12-43-220(c)(7).

B. <u>Different Requirements</u>

The requirements for the incentives are different. The Homestead Exemption requires a person who is 65 or older, permanently disabled or blind who owns the dwelling place, see §§ 12-37-220(9), 12-37-250(A)(1) and 12-37-290. The primary residence statute requires a legal "primary" residence and not more than 5 contiguous acres owned by a person who does not claim legal residence in another state or the 4% assessment ratio on another residence in South Carolina and who does not rent the primary residence for more than fourteen days, see § 12-43-220(c).

C. <u>Different Incentives</u>

The actual incentives conferred on property owners are also different. Article X, § 3 provides a $10,000 homestead exemption, section 12-37-290 exempts the first $10,000 of fair market value and § 12-37-250 (A)(1) provides a $50,000 exemption. In addition, § 12-37-252(A) provides a 4% assessment ratio for homestead exemptions.

Section 12-43-220(c)(1) provides a 4% assessment ratio for primary legal residences. Other statutes, e.g. Local Option Sales Taxes, provide other credits for primary residences.

The fallacy of Beaufort County's argument is found in Respondent's brief in page 3: "Petitioner has argued further that one who satisfies the limited criteria set forth within those [Homestead exemption] statutes is qualified for the homestead exemption *as well as the 4% residential assessment ratio authorized by section 12-43-220(c).*" (Emp. added.) Petitioner has not argued that he is entitled to the 4% ratio authorized by § 12-43-220(c). The 4% assessment ratio which Petitioner is qualified for is found in an entirely different Code section and in a different Chapter of Title 12. The 4% assessment ratio for homestead exemption residences is found in § 12-37-252(A) – not § 12-43-220(c). This section states that "*[n]otwithstanding any other provision of law*, property that qualifies for the homestead exemption pursuant to Section 12-37-250 is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." (Emp. added.)

In enacting the 4% assessment ratio for persons entitled to the Homestead exemption in 1996, the General Assembly recognized that a person might meet the requirements for the Homestead Exemption but not the primary residence statute. Section 12-37-252(A) plainly states: "***Notwithstanding any other provision of law**, property that qualifies for the homestead exemption pursuant to section 12-37-250* is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." (Emphasis added).

If Respondent is correct – if a person has to meet the primary residence statutory requirements found in § 12-43-220(c) in order to be entitled to the 4% assessment ratio – then why would the General Assembly have enacted § 12-37-252(A)? (Stated another way, under Respondent's argument by definition a person would have already qualified for the 4% assessment ratio under § 12-43-220(c).) In construing statutes, courts must assume that the legislature intended to accomplish something through enactment of a statute and did not instead engage in futile or worthless action. *See Florence County Democratic Party v. Florence County Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). *See also Home Health Services, Inc. v. S.C. Dep't of Rev. & Taxation*, 333 S.C. 691, 511 S.E.2d 404 (Ct. App. 1999); *Purvis v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 283, 403 S.E.2d 662 (Ct. App. 1991) (*citing Charleston Television, Inc. v. S.C. Budget & Control Board*, 296 S.C. 444, 458, 373 S.E.2d 892, 900 (Ct. App. 1988), *rev'd on other grounds*, 301 S.C. 468, 392 S.E.2d 671 (1990)).

The Department of Revenue recognized this. In S.C. Rev. Rul. #97-18, the Department held that "the ownership and occupancy requirements for the Homestead exemption and for the

4% legal residence assessment ratio are the same." But then, in DOR Information Letter 99-4, the Department recanted and stated "SC Revenue Ruling #97-18 is hereby withdrawn."

D. Different Qualifying Properties

Section 12-43-220(c)(1) includes the legal residence and not more than five acres contiguous thereto. The Homestead exemption, section 12-37-250 is limited to $50,000 but has no acreage limitation.

Subsection 12-43-220(c)(1) includes property "owned totally or in part in fee or by life estate." The Homestead exemption, 12-37-250(j) contains similar language.

The primary resident subsection includes "additional dwellings located on the same property and occupied by immediate family members of the owner of the interest." The Homestead exemption contains no similar language.

Subsection 12-43-220(c)(2)(v) qualifies members of the armed services who are residents of other states but who have a permanent duty station in this state for primary residence. The Homestead exemption contains no such qualifier.

Subsection 12-43-220(c)(6) qualifies purchasers of property subject to time share vacation rentals for no longer the 90 days for the primary residence status. The Homestead exemption contains no similar qualifier.

Subsection 12-43-220(c)(8) allows a prorated primary residence assessment for persons who own less of 50% of the legal residence. The Homestead exemption contains no similar language.

III. Fourteen-Day Rental Rule Does not Apply to Homestead Exemption

A. General

Lastly, even if the requirements for primary residence and Homestead Exemption are largely the same, the fourteen-day rental rule still would not apply to the Homestead Exemption. The fourteen-day rule is contained in Chapter 43 at § 12-43-220(c)(7) (the primary residence statute). This section states: "Notwithstanding any other provision of law, the owner–occupant of a *legal residence* is not disqualified from receiving the four percent assessment ratio *allowed by **this item***" (emphasis added) if the taxpayer meets the requirements of Section § 280A(g) of the Internal Revenue Code ("IRC") and is otherwise eligible to receive the 4% assessment ratio. (To repeat, the subsection references "this item," not "this Chapter" or "Title 12." Even if it said "this chapter" it would not apply, as Homestead exemption is in a different chapter.)

In this case, the Homestead Exemption is not dependent upon legal residence, nor does its 4% assessment ratio derive from "this item," i.e. § 12-43-220(C). The Homestead 4% ratio derives from § 12-37-252(A) which states that "[n]otwithstanding any other provision of law, property that qualifies for the homestead exemption *pursuant to section 12-37-250*" is entitled to a 4% assessment ratio (emphasis added). There is no such similar cross-reference in any of the homestead exemption statutes to IRC § 280A(g).

In addition, both *Tolpa v. Beaufort County Assessor*, 08-ALJ-17-0088-CC and *Ford v. Beaufort County Assessor, supra* make clear that the purpose of the fourteen day rule contained in (c)(7) is to modify (or provide limited relief) to the no "rented . . . residences" sentence contained in § 12-43-220(c)(1). This sentence states:

> *If this property has located on it any* rented mobile homes or *residences which are rented* or any business for profit, this four percent value does not apply to those businesses or rental properties. (emp. added).

As the Court noted in *Tolpa, supra*, "Section 12-43-220(c)(7), *supra*, was added as an amendment in 2005 after the parent subsection was enacted in 2002. The obvious intent of the amendment was to prevent the strict disqualification by rental in (c)(1) . . . the 4% assessment to taxpayers who may have occasion to rent their legal residences for 14 days or less in the tax year in question." By contrast none of the multiple Homestead Exemption statutes contain this no "rented . . . residences" language. In summary, § 12-43-220(c)(1) relates exclusively to primary residences (for persons under the age of 65). It has no application to the Homestead exemption.

The DOR publication, South Carolina Property Tax (2013 ed.) discusses legal residences in section 217. The publication discusses Homestead Exemption in section 619. Section 217 notes that "a residence rented for more than 14 days during the tax year is disqualified." (*Id.* At pg. 8) Section 619 makes no reference to the 14 day rule or to section 12-43-220(c)(7)

In addition, the requirements for the Homestead exemption are repeated in four separate places Art. X, § 3(i); § 12-37-220(9); § 12-37-250; and § 12-37-290. None of these statutes or the Constitutional provision contain a fourteen day rule nor do they cross-reference the rule.

S.C. Code Ann. § 12-37-252(B) does refer to § 12-43-220(c) in two places, but neither reference hinges the applicability of the homestead exemption on whether the taxpayer qualifies for the primary residence ratio. In fact, the section relates only to the availability of a refund claim—not to eligibility for the exemption. According to that section:

> (B) When a person qualifies for a refund pursuant to Sections 12-60-2560 and 12-43-220(c) for prior years' eligibility for the four percent owner-occupied residential assessment ratio, the person also may be certified for a homestead tax exemption pursuant to Section 12-37-250. The refund does not extend beyond the immediate preceding tax year....
>
> . . .
>
> (C) Notwithstanding any other provision of law, if a deceased taxpayer failed to claim the assessment ratio allowed pursuant to Section 12-43-220(c) or the exemption allowed pursuant to Section 12-57-250, or both, before the date of the taxpayer's death, then the personal representative of the deceased taxpayer's estate is deemed the agent of the deceased taxpayer for purposes of the applications required pursuant to these sections and any claim for refund arising pursuant to resulting overpayments.

Moreover, if the General Assembly had sought to require that homestead exemptions meet the requirements contained in section 12-43-220(c), then it would have used the mechanism it has used elsewhere. For example, in Chapter 6 of Title 12, when the General Assembly seeks to limit the use of credits to legal residences that qualify under the primary residence statute (i.e., 12-43-220(c)), it uses the term "legal residence pursuant to Section 12-43-220(c)" or "legal residence that qualifies under Section 12-43-220(C)." *See, e.g.*, 12-6-3660(A) (limiting a credit for retrofitting taxpayer's legal residence to owners properties that qualify under 12-43-220(C)); 12-6-3665(A) (limiting credit for state sales tax paid on purchases used to retrofit taxpayer's legal residence to owners of properties that qualify under 12-43-220(C)); 12-6-3670 (limiting credit for property insurance premium payments to owners of properties that qualify under 12-43-220(C)).

It makes no more sense to require a person otherwise eligible for the Homestead exemption to also qualify for the primary residence statute than it does to say a person cannot qualify for the primary residence statute unless he or she also qualifies for the Homestead exemption (age 65 or older).

B. Section 12-43-220(c)(2)(i)

The remainder of Respondent's argument is based upon a reading of the anti-December 31st no proration statute, § 12-43-220(c)(2)(i). By way of background, property taxes are generally not prorated in South Carolina. *See* South Carolina Property Tax Manual, Part IV, § 310.1 ("Numerous opinions of the South Carolina Attorney General have stated that there is no proration when more than one person owns the property during the year.") The DOR or the assessor takes a "snapshot" of the property on December 31st of the prior year and taxes are

imposed on the value and usage of the property on that date for the entire following year regardless of subsequent change of usage or value, *e.g., Benson Investments, LP v. Lexington County Assessor*, 11-ALJ-17-0518 (2012) ("The taxable status of real property for a given year is to be determined as on December 31 of the proceeding tax year, S.C. Code § 12-337-900; *Atkinson Dredging Co. v. Thomas*, 226 S.C. 361, 223 S.E. 2d 592 (1976).") The Supreme Court described the issue in *Atkinson Dredging Co. v. Thomas*, 266 S.C. 361, 369-70, 223 S.E.2d 592, 596 (1976) as follows:

> 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 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 . . . on the 31st day of December next preceding the tax year in question.

So, a $600,000 commercial building which is owned by a law firm on December 31, 2012 is taxed at a 6% assessment ratio on a value of $600,000 for all of 2013 notwithstanding that the YMCA or other exempt entity purchases it on July 1, 2013. In such a case, the exemption would not start until 2014.

This exact issue was very recently before the Court in *Hampton Friends of the Arts v. Department of Revenue*, 401 S.C. 372, 737 S.E.2d 628 (2013). Hampton Friends of the Arts purchased taxable property in March 2008. "It is undisputed that prior to Appellant's purchase, the property was subject to property taxes on December 31, 2007." *Id.* at 374, 737 S.E.2d at 629. The Appellant was granted an exemption for the property from the DOR for 2009 property taxes and subsequent years. The DOR denied the exemption for 2008, and Hampton appealed the 2008 determination. The Supreme Court upheld the ALC's determination that the property was not exempt in 2008, stating: "...[Hampton] avers that, because it acquired the property prior to the tax levy for the 2008 tax year, the property became exempt and no tax is owed. We disagree, for the law is clear that property tax liability is determined as of December 31st of the preceding tax

year, regardless of the subsequent transfer to an exempt corporation or when the tax is actually levied." *Id.* at 375, 737 S.E.2d at 629. The Supreme Court concluded:

> Pursuant to settled law, the 2008 tax status of the Hampton County property was determined on December 31, 2007. Because the property was subject to property taxes as of December 31, 2007, the property is subject to 2008 property taxes.

Id. at 376, 737 S.E.2d at 630.

All § 12-43-220(c)(2)(i) does is reverse this December 31st no proration rule where property is purchased by someone entitled to the primary residence or Homestead exemption. That is clearly its sole purpose. It states:

> To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address *for some period* during the applicable tax year. A residence which has been qualified as a legal residence *for any part of the year* is entitled to the four percent assessment ratio provided in this item *for the entire year*, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 *for the entire year*, and for the homestead exemption under Section 12-37-250, if otherwise eligible, *for the entire year*. (Emp. added.)

This section merely authorizes the 4% assessment ratio for primary residences as well as the homestead exemption "for the entire year" in order to overrule the normal December 31st no-proration rule. Stated another way, a person over the age of 65 who buys a residence which was taxed as a second home (*i.e.*, 6%) on July 1, 2013, is entitled under the statute to the 4% for all of 2013. This subsection (c)(2)(i) was added by the General Assembly in 1999 in Action 100 (H.B. 3696). The Act Title makes this clear: "To amend Section 12-43-220, as amended, relating to classification and the applicable assessment ratio of property for purposes of the property tax, *so as to provide that owner-occupied residential property receiving the four percent assessment ratio retains that assessment ratio*, the residential exemption from school operating millage, *and the Homestead exemption, if applicable, for the entire year in which the ownership or use of such property changes* and to make conforming amendments." (Emp. added.)

Respondent vigorously argues that § 12-43-220(c)(2)(i) imposes the 14 day rule contained in § 12-43-220(c)(7) on homestead exemptions because of the cross-reference to Homestead exemptions contained in it. But that is not what the section states. It first states that

"[a] residence which has been qualified as a legal residence for any part of the year is entitled to the 4% assessment ratio *provided in this item* for the entire year . . . ." "This item" refers to § 12-43-220(c). The 4% assessment ratio for homestead exemptions is found in § 12-37-252(A).

Section 12-43-220(c)(i) goes on to cross-reference the homestead exemption as follows: "and for the homestead exemption *under § 12-37-250*, if otherwise eligible, for the entire year." As previously stated the 4% assessment ratio is not found in § 12-37-250 – but rather in § 12-37-252(A). Section 12-37-250 provides the requirements to qualify for the Homestead Exemption.

Alternatively and notwithstanding that the plain language of the homestead exemption compels the conclusion that Petitioner is entitled to the exemption, the ambiguity of the statutory regime should be resolved in favor of the taxpayer. As the Supreme Court recently stated in *Media General Communications, Inc. v. Department of Revenue*, 388 S.C. 138, 694 S.E.2d 525 (2010):

> "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." "The determination of legislative intent is a matter of law." "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." The best evidence of intent is in the statute itself: "What legislature says in the text of the statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature."

388 S.C. at 147-48, 694 S.E.2d at 529-30 (citations omitted).

In the context of a tax statute, it is a settled rule that ambiguities are resolved "against the government and in favor of the taxpayer." *See Hadden v. S.C. Tax Comm'n*, 183 S.C. 38, 46-47, 190 S.E. 249, 251 (1937) (noting that "where a tax statute is ambiguous or is reasonably susceptible of an interpretation that would exclude the person or subject sought to be taxed, any substantial doubt must be resolved against the government in favor of the taxpayer"); *see also Clark v. S.C. Tax Comm'n*, 259 S.C. 161, 169, 191 S.E.2d 23, 26 (1972) ("Revenue laws are generally construed in favor of the taxpayer and against the taxing authority."); and *Sutherland Statutory Construction* § 66:1 (6th ed.).

Admittedly, the general rule is that tax credits and exemptions are a matter of legislative grace and are strictly construed against the taxpayer. *M. Lowenstein & Sons, Inc. v. S.C. Tax Comm'n,* 277 S.C. 561, 290 S.E.2d 812 (1982). However, as the Supreme Court recently stated in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011):

> "This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. It does not mean that we will search for an interpretation in [the Respondent]'s favor where the plain and unambiguous language leaves no room for construction." It is "[o]nly when the literal application of the statute produces an absurd result will we consider a different meaning."

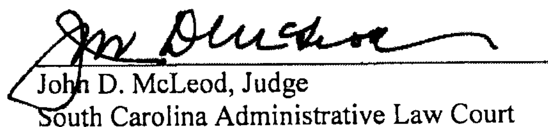
395 S.C. at 74-5, 716 S.E.2d at 881 (*citing State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008)). There is no absurd result with respect to the literal application of the statute's plain language and use of the statutorily defined terms utilized within the homestead exemption.

ORDER

Accordingly, based on the foregoing reasons, Beaufort's motion for summary judgment is denied and Petitioner's motion for summary judgment is granted. Specifically,

1. Petitioner Frank R. Mead, III, is entitled to the Homestead Exemption with a 4% tax assessment ratio on his legal residence for the tax year 2011 and subsequent years, and;
2. Respondent Beaufort County's application of the 6% tax assessment ratio to Petitioner's legal residence for the tax year of 2011 and subsequent years was unlawful.

AND IT IS SO ORDERED.

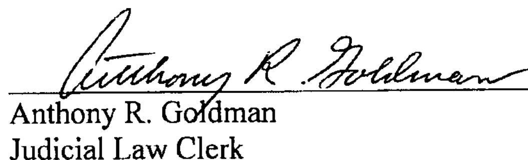


John D. McLeod, Judge
South Carolina Administrative Law Court

August 19, 2014
Columbia, S.C.

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Anthony R. Goldman
Judicial Law Clerk

August 19, 2014
Columbia, S.C.

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SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

FRANK R. MEAD, III, Petitioner,	)	DOCKET NO: 13-ALJ-17-0585-CC
vs.	)	MOTION FOR RECONSIDERATION
BEAUFORT COUNTY ASSESSOR, Respondent.	)	

Respondent Beaufort County Assessor hereby moves this Honorable Court pursuant to Rule 29(D), RPALC and Rule 59, SCRCP to reconsider and alter or amend its Final Order and Decision ("Order") filed on August 19, 2014.

INTRODUCTION

The Court determined the four percent residential assessment ratio and the Homestead Exemption are wholly divorced from one another and are "two ships in the night." However, the Court has neglected the rules of statutory construction that require that statutes 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. Duvall v. S.C. Budget and Control Bd., 377 S.C. 36, 659 S.E.2d 125 (2008). Respondent respectfully submits that the Homestead Exemption in Chapter 37 and the Four Percent Residential Assessment ratio are not "two ships in the night," but are part of the same general statutory law dealing with taxation of real property that **must** be construed together.

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ARGUMENTS

I. The Court failed to consider that Chapter 37 is not the sole determinant of Homestead Exemption availability and that §12-43-220(c) imposes an additional requirement for qualification of the Homestead Exemption.

The Order states that availability of the homestead exemption is governed exclusively by the provisions of §12-37-220, §12-37-250, and §12-37-252. The Order further provides that one who purports to satisfy the limited criteria set forth within those statutes is then qualified for the homestead exemption, as well as a 4% residential assessment ratio. Contrary to the Court's conclusion, however, Chapter 37 is not the sole determinant of the availability of the homestead exemption. The Order fails to consider that the homestead exemption is addressed not only within the referenced statutes in Chapter 37 of the code, but is also addressed, and additional requirements imposed, by the specific provisions of §12-43-220(c), in Chapter 43 of the code. Both chapters constitute parts of an overall statutory scheme encompassing taxation of real property, and both set forth specific provisions governing the availability of the homestead exemption. Any determination, therefore, of the eligibility of the subject property for the requested homestead exemption is necessarily dependent upon an appropriate interpretation of the relevant provisions of each of these chapters.

It is well settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together if possible to produce a single harmonious result. Joyner ex rel. Rivas vs. Rivas, 342 S.C. 102, 536 S.E. 2d 372 (2000). Thus any analysis of the availability of the homestead exemption does not end with consideration merely of §12-37-220, §12-37-250, and §12-37-

252. Equal consideration must also be given to §12-43-220(c), which specifically imposes additional requirements upon taxpayers seeking eligibility for the homestead exemption.

§12-43-220(c)(2)(i) provides:

> To **qualify** for the special property tax assessment ratio allowed by this item, [the preferential 4% residential assessment ratio available under Section 12-43-220(c)(1)] the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. **A residence which has been qualified as a legal residence for any part of the year is entitled to the 4% assessment ratio provided in this item for the entire year**, the exemption from property taxes levied for school operations pursuant to §12-37-251 for the entire year, **and for the homestead exemption under §12-37-250, if otherwise eligible, for the entire year.**

(emphasis added).

The plain language of §12-43-220(c)(2)(i) sets forth: (1) a specific reference to the homestead exemption under §12-37-250, (2) a specific recitation of additional requirements for eligibility for the homestead exemption under §12-37-250, and (3) a specific statement of legislative intent that the homestead exemption under §12-37-250 be available **only** to those properties meeting the requirements for the preferential residential assessment ratio set forth in §12-43-220(c)(1).

Thus, by the specific language of §12-43-220(c)(2)(i), **qualification** for the preferential residential assessment ratio provided by §12-43-220(c) is a prerequisite to eligibility for the homestead exemption under §12-37-250.

Despite the ruling of the Court, Chapter 37 does not stand alone as the only chapter relating to the Homestead Exemption. As noted hereinabove, chapters 37 and 43 are parts of a broader statutory scheme relating to taxation of real property, and must, consequently, be read as a whole. In applying the rules of statutory construction-including the mandates (1) that statutes be considered as a whole, (2) that statutes in apparent conflict should be construed to allow both to stand and to give effect to each, and (3) that statutes be construed, if possible, so as to render them valid – this court must conclude that the requirements for eligibility for the homestead exemption include not only those set forth within §12-37-250, but also those specifically set forth within §12-43-220(c)(2)(i).

Both the homestead exemption, addressed primarily in §12-37-250, and the residential assessment ratio, addressed primarily in §12-43-220(c), are available exclusively to the "legal residence" of the taxpayer. Moreover, notwithstanding the arguments of the taxpayer, Chapter 37 contains numerous references to the provisions of Chapter 43, including specific references, within §12-37-252(B) and (C), to §12-43-220(c). Similarly, Chapter 43 contains multiple references to the provisions of Chapter 37, including, most tellingly, §12-43-220(c)(2)(i), which specifically references the homestead exemption statute, §12-37-250, at issue here. Moreover, as emphasized hereinabove, §12-43-220(c)(2)(1), by specific reference to §12-37-250, imposes additional requirements for eligibility for the homestead exemption. Inasmuch as both chapters are parts of an overall statutory scheme addressing assessment and

taxation of real property, and in further view of the specific reference within §12-43-220(c)(2)(i) to the homestead exemption under §12-37-250, it is clear that the statutes must be interpreted in tandem, in furtherance of the legislative ends.

II. The Court failed to consider that the additional requirement imposed by §12-43-220(c) for qualification of the Homestead Exemption includes compliance with the fourteen day rule, as clarified by the Court of Appeals in the Ford decision.

The South Carolina Court of Appeals, in Ford vs. Beaufort County Assessor, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012) (*cert. denied*) specifically stated that, in the absence of any statutory exemption, rental of an owner-occupied residence during the tax year would **disqualify** the residence for the preferential 4% residential assessment authorized by §12-43-220(c). The Court further agreed that the sole statutory exception to the rental disqualification is the limited 14 day rental allowed by §12-43-220(c)(7). Thus, an owner-occupied residence, rented for more than 14 days during the relevant year (as is the case with the taxpayer's property here) is not **qualified** for the "preferred assessment ratio" allowed by §12-43-220(c).

As demonstrated hereinabove, per the specific provisions of §12-43-220(c)(2)(i), property does not **qualify** for the homestead exemption unless and until the property is first **qualified as a legal residence** under §12-43-220(c)1). The taxpayer's subject property here, which was rented for more than 14 days during the relevant tax year, does not come within the limited exception (under §12-43-220(c)(7)), which would otherwise allow the residential assessment notwithstanding rental of the property. Thus, contrary to this Court's ruling, the taxpayer's property (1) fails to satisfy the requirements for residential assessment

as imposed by §12-43-220(c), (2) fails to satisfy the requirements for the homestead exemption, as imposed by §12-43-220(c)(2)(i), and, therefore, (3) simply does not qualify for either the homestead exemption or the residential assessment.

Furthermore, §12-37-252, by its specific provisions, authorizes the 4% residential assessment ratio **only** for a legal residence which in fact "**qualifies**" for the homestead exemption pursuant to §12-37-250. As demonstrated hereinabove, a legal residence does **not** in fact **qualify** for the homestead exemption under §12-37-250 unless and until that property satisfies all legislatively imposed criteria, including the requirements set forth in §12-43-220(c)(2)(i). A residence which has, during the relevant tax year, been rented for a period in excess of 14 days (and which thus is not within the limited exception to the rental disqualification), simply does not satisfy the requirements imposed by §12-43-220(c)(2)(i). Correspondingly, inasmuch as the requirements of §12-43-220(c)(2)(i) are specifically applicable to eligibility under §12-37-250, the subject property (rented for a period in excess of 138 during the relevant tax year), simply **does not** "**qualify**" for the homestead exemption under §12-37-250, and is thus not eligible for either that exemption, or for the preferential residential assessment.

III. The Court erred in its interpretation of §12-37-252 and the plain language of the statute mandates the Court reconsider its ruling and find in favor of the Assessor.

The Court determined that the Assessor's reading of Chapter 37 and Chapter 43 would render the provisions of §12-37-252(A) meaningless because

property qualifying for the homestead exemption would, by definition, qualify for the 4% residential assessment, making unnecessary any further legislative statement. However, in making that determination, the Court has failed to consider the Assessor's arguments and upon doing so will be compelled to find in the Assessor's favor.

As stated, to qualify for the homestead exemption available under §12-37-250, a real property owner must first satisfy the criteria for the 4% residential assessment under §12-43-220(c)(1). The provisions of §12-37-252(A), however, preclude any taxing authority from requiring a taxpayer to **elect** between the homestead exemption and the residential assessment ratio. These provisions guarantee that the taxpayer, who satisfies all statutory criteria for the homestead exemption (including those criteria imposed under §12-37-250 **and** under §12-43-220(c)(2)(1), and who, therefore, by definition, satisfies the requirements for the residential assessment ratio) will, in fact, receive the benefits of **both** the homestead exemption and the preferential residential assessment ratio. Section 12-37-252(A) thus serves as a definitive legislative statement that property, which in fact qualifies for both the homestead exemption and the residential assessment ratio, will be entitled to the benefit of both.

IV. The Court failed to consider that the 4% Assessment in §12-43-220(c) is the same 4% Assessment authorized under §12-37-252 and any other reading is contrary to the South Carolina Constitution.

The Court has erroneously determined that the 4% ratio purportedly granted by §12-37-252(A) is not the residential assessment ratio authorized by §12-43-220(c), but instead is a separate assessment ratio that applies

specifically to homestead exemption residences. This determination is in error.

The South Carolina Constitution sets forth the classifications for ad valorem taxation and specifically enumerates a legal residence classification and accompanying four percent assessment ratio. See Art. X §1(3). The Constitution also provides that all other real property, not specifically provided, for should be taxed at an assessment equal to six percent. Article X §1(5). Contrary to the ruling of the Court, there is no separate four percent assessment ratio authorized by the Constitution or by enactment of the General Assembly. The only four percent assessment ratio available to real property originates in Article X §1 of the Constitution and is further enumerated by enactment of the General Assembly in §12-43-220(c). There is no basis, either under the Constitution or under Title 12 to support the taxpayer's contention that §12-37-252 provides a different four percent residential assessment to properties that qualify for the homestead exemption solely under §12-37-250.

The Constitution and accompanying legislative enactments make clear that there is only one four percent residential assessment ratio for legal residences. Accordingly, because there is only one four percent assessment available to legal residences, logic, coupled with the rules of statutory construction and the obvious intent of the legislature, dictates that the rules specifically created by the General Assembly for obtaining the four percent residential assessment ratio under §12-43-220 also apply to a taxpayer seeking the four percent ratio that accompanies the homestead exemption. This conclusion is further bolstered by constitutional language providing that the

assessment of all property "shall be equal and uniform" to the enumerated classifications. Article X §1(1). Allowing a taxpayer the four percent residential assessment by simply meeting the requirements of §12-37-250, without regard to the statutory confines of the residential assessment, flies in the face of the constitutional mandate that property assessment must be equal and uniform. Therefore, as discussed above, it is abundantly clear that not only are the homestead exemption and the four percent assessment linked, but in order to **qualify** for the homestead exemption, one must first meet the requirements of both §12-37-250 and §12-43-220(c), which, as noted hereinabove includes an explicit prohibition against rental, subject to the fourteen day rental exception.

This Court's ruling which grants the 4% residential assessment to property which fails to satisfy the legislatively imposed criteria for eligibility, renders §12-37-252(A) violative of the provisions of Article X §1(5), because, under this ruling, the general assembly would have created a separate classification not provided for and thus contrary to the enumerated classifications in the Constitution and the constitutional mandate that property assessments be equal and uniform.

In addition, this Court's Order, allows a homeowner (upon satisfaction of the limited criteria set forth in §12-37-250) to rent his residence for 364 days each year, without regard to the requirements of the 4% residential assessment ratio in §12-43-220(c), in contradiction of the specific legislative mandates against such rentals. By contrast, a taxpayer failing to meet the requirements under §12-37-250 (as interpreted by this Court), although the owner of an identical residence, would not be eligible for the 4% residential assessment ratio,

if his residence were in fact rented for a period in excess of 14 days. Such circumstances, which would be allowed by this Court's current decision, are contrary to the enumerations of the Constitution, inconsistent with the specific terms of the relevant statutes, and are incompatible with the policy goals which are inherent in the referenced statutes.

V. The Court erred in determining that §12-43-220(c)(2)(i) is solely a proration statute; furthermore, the Court failed to consider Respondent's arguments that §12-43-220(c)(2)(i) has a broader purpose.

The Court determined that §12-43-220(c)(2)(i) operates as an exception to the general rule against pro-rating tax assessments. However, the Court failed to consider that §12-43-220(c)(2)(i) also encompasses a broader purpose. When Chapters 37 and 43 are read together, the homestead exemption and the four percent assessment are clearly and inextricably linked by direct statutory references to one another. As noted, §12-43-220(c)(2)(i) expressly provides that a residence which has been "qualified as a legal residence" is entitled to the four percent assessment ratio and the homestead exemption under §12-37-250, if otherwise eligible. This section imposes the requirement that in order to receive the homestead exemption, a property must first **qualify** as a legal residence pursuant to §12-43-220(c)(2)(i). This conclusion is supported not only by the clear language of §12-43-220(c), but also the qualifying language for the homestead exemption in Chapter 37 and the clear language of the Constitution.

VI. The Court failed to consider Respondent's Policy Arguments before making its ruling.

In reaching its conclusion, the Court clearly failed to consider the policy arguments in favor of the Assessor's interpretation of Chapters 37 and 43. A requirement that a taxpayer, seeking the homestead exemption for his real property, must first satisfy the criteria for eligibility for the 4% residential assessment ratio under §12-43-220(c), is not only consistent with the specific provisions of the statutes, but also encourages owner occupancy of homes. Such owner occupancy clearly contributes to a sense of community, maintenance of home values, and an overall enhancement of the general welfare.

Furthermore, allowing a taxpayer who rents his home for more than fourteen days a year and is denied the four percent residential assessment ratio to be allowed to then rent his home an unlimited number of days and receive that 4% assessment only by virtue of reaching the age of sixty-five or meeting any other requirement of §12-37-250 undermines the constitutional provision creating the four percent assessment ratio and is contrary to the obvious legislative intent that one cannot rent his residence for more than fourteen days and receive the four percent residential assessment ratio.

VII. The Court failed to consider that any ambiguities found in these statutes must be construed against the taxpayer and in favor of the assessor.

South Carolina appellate courts have provided specific rules for construction of statutes granting exemptions and/or deductions from taxation. Those rules, which require strict construction of such statutes **against** the

taxpayer, are plainly applicable to the exemption provided by §12-37-250, and equally applicable to §12-43-220, which the South Carolina Supreme Court has recently addressed as an exemption statute. CFRE, LLC, 395 S.C. 67, 716 S.E. 2nd 877.

The statutory provisions at issue here clearly impose specific requirements for eligibility for the homestead exemption, including the requirement that such property must also satisfy those criteria for eligibility for the preferential residential assessment ratio under §12-43-220(c). However, even in the absence of such legislative clarity, the provisions set forth within the legislative scheme are, at the very least, ambiguous. Under established rules of construction, ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer. The Supreme Court, in State vs. Life Ins. Co. of Georgia, 254 S.C. 286, 175 S.E.2d 203 (1970), recited the "...well settled rule that constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming exemption; he must clearly bring himself within the constitutional or statutory language upon which he relies." (Internal quotes omitted).

VIII. The Court erred in determining that the taxpayer is entitled to the homestead exemption as well as the four percent ratio. Furthermore the Court erred in granting those exemptions beyond the 2011 tax year.

As discussed in each party's brief and in arguments before the Court, the only issue before the Administrative Law Court is whether the taxpayer was entitled to the homestead exemption for the tax year 2011. Obviously,

Respondent asserts the Court erred in determining the taxpayer was entitled to the exemption in 2011, but in addition to that, Respondent strongly urges the Court to reconsider its ruling that taxpayer is entitled to the exemption for the years following 2011. There has been no evidence presented or findings of fact made regarding taxpayer's eligibility for the homestead exemption beyond the year 2011, and any ruling granting that exemption without a fact finding for those subsequent years constitutes clear error.

CONCLUSION

Therefore, Respondent respectfully moves this Honorable Court to consider the arguments before it in this motion and reconsider its decision. Respondent humbly requests that this Court find the following:

1. Chapter 37 is not the sole determinant of Homestead Exemption availability, and §12-43-220(c) imposes an additional requirement for qualification of the Homestead Exemption.

2. The additional requirement imposed by §12-43-220(c) for qualification of the Homestead Exemption includes compliance with the fourteen day rule under the Ford decision.

3. The purpose of §12-37-252 is to ensure a taxpayer, eligible for the 4% residential assessment ratio and the homestead exemption, not be required to elect between the two benefits, and to guarantee that the taxpayer receive the benefit of both exemptions.

4. The 4% Assessment in §12-43-220(c) is the same 4% Assessment authorized under §12-37-252 and any other reading violates the South Carolina Constitution.

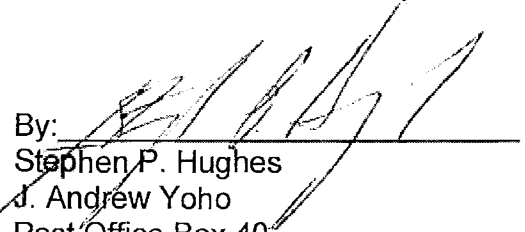
5. The Court erred in determining that §12-43-220(c)(2)(i) is solely a proration statute; furthermore, the Court failed to consider Respondent's arguments that §12-43-220(c)(2)(i) has a broader purpose.

6. Public policy considerations also support the Assessor's determination that one cannot receive the homestead exemption without first meeting the requirements of the 4% residential assessment ratio.

7. Any ambiguities found in these statutes must be construed against the taxpayer and in favor of the assessor.

8. The taxpayer is not entitled to the homestead exemption or 4% residential assessment ratio for the year 2011, and eligibility for any year following 2011 is not as issue before the Court.

HOWELL, GIBSON & HUGHES, P.A.



By:____________________

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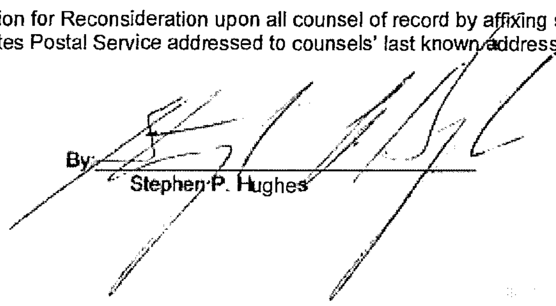
August 25, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion for Reconsideration upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 28th day of August, 2014.



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