THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

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Case No. 13-ALJ-17-0585-CC

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Frank Mead, III .................................................................Respondent,

v.

Beaufort County Assessor ..............................................Appellant.

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# INITIAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUE ON APPEAL

Respondent agrees with Appellant's statement of the Issue on Appeal: Did the Administrative Law Court err in its determination that the Respondent was entitled to the Homestead Exemption despite renting his residence for more than fourteen days during the 2011 tax year?

## STATEMENT OF THE CASE

Respondent agrees with Appellant's Statement of the Case: This is an appeal from an Order of the Administrative Law Court (ALC), reversing the Beaufort County Assessor's (Assessor) denial of the Homestead Exemption for Respondent's residence. The Assessor and the Beaufort County Tax Equalization Board (Board) denied the Homestead Exemption for tax year 2011 to Respondent, who sought a contested case hearing before the ALC. Both the Respondent and the Assessor filed Motions for Summary Judgment and submitted proposed orders following oral argument on June 25, 2014. By Order dated August 19, 2014, the Honorable John D. McLeod, presiding judge, determined that Respondent was entitled to the Homestead Exemption, reversing the Assessor and Board's decisions. Following the denial of Appellant's motion for reconsideration, Appellant filed a Notice of Intent to Appeal on October 27, 2014, and now seeks review of the ALC's Order.

## STATEMENT OF THE FACTS

Respondent is the owner of a home on Hilton Head Island in Beaufort, South Carolina (Subject Property) 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, Respondent's residence was

assessed at the 4% ratio applicable to both primary residences and the Homestead Exemption. (ALC Order Findings of Facts, ¶ 3.)

Respondent was born in 1939. He has been over 65 years of age since 2004. (*Id.* at ¶ 4.)

Respondent qualified for the Homestead Exemption in 2005 and received the Homestead Exemption on his property from 2005 through 2010. (*Id.* at ¶ 5.)

In 2011, Respondent rented his house for more than 14 days. The Beaufort County Auditor's revoked the Homestead Exemption for 2011 on the grounds that because Respondent 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. (*Id.* at ¶ 7.)

Following the Assessor's action, Respondent appealed the Assessor's determination to the Beaufort County Tax Equalization Board, which denied Respondent relief by letter dated November 25, 2013. (Board Letter dated 11/25/13). On December 9, 2013, Respondent requested a contested case hearing before the South Carolina Administrative Law Court (ALC) and a Notice of Assignment was filed by the ALC on December 12, 2014, assigning the case to the Honorable John D. McLeod. (Request for Hearing dated 12/9/13).

Before the ALC, both parties filed Motions for Summary Judgment and agreed that the sole issue before the ALC was whether the Homestead Exemption is available only to property that also qualifies for the preferential residential assessment ratio found

in S.C. Code Ann. § 12-43-220(c). (Transcript p.5, lines 4-19). Following oral argument on the issue, Judge McLeod largely adopted (with changes) Respondent's proposed order reversing the determination of the Assessor and the Board. (Order dated 8/19/14).

In his Order, Judge McLeod determined Respondent met the requirements of the homestead exemption because he had been a resident of South Carolina for at least one year, over the age of sixty-five, and did not do anything that would amount to a "change affecting eligibility." (Order p. 4). Judge McLeod further held that the homestead exemption applies to a person's dwelling place and found that despite Respondent's practice of renting his home and living in a temporary apartment for various periods of the year, Respondent does not hold out any other property as his primary residence, thus the Subject Property is his "dwelling place." (Order p. 4). Judge McLeod further determined that the homestead exemption and the primary residence classification are "two ships in the night" and explained that the two classifications have different constitutional provisions, statutes, requirements, incentives, and qualifying properties. (Order pp. 5-7). Judge McLeod also held that the fourteen day rental rule does not apply to the Homestead Exemption and granted Respondent the Homestead Exemption. (Order pp. 7-9).

## STANDARD OF REVIEW

In an appeal from an ALC decision, the Administrative Procedures Act provides the appropriate standard of review. S.C. Code Ann. § 1-23-610(8) (Supp. 2014). This Court confines its analysis of an ALC decision to whether it 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 an abuse of discretion or clearly unwarranted exercise of discretion.

*Id.* At issue in this case is whether the ALC decision is in violation of constitutional or statutory provisions.

## ARGUMENT

### I. THE ALC DID NOT ERR IN ITS DETERMINATION THAT CHAPTER 37 IS THE SOLE DETERMINATION OF HOMESTEAD EXEMPTION AVAILABILITY.

Appellant argues (p. 4 of Appellant's Brief) that "[t]he ALC committed an error of law by holding the availability of the homestead exemption is governed exclusively by the provisions of South Carolina Code Ann. §12-37-220, §12-37-250, and §12-37-252. The ALC also erred in its determination that one who satisfies the limited criteria set forth within those statutes is qualified for the homestead exemption, as well as a 4% residential assessment ratio." As detailed below, the Homestead exemption is governed exclusively by the above statutes. In addition, the ALC did **not** determine that Respondent was entitled to "4% residential assessment."

#### A. 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.

### B. 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, 12-37-252, and 12-37-290. Under these four 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, Respondent 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).

It is clear that Respondent 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.*

**C. Homestead Exemption vs. Primary Residence**

Appellant's position is that Respondent 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.

### 1. **Different Constitutional Provision and Statutes**

The Homestead Exemption is created in 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 provisions are 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.) They are codified in § 12-43-220(c). The "Fourteen Day Rental" former rule is found in § 12-43-220(c)(7).

### 2. **Different Requirements**

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(A)(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 for the year at issue is this case (2011) does not rent the primary residence for more than fourteen days, see § 12-43-220(c).[1]

### 3. **Different Incentives**

The actual incentives conferred on property owners are also different. Article X, § 3 provides a $10,000 Homestead Exemption, § 12-37-290 exempts the first $10,000 of

[1] This statute was amended in 2014. Property owners can now rent their house for 72 days and retain their primary residence status. *See* S.C. Code Ann. § 12-43-220(c)(2)(iv) (Supp. 2014).

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.

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 Appellant 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 Appellant'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 Centex Int'l, Inc. v. S.C. Dep't of Rev.*, 406 S.C. 132, 145-46, 750 S.E.2d 65, 72 (2013) *and Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). *See also Home Health Servs., 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 Bd.*, 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."

**4. 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.

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 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.

In 2014, the General Assembly in § 12-43-220(c)(8)(ii) allows property owned by a trust, family limited partnership or LLC to qualify for the 4% primary residence assessment ratio if the beneficiaries of the trust or members of the partnership or LLC are the primary resident and the primary resident's parents, spouse, children, grandchildren or siblings. The General Assembly provided no such relief for persons entitled to the Homestead Exemption.

The General Assembly provides various tax credits to owners of primary residents which it does not provide to Homestead Exemptions, see hurricane retrofit income tax credits for primary residences, §§ 12-6-3660 and 12-6-3665; and credits for excess property insurance premiums, § 12-6-3670.

## II. THE ALC DID NOT ERR BY FAILING TO APPLY THE FOURTEEN DAY RULE, AS CLARIFIED BY THE COURT OF APPEALS IN THE *FORD* DECISION.

The fallacy of Beaufort County's argument is found in Appellant's Brief (p. 10) which states that "[t]he 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 section 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 section 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 section 12-43-220(c)."

Respondent has not argued that he is entitled to the 4% ratio authorized by § 12-43-220(c). The 4% assessment ratio which Respondent 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.)

To the extent the requirements for primary residence and Homestead Exemption are similar, the (former) fourteen-day rental rule still would not apply to the Homestead Exemption. The (former) 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 (2014 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 8). Section 619 makes no reference to the 14 day rule or to § 12-43-220(c)(7).

In addition, the requirements for the Homestead Exemption are uniquely repeated in four separate places, S.C. Const. Art. X, § 3(i); § 12-37-220(A)(9); § 12-37-250; and § 12-37-290. (I say "uniquely" in that there is no other state tax incentive or exemption which lists or repeats the same qualifications in three separate places in Title 12.) 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 § 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.

## III. THE ALC DID NOT ERR IN ITS INTERPRETATION OF § 12-37-252.

Appellant argues (p. 12 of Appellant's Brief) that "[t]he ALC determined that the Assessor's reading of Chapter 37 and Chapter 43 would render the provisions of section 2-37-252(A) [sic] meaningless because property qualifying for the homestead exemption would, by definition, qualify for the 4% residential assessment, making unnecessary any further legislative statement."

Appellant has this exactly backward. The General Assembly enacted § 12-37-252(A) to provide a 4% assessment ratio for persons qualifying for the Homestead Exemption regardless of whether they qualified under the primary residence statute.

IV. THE ALC DID NOT ERR IN FINDING THE 4% ASSESSMENT UNDER § 12-37-252 IS SEPARATE FROM THE 4% ASSESSMENT UNDER § 12-43-220(C).

Appellant's Brief (p. 13) states that "[t]he ALC erroneously determined that the 4% ratio purportedly granted by section 12-37-252(A) is not the residential assessment ratio authorized by section 12-43-220(c), but instead is a separate assessment ratio that applies specifically to homestead exemption residences."

The ALC did not err; this is exactly what § 12-37-252(A) states. And the 4% assessment ratio is not "purportedly granted" by § 12-37-252(A). The statute is very explicit.

V. THE ALC DID NOT ERR IN DETERMINING THAT § 12-43-220(C)(2)(I) IS SOLELY A PRORATION STATUTE.

Appellant's argument is based upon a reading of the anti-December 31st, no-proration statute, § 12-43-220(c)(2)(i). The ALC determined that § 12-43-220(c)(2)(i) simply operates as an exception to the general rule against pro-rating tax assessments.

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, see S.C. Code § 12-37-900 and *Atkinson Dredging Co. v. Thomas*, 226 S.C. 361, 223 S.E. 2d 592 (1976).") The Supreme Court described the issue in *Atkinson Dredging*, 266 S.C. at 369-70, 223 S.E.2d at 596, 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. South Carolina Department of Revenue*, 401 S.C. 372, 737 S.E.2d 628 (2013). Hampton Friends of the Arts (Hampton) purchased taxable property in March 2008. "It is undisputed that prior to [Hampton's] purchase, the property was subject to property taxes on December 31, 2007." *Id.* at 374, 737 S.E.2d at 629. Hampton 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. 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 to the seller 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 Act 100 (H.B. 3696). The Act's 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.)

Appellant vigorously argues that § 12-43-220(c)(2)(i) imposes the former 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." (Emp. added.) 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.

## VI. THE ALC'S ORDER DOES NOT VIOLATE PUBLIC POLICY.

Appellant's Brief (p. 17) argues that "to deny the 4% residential assessment ratio to a taxpayer who rents his home for more than fourteen days a year, while allowing the 4% residential assessment ratio, notwithstanding rental in excess of fourteen days, simply by virtue of reaching the age of sixty-five or meeting any other requirement of section 12-37-250, undermines the constitutional provision creating the 4% assessment ratio and is contrary to the obvious legislative intent that one cannot rent his residence for more than fourteen days and receive the 4% residential assessment ratio."

As stated above in Appellant's Brief (pp. 8-11) there are numerous differences between the homestead exemption and primary residence. The former fourteen day rule is simply one of those differences.

VII. THE ALC DID NOT FAIL TO CONSTRUE AMBIGUITIES FOUND IN THE RELEVANT STATUTES IN FAVOR OF THE ASSESSOR.

Appellant argues (pp. 17-18) that "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 section 12-37-250, and equally applicable to section 12-43-220, which the South Carolina Supreme Court has recently addressed as an exemption statute. *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E. 2nd 877, 881 (2011)." (emphasis in original).

In fact, 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. South Carolina 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 Appellant]'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.

## VIII. THE ALC DID NOT ERR IN GRANTING THE HOMESTEAD EXEMPTIONS BEYOND THE 2011 TAX YEAR.

Appellant asserts (pp. 18-19) that the "only issue before the ALC was whether the taxpayer was entitled to the homestead exemption for the tax year 2011. As argued

hereinabove, Appellant asserts the ALC erred in determining the taxpayer was entitled to the exemption in 2011, but in addition, [Appellant] strongly urges this Court to reverse the ALC's ruling that Respondent 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...."

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 Respondent was granted the Homestead Exemption in 2005 on the basis of his age. Ownership of the residence has remained unchanged.

It is clear that Respondent 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.*

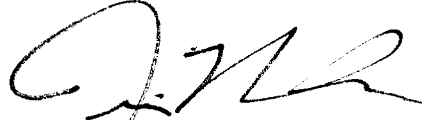
The only basis which Beaufort County has asserted that Respondent is not entitled to the Homestead Exemption is that he rented his house for more than 14 days a year. If the Court of Appeals affirms the ALC decision that the former 14 day rule does not apply

to Homestead Exemptions, then clearly Respondent is entitled to it until he sells the residence. He is not getting any younger.

CONCLUSION

Based on the foregoing, the Respondent respectfully requests that this Court affirm the Order of the ALC, granting the Respondent's Motion for Summary Judgment.

NEXSEN PRUET, LLC



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

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Case No. 13-ALJ-17-0585-CC

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Frank Mead, III ........................................................................Respondent,

v.

Beaufort County Assessor........................................................Appellant.

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PROOF OF SERVICE

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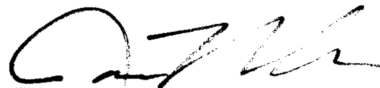
I certify that I served the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal on the Beaufort County Assessor by depositing a copy of it in the United States Mail, postage prepaid, on this 15th day of January, 2015, addressed to its attorneys of record, Stephen P. Hughes and J. Andrew Yoho, at their office at HOWELL, GIBSON AND HUGHES, P.A., Post Office Box 40, Beaufort, South Carolina 29901-0040.

NEXSEN PRUET, LLC



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SC Court of Appeals

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Admitted in SC

January 15, 2015

**VIA HAND DELIVERY**

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

Re: Frank Mead, III v. Beaufort County Assessor
Case No. 13-ALJ-17-0585-CC

Dear Ms. Kitchings:

Enclosed for filing with the Court, is an original and one copy of the Initial Brief of Respondent and Designation of Matter in the above-referenced matter. Kindly file the original of record with the court and return a time-stamped copy to our courier.

Charleston
Charlotte
**Columbia**
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

Very truly yours,

Burnet R. Maybank, III

BRM/maa
Enclosures
cc: Stephen P. Hughes, Esquire (w/enc.)
J. Andrew Yoho, Esquire (w/enc.)

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