THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Honorable John D. McLeod

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

FRANK R. MEAD, III ..... Respondent,

v.

BEAUFORT COUNTY ASSESSOR ..... Appellant.

FINAL BRIEF OF APPELLANT

HOWELL, GIBSON & HUGHES, P.A.
Stephen P. Hughes
Bar No: 2805
sphughes@hghpa.com
J. Andrew Yoho
Bar No: 100803
ayoho@hghpa.com
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400

Beaufort, South Carolina

February 4, 2015

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Honorable John D. McLeod

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

FRANK R. MEAD, III ..... Respondent,

v.

BEAUFORT COUNTY ASSESSOR ..... Appellant.

FINAL BRIEF OF APPELLANT

HOWELL, GIBSON & HUGHES, P.A.
Stephen P. Hughes
Bar No: 2805
sphughes@hghpa.com
J. Andrew Yoho
Bar No: 100803
ayoho@hghpa.com
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400

Beaufort, South Carolina

February 4, 2015

TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Constitution

South Carolina Statutes

South Carolina Supreme Court Opinions

South Carolina Court of Appeals Opinions

STATEMENT OF 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

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 Petitioner's motion for reconsideration, Petitioner 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, Frank R. Mead, III, a resident of Hilton Head Island rented his residence for no fewer than 138 days during the 2011 tax year. (R.p.200, lines 7-8; R.p.219, lines 8-10). As a result, the Appellant, Beaufort County Assessor determined Respondent was no longer eligible for the homestead exemption because the subject property failed to satisfy the legislatively-imposed

criteria governing the availability of the homestead exemption. (R.p.199, line 24-p.200, line 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. (R.p.15). 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. (R.p.16).

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). (R.p.199, lines 4-19). Following oral argument on the issue, Judge McLeod adopted Respondent's proposed order reversing the determination of the Assessor and the Board. (R.p.2).

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." (R.p.5). 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." (R.p.5). 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. (R.pp.7-8). Judge McLeod also held that the fourteen day rental rule does not apply to the homestead exemption and granted Respondent the homestead exemption. (R.pp.8-10).

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(B) (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. In determining whether the ALC's decision was supported by substantial evidence, the Court need only find, looking at the entire record on appeal, evidence from which reasonable minds could reach the same conclusion as the ALC. Hill v. S.C. Dep't of Health and Envtl. Control, 389 S.C. 1, 9-10, 698 S.E.2d

612, 617 (2010). However, the Court may reverse the decision of the ALC where it is in violation of a statutory provision or it is affected by an error of law. Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue, 399 S.C. 313, 316, 731 S.E.2d 869, 870-71 (2012).

ARGUMENT

I. THE ALC ERRED IN ITS DETERMINATION THAT CHAPTER 37 IS THE SOLE DETERMINANT OF HOMESTEAD EXEMPTION AVAILABILITY AND FAILED TO ACKNOWLEDGE THAT §12-43-220(C) IMPOSES AN ADDITIONAL REQUIREMENT FOR QUALIFICATION OF THE HOMESTEAD EXEMPTION.

The 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. These rulings are not supported by substantial evidence or a plain reading of the relevant statutes.

Chapter 37 is not the sole determinant of the availability of the homestead exemption. Chapter 43 of the Code, specifically, section 12-43-220(c)(1), addresses and imposes additional requirements for qualifying for the exemption. It is clear both chapters constitute parts of an overall statutory scheme encompassing real property taxation, and both set forth specific provisions governing the availability of the homestead exemption. Accordingly, any determination of the eligibility of the subject property for the requested

homestead exemption is dependent upon an appropriate interpretation of the relevant provisions of both chapters.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. Chem-Nuclear Systems, LLC v. S.C. Bd. of Health and Envtl. Control, 374 S.C. 201, 205, 648 S.E.2d 601, 603 (2007). All rules of statutory construction are subordinate to this rule if the legislative intent can be reasonably determined in the language used, then that language must be construed in light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 437, 567 S.E. 2d 240, 242 (2002). Moreover, "the language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose." Chem-Nuclear, 374 S.C. at 205, 648 S.E.2d at 603.

A statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. Duvall v. S.C. Budget and Control Bd., 377 S.C. 36, 42, 659 S.E.2d 125, 127 (2008). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of particular words." Floyd vs. Nationwide Mut. Ins. Co., 367 SC 253, 260, 626 SE 2d 6, 10 (2006). Additionally, statutes in apparent conflict should, if possible, be construed to allow both to stand and to give effect to each. National Adver. Co., Inc. vs. Mt. Pleasant Bd. of Adjustment, 312 S.C. 397, 400, 440 S.E.2d 875, 877 (1994).

Article X, §3(i) of the South Carolina Constitution establishes "...a homestead exemption for persons 65 years of age and older, for persons permanently and totally disabled, and for blind persons...under conditions prescribed by the General Assembly by general law...." However, that constitutional provision is not a blanket grant, but rather authorizes the homestead exemption only under such "conditions" as may be "prescribed" by the General Assembly. Moreover, S.C. Code Ann. §12-37-220(A)(9) (Supp.2014), in initially recognizing the homestead exemption, mirrors the language of the Constitution, and grants the exemption only "under conditions prescribed" by the General Assembly.

Section 12-37-250 more comprehensively addresses the matter, specifying that the homestead exemption is available for the first $50,000.00 of the fair market value of the "dwelling place" of the owner, when the owner, among other qualifications, has reached the age of 65 years, has been classified as totally and permanently disabled, or is legally blind. Section 12-37-250(a)(5), defines "dwelling place" as "...the permanent home and **legal residence** of the applicant." [emphasis added].

Section 12-37-252 provides, in relevant part, that "...property that **qualifies** for the homestead exemption pursuant to section 23-37-250 is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." [emphasis supplied].

Any analysis of the availability of the homestead exemption does not end with consideration of sections 12-37-220, -250, and -252. Equal consideration

must also be given to other statutory provisions that also address the availability of the homestead exemption, most relevantly, section 12-43-220(c), which specifically imposes additional conditions and restrictions upon taxpayers seeking eligibility for the homestead exemption. See, Duvall, 377 S.C. at 42 659 S.E.2d at 127 (stating a statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect).

Section 12-43-220(c)(2)(i), states, in relevant part:

> 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]. Section 12-43-220(c)(2)(i) is the statutory embodiment of the constitutional authorization to tax a legal residence at an assessment equal to 4% of the fair market value of such property. Art. X §1(3). The Constitution sets forth other classifications for ad valorem taxation and further provides that all properties not specifically enumerated should be taxed at an assessment equal to six percent. See Art. X §1(5). Accordingly, by its specific terms, the Constitution authorizes only one 4% residential assessment, which is codified in section 12-43-220(c).

Section 12-43-220(c)(2)(i) also sets forth a specific reference to the homestead exemption discussed section 12-37-250, and serves as evidence of a statutory scheme providing that a taxpayer cannot qualify for the homestead

exemption without meeting the qualifications for the preferential residential assessment ratio. Section 12-37-252 references the 4% assessment ratio and discusses the criteria by which the preferential residential assessment ratio accompanies the homestead exemption. Furthermore, section 12-43-220(c)(2)(i) sets forth an additional and statutorily mandated provision contained in section 12-43-220(c)(2)(i) outlining the requirements for a residence to qualify for the preferential residential assessment ratio in order to be eligible for the homestead exemption. The plain language of the statutes, when read together as a whole, harmoniously works in tandem to provide **qualifying** taxpayers both the homestead exemption and the 4% residential assessment.

The plain language of section 12-43-220(c)(2)(i) sets forth: (1) a specific reference to the homestead exemption under section12-37-250, (2) a specific recitation of additional requirements for eligibility for the homestead exemption under section12-37-250, and (3) a specific statement of legislative intent that the homestead exemption under section 12-37-250 be available **only** to those properties meeting the requirements for the preferential residential assessment ratio set forth in section 12-43-220(c)(1). Thus, by the specific language of section 12-43-220(c)(2)(i), **qualification** for the preferential residential assessment ratio provided by section 12-43-220(c) is a prerequisite to eligibility for the homestead exemption under section 12-37-250.

Despite the ruling of the ALC, 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 section 12-37-250, but also those specifically set forth within section 12-43-220(c)(2)(i).

Both the homestead exemption, addressed primarily in section 12-37-250, and the residential assessment ratio, addressed primarily in section 12-43-220(c), are available exclusively to the "legal residence" of the taxpayer. Moreover, notwithstanding the ALC's holding, Chapter 37 contains numerous references to the provisions of Chapter 43, including specific references, within section 12-37-252(B) and (C), to section 12-43-220(c). Similarly, Chapter 43 contains multiple references to the provisions of Chapter 37, including, most tellingly, section 12-43-220(c)(2)(i), which specifically references the homestead exemption statute, section 12-37-250, at issue here. Moreover, as emphasized hereinabove, section 12-43-220(c)(2)(1), by specific reference to section12-37-250, 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 section 12-43-220(c)(2)(i) to the homestead exemption under

section 12-37-250, it is clear that the statutes must be interpreted in tandem, in furtherance of the legislative ends.

Accordingly, the ALC's holding is premised upon an error of law and is not supported by substantial evidence or the plain reading of the relevant statute. This error of law warrants correction by this Court.

II. THE ALC ERRED BY FAILING TO APPLY 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 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).

As demonstrated hereinabove, per the specific provisions of section 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 section 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 section 12-43-220(c)(7)), which would otherwise allow the residential

assessment notwithstanding rental of the property. Thus, contrary to the ALC's ruling, the taxpayer's property (1) fails to satisfy the requirements for residential assessment as imposed by section 12-43-220(c), (2) fails to satisfy the requirements for the homestead exemption, as imposed by section 12-43-220(c)(2)(i), and, therefore, (3) simply does not qualify for either the homestead exemption or the residential assessment.

Furthermore, section 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 section 12-37-250. As demonstrated hereinabove, a legal residence does **not** in fact **qualify** for the homestead exemption under section 12-37-250 unless and until that property satisfies all legislatively imposed criteria, including the requirements set forth in section 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 section 12-43-220(c)(2)(i). Correspondingly, inasmuch as the requirements of section 12-43-220(c)(2)(i) are specifically applicable to eligibility under section 12-37-250, the subject property (rented for a period in excess of 138 days during the relevant tax year), **does not** "**qualify**" for the homestead exemption under section 12-37-250, and is thus not eligible for either that exemption, or for the 4% residential assessment.

III. THE ALC ERRED IN ITS INTERPRETATION OF §12-37-252.

The ALC determined that the Assessor's reading of Chapter 37 and Chapter 43 would render the provisions of section 2-37-252(A)[1] 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 ALC failed to consider the Assessor's arguments and upon doing so committed an error of law.

As stated, to **qualify** for the homestead exemption available under section 12-37-250, a real property owner must first satisfy the criteria for the 4% residential assessment under section 12-43-220(c)(1). However, the provisions of section 12-37-252(A), 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 section 12-37-250 **and** under section 12-43-220(c)(2)(1), will, in fact, receive the benefits of **both** the homestead exemption and the 4% 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. Accordingly,

[1] (A) 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. Any agriculturally classified lands that are a part of the homestead must be taxed on an assessment equal to four percent of the lands' value for agricultural purposes. The county auditor shall notify the county assessor of the property so qualifying and no further application is required for such classification and taxation.

the ALC's analysis of section 12-37-252(A) is controlled by an error of law and should be corrected by an Opinion of this Court.

IV. THE ALC ERRED IN FINDING THE 4% ASSESSMENT UNDER §12-37-252 IS SEPARTE FROM THE 4% ASSESSMENT UNDER §12-43-220(C) BECAUSE ONLY ONE 4% ASSESSMENT IS AUTHORIZED UNDER THE SOUTH CAROLINA CONSTITUTION.

The 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. This determination is controlled by an error of law. The South Carolina Constitution sets forth the classifications for ad valorem taxation and specifically enumerates a legal residence classification and accompanying 4% 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 ALC, there is no separate 4% assessment ratio authorized by the Constitution or by enactment of the General Assembly. The only 4% assessment ratio available to real property originates in Article X §1 of the Constitution and is further codified by enactment of the General Assembly in section 12-43-220(c). There is no basis, either under the Constitution or under Title 12 to support the taxpayer's contention that section 12-37-252 provides a different 4% residential assessment to properties that qualify for the homestead exemption exclusively under section 12-37-250.

The Constitution and accompanying legislative enactments make clear that there is only one 4% residential assessment ratio for legal residences.

Accordingly, because there is only one 4% 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 4% residential assessment ratio under section 12-43-220 also apply to a taxpayer seeking the homestead exemption which is accompanied by the 4% residential assessment ratio. 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 4% residential assessment by simply meeting the requirements of section 12-37-250, without regard to the statutory and constitutional confines of the 4% assessment, is in direct contradiction to the constitutional mandate that property assessments must be equal and uniform. Therefore, as discussed above, it is abundantly clear that not only are the homestead exemption and the 4% assessment linked, but in order to **qualify** for the homestead exemption, one must first meet the requirements of both section 12-37-250 and section 12-43-220(c), which, as noted hereinabove includes an explicit prohibition against rental, subject to the fourteen day rental exception.

The ALC's ruling which grants the 4% residential assessment to property which fails to satisfy the legislatively imposed criteria for eligibility, renders section 12-37-252(A) violative of the provisions of Article X §1(5), because, under the ALC's 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 to promoting an unconstitutional and unauthorized residential assessment, the ALC's order also creates an absurd framework for tax payers seeking the 4% residential assessment. Under the ALC's Order, a homeowner who meets the requirements of section 12-37-250 (over the age of sixty-five, etc.) may rent his residence for 364 days each year, without regard to the fourteen day rental rule, and receive **both** the homestead exemption and the 4% residential assessment. By contrast, a taxpayer failing to meet the requirements under section 12-37-250 (as interpreted by the ALC), 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. Accordingly, under this rubric, a sixty-four year old South Carolina resident who rents his home for fifteen days a year will not be eligible for the 4% residential assessment; however, when that same taxpayer reaches the age of sixty-five he is then entitled to the 4% assessment and the homestead exemption and may rent his residence an unlimited amount of days during a year. Such circumstances, promoted by the ALC's decision, are contrary to the enumerations of the Constitution, inconsistent with the specific terms of the relevant statutes, incompatible with the policy goals which are inherent in the referenced statutes, and amount to an error of law that requires correction by this Court.

V. THE ALC ERRED IN DETERMINING THAT §12-43-220(C)(2)(I) IS SOLELY A PRORATION STATUTE AND FAILED TO CONSIDER THE STATUTE'S BROADER PURPOSE.

The ALC determined that section 12-43-220(c)(2)(i) operates as an exception to the general rule against pro-rating tax assessments. However, the ALC erroneously failed to recognize that section 12-43-220(c)(2)(i) also encompasses a broader purpose. When Chapters 37 and 43 are read together, the homestead exemption and the 4% assessment are clearly and inextricably linked by direct statutory references to one another. See Chem-Nuclear, 374 S.C. at 205, 648 S.E.2d at 603 (stating the language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose); Duvall, 377 S.C. at 42 659 S.E.2d at 127 (stating a statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect). As noted, section 12-43-220(c)(2)(i) expressly provides that a residence which has been "qualified as a legal residence" is entitled to the 4% assessment ratio and the homestead exemption under section 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 section 12-43-220(c)(2)(i). This conclusion is supported not only by the clear language of section12-43-220(c), but also the qualifying language for the homestead exemption in Chapter 37 and the clear language of the Constitution.

VI. THE ALC'S ORDER VIOLATES PUBLIC POLICY.

In reaching its decision, the ALC clearly failed to consider the public policy ramifications of its Order. 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 section12-43-220(c), is not only consistent with the specific provisions of the constitution and 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, 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. These considerations warrant reversal of the ALC's decision.

VII. THE ALC FAILED TO CONSTRUE AMBIGUITIES FOUND IN THE RELEVANT STATUTES 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 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).

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 section 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, 292, 175 S.E.2d 203, 206 (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 ALC ERRED IN DETERMINING THAT THE TAXPAYER IS ENTITLED TO THE HOMESTEAD EXEMPTION AS WELL AS THE 4% RATIO. FURTHERMORE THE COURT ERRED IN GRANTING THOSE EXEMPTIONS BEYOND THE 2011 TAX YEAR.

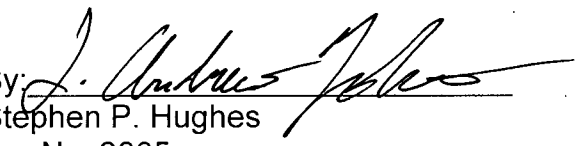
As discussed in each party's summary judgment motions to the ALC and in the oral arguments below, the only issue before the ALC was whether the taxpayer was entitled to the homestead exemption for the tax year 2011. As argued hereinabove, Appellant asserts the ALC erred in determining the taxpayer

was entitled to the exemption in 2011, but in addition, Petitioner 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, and any ruling granting that exemption without a fact finding for those subsequent years constitutes clear error on the part of the ALC and represented a decision not supported by any, much less substantial, evidence.

CONCLUSION

Appellant respectfully submits that the ALC's decision that reverses the Assessor and Board's decision denying taxpayer the right to the homestead exemption was controlled by an error of law and not supported by substantial evidence. As noted above the relevant constitutional and statutory provisions dictate that a taxpayer must qualify for the 4% residential assessment in order to receive the homestead exemption. Any other reading is in error and produces an unconstitutional and absurd result. For the foregoing reasons, Appellant respectfully requests this Court reverse the decision of the ALC and find that Respondent is not eligible for the homestead exemption.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Stephen P. Hughes
Bar No: 2805
J. Andrew Yoho
Bar No: 100803
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorneys for Appellant Beaufort County Assessor

Beaufort, South Carolina

February 4, 2015

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Honorable John D. McLeod

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

FRANK R. MEAD, III ..... Respondent,

v.

BEAUFORT COUNTY ASSESSOR ..... Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the submitted Final Brief of the Appellant complies with Rule 211(b), SCACR.

HOWELL, GIBSON & HUGHES, P.A.

By: _____

Stephen P. Hughes
J. Andrew Yoho
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Bar No: 100803
Attorney for Appellant

Beaufort, South Carolina

February 10, 2015

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Honorable John D. McLeod

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

FRANK R. MEAD, III ..... Respondent,

v.

BEAUFORT COUNTY ASSESSOR ..... Appellant.

PROOF OF SERVICE

I certify that I served the Final Brief of Appellant, Beaufort County Assessor, on Frank R. Mead, III by depositing a copy of it in the United States Mail, postage prepaid, on this 11th day of February, 2015, addressed to his attorneys of record, Burnet Maybank, III and James P. Rourke, at their office at Nexsen Pruet, PLLP, P.O. Box 2426, Columbia, SC 29202.

HOWELL, GIBSON & HUGHES, P.A.

By: _____

Stephen P. Hughes
Bar No. 2805
J. Andrew Yoho
Bar No: 100803
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Appellant Beaufort County Assessor

Beaufort, South Carolina