

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

S.C. Supreme Court

Ralph K. Anderson, III, Administrative Law Judge

Published Opinion No. 4992 (S.C. Ct. App. filed June 27, 2012)

Gregory Ford and Leslie Ford Petitioners,

v.

Beaufort County Assessor Respondent.

APPENDIX

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Record on Appeal, Final Brief of Appellant, Final Brief of Respondent and Final Reply Brief of Appellant are attached separately.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Gregory Ford and Leslie Ford, Appellants,

v.

Beaufort County Assessor, Respondent.

Appeal From Administrative Law Court
Ralph K. Anderson, III, Administrative Law Court Judge

Opinion No. 4992
Heard November 2, 2011 – Filed June 27, 2012

AFFIRMED

John J. Pringle, Jr., of Columbia, for Appellants.

Stephen P. Hughes and William T. Young, III, of
Beaufort, for Respondent.

THOMAS, J.: Gregory and Leslie Ford appeal an order issued by the Administrative Law Court (ALC) upholding the decision of the Beaufort

County Assessor (Assessor) to assess their property at the six-percent ratio instead of the four-percent ratio allowed for a legal residence. We affirm.

FACTS AND PROCEDURAL HISTORY

The Fords own a residence on Hilton Head Island. It is their legal residence and domicile. They purchased the property in 2003 and built their house on it in 2005. Initially, they lived in their home the entire year and never rented it out to others.

During the summer of 2008, the Fords leased their home for ninety-one days. They paid accommodations taxes on their rental income. While their home was leased, they lived in a rented apartment in Sea Pines. The Fords' drivers' licenses, voter registration cards, tax bills and returns, and utility bills all show the address of the subject property as their legal residence, and they have never claimed any other address as their legal residence or domicile during the time in question. In 2008, they earned \$76,500 from the rental of their residence.

In August 2008, the Assessor received an anonymous letter stating the Fords, though "claiming the house as their permanent residence, and being taxed at the 4% rate," "are not in residence and are renting the house out on the weekly rental market during the summer weeks for income purposes." Based on this information, the Assessor sought further information from the Fords, who advised (1) the subject property was their "personal home," (2) they rented the property for a few weeks in the summer, and (3) they lived there for the rest of the year. They also directed the Assessor to an internet site for specific information about the rental periods and terms.

After reviewing the matter, the Assessor sent the Fords a letter informing them that their application for the four-percent assessment ratio was denied for tax year 2008 because their property was rented for more than fourteen calendar days during the tax year. The Fords appealed the

Assessor's decision to the Beaufort County Tax Equalization Board. The Board held a conference on the matter and affirmed the Assessor's decision.

The Fords then initiated this action in the ALC for a contested case hearing. The ALC held a hearing in the matter and issued an order affirming the ruling of the Board, holding (1) the Fords' home was ineligible for the four-percent assessment ratio for 2008 because it was rented for more than fourteen days during that year and (2) the sole statutory exception to the general rule that rental property does not qualify for the four-percent assessment ratio did not apply in this case. This appeal followed.

ISSUE

Did the ALC err in upholding the Assessor's decision to deny the Fords' application for the four-percent property tax ratio for their home?

STANDARD OF REVIEW

Tax appeals to the ALC are subject to the Administrative Procedures Act, and an appellate court is to review the ALC's decision for errors of law. CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 73-74, 716 S.E.2d 877, 880-81 (2011). "Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." Id. at 74, 716 S.E.2d at 881.

LAW/ANALYSIS

The primary focus of this appeal is section 12-43-220(c) of the South Carolina Code (Supp. 2011),¹ which governs the eligibility of a legal residence to be taxed on an assessment ratio equal to four percent of the fair market value of the property. A legal residence that is not eligible to be taxed at this ratio is generally taxed based on an assessment ratio equal to six

¹ Section 12-43-220 has been amended twice since this matter began; however, paragraph (c) was not affected by the changes.

percent of its fair market value. S.C. Code Ann. § 12-43-220(e) (Supp. 2011).

Section 12-43-220(c)(1) provides in pertinent part as follows:

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property. . . . When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. 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. For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

The ALC held that under section 12-43-220(c)(1), the four-percent ratio generally would not be applied to an owner-occupied legal residence if that residence is rented for profit during the applicable tax year. In reaching

this conclusion, the ALC emphasized the use of the language "any . . . residences which are rented" and interpreted this phrase to include a taxpayer's legal residence.

The Fords first take issue with the ALC's rejection of their argument about the significance of the term "this property," which is used in the next-to-last sentence of section 12-43-220(c)(1). The sentence reads as follows: "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." (emphases added). Whereas the Fords argue "this property" includes only certain property contiguous to the legal residence and not the property on which the legal residence is located, the Assessor and the ALC maintain otherwise. We agree with the Assessor and the ALC.

In the first sentence of the above-quoted passage, it is apparent that the four-percent assessment "of the fair market value of the property" is a percentage of the value of the property on which the legal residence is located plus the same percentage of the value of limited surrounding acreage. Furthermore, in the sentence immediately preceding the sentence at issue here, "the property" upon which a lessee is liable for taxes obviously includes the property on which lessee's legal residence is located, as well as contiguous property not to exceed a total of five acres. We therefore agree with the ALC that the phrase "this property" in the next-to-last sentence in section 12-43-220(c)(1) includes the property on which the legal residence of an owner-occupant is located and that a legal residence of an owner-occupant is therefore subject to the six-percent assessment ratio if it is one of "any residences which are rented" and located on "this property." See McClanahan v. Richland Cnty. Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002) ("All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute."); Russo v. Nationwide Mut. Ins. Co., 334 S.C. 455, 458, 513 S.E.2d 127, 128 (Ct. App. 1999) ("In statutory construction, legislative intent prevails where it can be reasonably ascertained from the plain meaning of the statutory language.").

The Fords further argue they are entitled to the four-percent assessment ratio pursuant to the first sentence in section 12-43-220(c)(1) because the subject property is their legal residence and they have satisfied the requirements of section 12-43-220(c)(2), which lists what a taxpayer must do in order to receive the four-percent assessment ratio for an owner-occupied residence.² We disagree. Although a taxpayer may be entitled to have property taxed at the four-percent assessment ratio based on a showing that the property for which the lower assessment ratio is sought has been that taxpayer's legal residence for some part of the tax year, the right to be taxed at the lower rate is subject to qualifications within the same statute. See Duvall v. S.C. Budget & Control Bd., 377 S.C. 36, 42, 559 S.E.2d 125, 127 (2008) ("When construing statutory language, the 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."). Here, the legislature intended to grant the preferred assessment ratio only to those owner-occupants who limit the use of their legal residences to statutorily defined parameters.

The Fords also contend the ALC erroneously interpreted section 12-43-220(c)(7) of the South Carolina Code (Supp. 2011) to be the sole exception to the rule disqualifying an owner-occupant from receiving the four-percent assessment ratio for a legal residence that is rented for profit during the tax year. Specifically, they contend subsection (c)(7) is only a "safe-harbor" and their failure to meet the requirements in this subsection should not prevent them from receiving the preferred assessment ratio. We disagree.

² Under section 12-43-220(c)(2) of the South Carolina Code (Supp. 2011), "[t]o qualify for the special property tax assessment ratio . . . , 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." This section further provides that "[a] residence which has been qualified as a legal residence for any part of the year is entitled to the four-percent assessment provided in this item for the entire year"

Section 12-43-220(c)(7) provides as follows:

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 if the taxpayer's residence meets the requirements of Internal Revenue Code Section 280A(g) . . . and the taxpayer otherwise is eligible to receive the four percent assessment ratio.

Internal Revenue Code section 280A(g), to which section 12-43-220(c)(7) refers, reads as follows:

(g) Special rule for certain rental use.—
Notwithstanding any other provision of this section . . . , if a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, then—

(1) no deduction otherwise allowable under this chapter because of the rental use of such dwelling unit shall be allowed, and

(2) the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer under section 61.

The ALC reasoned that because (1) a statute providing that "a thing shall be done in a certain way carries with it an implied prohibition against doing that thing in another way" and (2) a court should interpret a particular provision in conjunction with the whole statute and the policy of the law rather than in isolation, it follows that the legislature intended for section 12-43-220(c)(7) to state the sole exception under which a legal residence that is rented during the tax year can receive the four-percent assessment ratio. We

agree with the ALC's analysis. Under section 12-43-220(c)(1), the Fords cannot claim the four-percent assessment ratio for their home, and there are no other statutory criteria under which the disqualification would be waived.³

Finally, the Fords complain the ALC erroneously treated the four-percent assessment ratio as an exemption or deduction and construed it against them based on this allegedly incorrect characterization. They assert the ALC did not cite any authority for the proposition that property tax assessment ratios are characterized as exemptions or deductions or that any ambiguities in a tax classification statute should be construed against the taxpayer. We disagree. The South Carolina Supreme Court has recently held that section 12-43-220 is a tax exemption statute. See CFRE, 395 S.C. at 74, 716 S.E.2d at 881 (implying section 12-43-220(c)(1) provides a statutory tax exemption and referencing "our policy of strictly construing tax exemption statutes against the taxpayer"). We therefore hold the ALC correctly construed any uncertainty in the statute against the Fords.

CONCLUSION

We agree with the ALC's interpretation of section 12-43-220(c) of the South Carolina Code and affirm the decision to deny the Fords' application for a four-percent assessment ratio on their home.

³ In support of their position, the Fords cite an order in a case involving different parties in which the ALC held the waiver of disqualification in section 12-43-220(c)(7) was only a safe harbor provision. Although this court affirmed the ALC, it did so in an unpublished opinion. Neither the ALC order nor this court's unpublished opinion is binding authority, and the ALC in this case was not compelled to follow either decision. See Rule 268(d)(2), SCACR ("Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved."); 21 C.J.S. Courts § 212 (2006) ("Trial or inferior court decisions are not precedents binding other courts, including appellate courts or other judges of the same trial court.").

AFFIRMED.

FEW, C.J., and KONDUROS, J., concur.

ELLIS:LAWHORNE

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July 12, 2012

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1205 Pendleton Street
Edgar Brown Building
Columbia, SC 29201

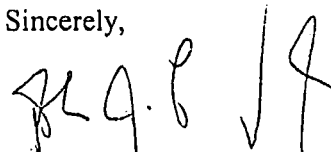
RE: Gregory Ford and Leslie Ford vs. Beaufort County Assessor
Case No. 2009-ALJ-17-0179-CC
Court of Appeals Case No. 2010164527
ELS File No. 1986-11658

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Petition for Rehearing filed on behalf of the Appellants in the above-referenced case. Please return a clocked copy of same via the bearer of these documents.

By copy of this letter, we are serving a copy of these documents upon the Respondent and enclose our Proof of Service to that effect.

Sincerely,



John J. Pringle, Jr.

JJP/cr

Enclosures (as stated)

cc: Stephen P. Hughes, Esquire
Gregory Ford and Leslie Ford

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No. 2009-ALJ-17-0179-CC

Gregory Ford and Leslie Ford, ...Appellants,

v.

Beaufort County Assessor, ...Respondent.

PETITION FOR REHEARING OF APPELLANTS

Appellants, Gregory and Leslie Ford, (the "Fords"), pursuant to Rule 221 of the South Carolina Appellate Court Rules, respectfully request that this Honorable Court grant rehearing as set forth herein. The issues set out below were not addressed by the Court.

INTRODUCTION

In Ford, No. 4992, 2012 WL 2401956 (S.C. Ct. App. June 27, 2012) (the "Opinion"), the Court characterized ten (10) pages of Appellants' arguments addressing S.C. Code Ann. § 12-43-220(C)(1) (the "Statute") (Appellants' Brief, pp. 3-13) in one sentence. Moreover, the Court dispensed with those arguments with two sentences of analysis.

By considering only isolated phrases of selected parts of the Statute, the Court ignored the plain language of the Statute in close proximity to the provisions referenced

in the Opinion, as well as the context provided by the Statute's terms, and did not address the Fords' arguments that covered all relevant portions of the Statute. "The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose." Jackson v. Charleston County School Dist., 316 S.C. 177, 181, 447 S.E.2d 859, 861 (1994) (quoting Laurens County School District v. Cox, 308 S.C. 171, 417 S.E.2d 560 (1992)); Whitner v. State, 328 S.C. 1, 492 S.E.2d 777 (1997) ("when construing a statute, we do not view its terms in isolation, but rather in the context of the entire statute and its intended purpose.")

The Fords analyzed in great detail the relevant portions of the Statute -- namely first, third, fourth, and fifth sentences thereof, and showed exactly how the term "this property" cannot include "legal residence", based upon the Statute's plain language, its context, and its purpose. See Brief of Appellants, at pp. 5-14. If the Statute's language is indeed plain and unambiguous to the Court, the Fords ask the Court to directly address their arguments and explain why the reading offered by the Appellants is invalid.

As a practical matter, why on Earth would the General Assembly invalidate the 4 percent assessment for the legal residence by burying same in the middle of the Statute, and never once just plainly state that a taxpayer loses the 4% assessment if the legal residence is rented?

STANDARD FOR A PETITION FOR REHEARING

According to Rule 221(a) of the South Carolina Appellate Court Rules, a properly drawn petition for rehearing must state "the points supposed to have been overlooked or

misapprehended by the court.” See Kennedy v. South Carolina Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001); and James A. Atkins, 16 S.C. Jur. Appeal and Error § 147 (2007). “The purpose of such a petition (for rehearing) is to aid the court in deciding correctly a case heard by it.” Arnold v. Carolina Power & Light Co., 168 S.C. 163, 167 S.E. 234 (1933).

THE STATUTE

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property...When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. 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. For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

THE OPINION'S CONCLUSION

The Court concluded

the phrase “this property” in the next-to-last sentence in [the Statute] includes the property on which the legal residence of an owner-occupant is located and that a legal residence of an owner-occupant is therefore subject to the six-percent assessment ratio if it is one of “any residences which are rented and located on “this property.”

ARGUMENTS

I. THIS COURT OVERLOOKED THE FORDS' ARGUMENTS THAT THE LEGISLATURE INTENDED "LEGAL RESIDENCE" AND "PROPERTY" TO BE DIFFERENT TERMS WITH DIFFERENT MEANINGS AND DIFFERENT APPLICATIONS WITHIN THE STATUTE.

A. The Court Mischaracterized Appellants' Argument.

According to the Opinion (Page 3), "the Fords argue 'this property' includes only certain property contiguous to the legal residence *and not the property on which the legal residence is located. . . .*" This is incorrect. Appellants never argued, and the Statute contains no reference, to the "property on which the legal residence is located." The Statute uses the term "legal residence" and makes clear that the four-percent ratio is available for the "legal residence" and in certain circumstances the "property" contiguous to that "legal residence." The phrase used by the Court makes easier the conflation of "legal residence" and "this property" that is found nowhere in the Statute.

B. The Court's Analysis of the First Sentence of the Statute Overlooks the Language in that Sentence and Appellants' Arguments Regarding Same.

The Court's conclusion above rested on two sentences of the Statute, and was expressed in two sentences of analysis in the Opinion. First, the Court homed in on the last six words of the first sentence of the Statute (in the process skipping over the rest of the sentence as described below), to conclude that "fair market value of the property" means

a percentage of the value of the property on which the legal residence is located plus the same percentage of the value of limited surrounding acreage. Opinion, Page 3.

Presumably, the Court intended to demonstrate that “property” as used in that sentence was inclusive of “legal residence.” However, the complete first sentence of the Statute states:

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property... (emphasis added).

The Court’s isolated and limited citation ignored an earlier use of the term “property” in the *same sentence* that contradicts its conclusion. The reference to “additional dwellings located on the *same property*” refers to additional dwellings or improvements resting on the contiguous land that cannot be the “legal residence”. The Court’s conclusion not only ignores the highlighted language above, but also Appellants’ arguments (Brief pp. 5-7) demonstrating the differences between “legal residence,” the property contiguous to it, and “additional dwellings located on the same property,” as demonstrated by the Statute, the definition of “legal residence” found in S.C. Code Ann. Regs § 117-1800, and the meaning of “contiguous” as defined by the Supreme Court. The Court’s reliance on the last six words of this sentence to conflate one or more of these terms, while ignoring the plain language of the rest of the sentence treating these concepts differently, as well as the context in which these terms are used, was error.

C. The Opinion’s Second Sentence of Analysis Opinion Overlooked Critical Portions of the Statute and Appellants’ Arguments Regarding Same.

The Opinion further concluded:

Furthermore, in the sentence immediately preceding the sentence at issue here, “the property” upon which the lessee is liable for taxes obviously

includes the property upon which the lessee's legal residence is located, as well as the contiguous property not to exceed a total of five acres.

The provision referenced by the Court reads:

If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item.

With all due respect, and as argued by Appellants (Appellants' Brief pp. 8-10), the Statute makes clear that is absolutely incorrect, not only by its plain language referencing not the "legal residence" but instead the property contiguous to his legal residence, *but by the plain language of the sentence immediately preceding the sentence quoted above and overlooked by the Court:*

When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, *the assessment for the residence is at the same ratio as provided in this item. (emphasis added).*

As argued by the Appellants in their Brief, the Statute has one sentence describing how a taxpayer receives the 4% assessment for the legal residence when the "legal residence is located on leased or rented property" and another sentence describing how the taxpayer who is a "lessee of property upon which he has located his legal residence" can pay the taxes on the leased property and receives the 4 percent assessment for that property.

Again, as argued by Appellants:

Because the provision allowing the four percent assessment *for* leased property is a completely different situation from the previous provision allowing the four percent assessment for a legal residence located *on* leased property (but not for the leased property itself), it is additionally clear that the General Assembly intended to treat "legal residence" and "property" as two separate things. More specifically, if there is one mechanism whereby a "legal residence" is entitled to the assessment, and

another whereby "leased property" can so qualify, then the two terms cannot mean or connote the same thing.

The Court did not address the effect of these two sentences and their clear and plain meaning. The Respondent did not, and cannot.

D. The Court Overlooked Appellants' Arguments Regarding the Sentence at Issue.

The fifth sentence of the Statute 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.

Based upon the arguments above misapprehended and overlooked by the Court, it is clear that lawmakers used "this" in the fifth sentence to reference the property described in the fourth sentence, and the third sentence and the first sentence. Appellants' Brief at p. 11. It follows from a straight-forward reading of this provision, along with the "above-referenced distinctions between 'legal residence' and 'property' that "this property" refers to the up to five acres of property contiguous to a taxpayer's legal residence, *but not to the taxpayer's 'legal residence.'*" *Id.*

II. THE COURT MISCHARACTERIZED APPELLANTS' ARGUMENTS REGARDING LEGAL RESIDENCE AND DOMICILE

As set out in pp. 14-17 of their Brief, Appellants simply pointed out that the requirements for establishing a "legal residence" are referenced throughout the Statute and are very straightforward. The Court ignored these provisions based upon its faulty assumption that the Statute as discussed above disqualified Appellants (by doing so obliquely in a provision buried in the middle of the Statute and referenced nowhere else in the Statute). The idea that a taxpayer can forfeit the 4% assessment by renting her

house for even one day is found nowhere in the Statute, and the Court did not address the provisions cited by Appellants that directly contradict the Court's conclusion.

III. THE COURT DID NOT ADDRESS APPELLANTS' ARGUMENTS REGARDING § 12-43-220(C)(7).

The Court adopts the ALC's conclusions on this point without addressing Appellants' arguments contained on Page 17-20 of their Brief. Appellants did not cite the Metts case for the proposition that it bound either the ALC or this Court. It is the rationale of the Metts decision that was important to the Appellants and their arguments, and the Court did not address those arguments. Specifically, the Court was silent on the following language from that opinion (cited in Appellants' Brief at p. 19):

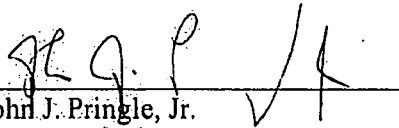
[f]undamental logic requires that if the General Assembly wants to preclude taxpayers who rent their dwelling units for more than fifteen days from receiving the four percent assessment ratio, it must independently say so.

CONCLUSION

Based upon the above, Appellants request that the Court consider the arguments made by Appellants and grant rehearing.

Respectfully Submitted,

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July 12, 2012

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PROOF OF SERVICE

I, the undersigned paralegal, of the law offices of Ellis Lawhorne & Sims, P.A., attorneys for Appellants, Gregory Ford and Leslie Ford, do hereby certify that I have served all counsel in this action with a copy of the Petition for Rehearing via 1st Class Mail Service as indicated below on the 12th day of July, 2012:

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Carol Roof, Paralegal

Columbia, South Carolina

The South Carolina Court of Appeals

Gregory Ford and Leslie Ford, Appellants,
v.
Beaufort County Assessor, Respondent.

Appellate Case No. 2010-164527

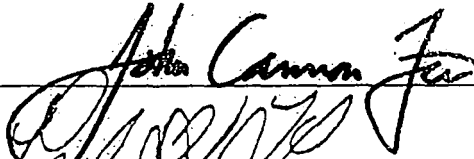
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Ellis, Lawhorne
& Sims, P.A.

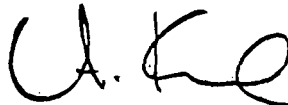
ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.




C.J.

J.



J.

Columbia, South Carolina

cc:

John Julius Pringle, Jr.
Stephen P. Hughes
Christian L. Rogers
Jana E Shealy

FILED

August 20, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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RECORD ON APPEAL

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October 28, 2010

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Gregory Ford and Leslie Ford,

Petitioners,

v.

Beaufort County Assessor,

Respondent.

Docket No. 09-ALJ-17-0179-CC

FINAL ORDER AND DECISION

APPEARANCES: For the Petitioner: John Pringle, Esquire
For the Respondent: Stephen Hughes, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) for a contested case hearing pursuant to S.C. Code Ann. § 12-60-2540. The Beaufort County Assessor, (Assessor) seeks review of the Assessor's determination the Petitioners, Gregory and Leslie Ford, are not entitled to the 4% residential assessment on their property, located at [REDACTED], Hilton Head Island, South Carolina, for the tax year 2008). A hearing was held before me on November 17, 2009 at the offices of the Administrative Law Court.

FINDINGS OF FACTS

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion and the credibility of the witnesses, I make the following additional findings of fact by a preponderance of evidence:

Petitioners own a home at [REDACTED] on Hilton Head Island in Beaufort County. [REDACTED] is the Petitioners' legal residence and domicile. For the tax year 2008, Petitioners occupied the home for approximately nine (9) months. The other three months they leased an apartment in Sea Pines and rented their primary residence as a means of generating income. [REDACTED] was available for rental for 13 weeks during the summer of 2008. Of that, it was actually rented for a total of ninety-one (91) days.

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SC ADMIN. LAW COURT

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude the following as a matter of law:

The Administrative Law Court has jurisdiction of this matter pursuant to S.C. Code Ann. § 12-60-2540. Furthermore, the standard of proof in proceedings before the ALC is a preponderance of the evidence. Anonymous v. State Bd. Of Medical Examiners, 329 S.C. 371, 496 S.E.2d 17 (1998).

Section 12-43-220 (c)(1)

The Assessor asserts that S.C. Code Ann. § 12-43-220(c)(1) requires that any rental of an owner occupied legal residence disqualifies that property from receiving the four percent assessment. Petitioners argue that the General Assembly established a distinction between “property” and “legal residence” in the first sentence of Section (c)(1), and maintained that difference consistently throughout this provision. In support of that proposition, Petitioners analyzed the use of those terms in Section 12-43-220 (c)(1).

The cardinal rule of statutory construction is to give effect to the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where possible, legislative intent should be determined by the language of the statute. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 44, 161 (2007). If the statutory language is plain and unambiguous, then its terms should be applied according to their clear and definite meaning; and “there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995). The literal language of a statute should be disregarded only when the result is “so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention.” Kiriakides v. United Artists Commc'ns Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

This being a tax exemption matter, there are additional statutory construction consideration. Generally, “[i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt.” S.C. Nat'l Bank v. S.C. Tax Comm'n, 297 S.C. 279, 376 S.E.2d 512 (1989). Our Court of Appeals has further recognized that “where substantial doubt exists as to construction and interpretation of legislative action with respect to enactment and enforcement of tax statutes, the doubt must be resolved against the government.” State v. Charron, 351 S.C. 319, 326, 569 S.E.2d 388, 392 (Ct. App. 2002) quoting Columbia Ry., Gas & Elec. Co. v. Carter,

127 S.C. 473, 121 S.E. 377 (1924); Coble Dairy Products Coop. Inc. v. Livingston, 239 S.C. 401, 405, 123 S.E.2d 301, 302 (1961) (“A tax statute is not to be extended beyond the clear import of its language, and any substantial doubt as to its meaning is to be resolved in favor of the taxpayer.”). Nevertheless, this deference is inapplicable in tax exemption or tax deduction matters. In Owen Industrial Products v. Sharpe, 274 S.C. 193, 195, 262 S.E.2d 33, 34 (1980), our Supreme Court held that “the language of a tax exemption statute must be given its plain, ordinary meaning and must be construed strictly against the claimed exemption.”¹ Later, in Southeastern Kusan Inc. v. S.C. Tax Commission, 276 S.C. 487, 280 S.E.2d 57 (1981), the Court further explained that:

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 [taxing authorities] favor where the plain and unambiguous language leaves no room for construction. Only when the literal application of a statute produces an absurd result will we consider a different meaning.

Southeastern Kusan Inc. v. S.C. Tax Comm'n, 276 S.C. 487, 489-490, 280 S.E.2d 57, 58 (1981) (citations omitted).

The first sentence of Section 12-43-220 (c)(1) states that

The **legal residence** and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the **same property** and occupied by immediate family members of the owner of the interest, are taxed on an assessment ratio equal to four percent of the fair market value of the property.

In setting forth what portions of the Petitioner’s property receive the four percent, Petitioners aver that Section (c)(1) treats

- “legal residence,”
- five acres of property contiguous to that legal residence, and
- any additional dwellings thereon occupied by immediate family members of the owner,

as three separate and distinct things. Petitioners further claims that the next portion of Section (c)(1) maintains this distinction between “legal residence” and “property. That provision provides that:

¹ Similarly, regarding tax deduction statutes, the court has held that ambiguities must be resolved against the taxpayer. Lowenstein & Sons, Inc. v. S.C. Tax Comm'n, 277 S.C. 561, 290 S.E.2d 812 (1982).

When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is the same ratio as provided by this item.

Obviously, property other than the legal residence is distinct from the legal residence. The objective here is rather to seek to ascertain the intent of the General Assembly in utilizing the terms. Importantly, a legal residence does not exist in a vacuum. In fact, it is not the house which is the legal residence that is taxed, but the property upon which the legal residence is located. Though the land which does not consist of the legal residence is distinctly addressed by this statute, the treatment exists to enumerate the property that is subject to the four percent assessment. In fact, the very purpose of these provisions is to ascertain the portions of the property that receive the four percent assessment.

In that light, in the second sentence, as with the first, the legal residence is the foundation by which the entire property may receive the four percent assessment. The added distinction is that though leased property may not normally receive such an assessment, it does if the owner of a residence on the property occupies that residence as their legal residence. It thus is bringing the property under the umbrella of the tax treatment of the property upon which the residence lies. Such a result does not support the supposition that legal residences are distinctly treated under this law but rather the property is considered as a whole.

The third sentence again follows the concept of discerning the implication of the legal residence upon leased property, in this instance settling the implication of the tax treatment when the lessee owns the legal residence. Section 12-43-220 (c)(1) provides that if the lessee has their legal residence upon the property and is "liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item." Interestingly, as in the first sentence, the legal residence is the avenue through which that property obtains the preferred assessment ratio.

It is in this context and through that prism we analyze the legislative intent of the disputed statutory language. After the above provisions, the General Assembly set forth that:

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.

Expressed in terms of the applicable language, the provision provides that if **this property** has located on it **any** residences which are rented for profit, this four percent value does not apply to those rental properties. Petitioner maintains that ultimately the decisive phrase in terms of resolving this case is the meaning of “this property.” That argument ignores the other important term “any residences” for which the statute does not provide a limitation to only other residences upon the property. Recognizing that in this instance ambiguities are resolved against the taxpayer seeking the exemption, the phrase “any residence” includes the taxpayer’s residence. Furthermore, as explained above, though there must be a distinct residence to generate the right to a four percent assessment, it is the property upon which that residence is located that receives the preferred assessment. Moreover, if property is a completely distinct concept, the phrase “this property” would presumably refer to the preceding sentence. That reference however would render the sentence meaningless. Finally, if a “primary residence” is not restricted from being rented for profit, then S.C. Code Ann. § 12-43-22 (c)(7) would be superfluous. Duvall v. S.C. Budget and Control Bd., 377 S.C. 36, 659 S.E.2d 125 (2008) (“The Court must presume the Legislature intended its statutes to accomplish something and did not intend a futile act.”). S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) (“A statute should not be construed by concentrating on an isolated phrase.”). I therefore find that “this property” refers to the tract of land upon which the residence is location and that the Petitioners’ residence is included within the term “any residence.”

Section 12-43-220 (c)(7)

Petitioners contend that even if Section 12-43-220(c)(1) precludes them from receiving a four percent assessment upon their residence because it is rented for profit during the year, that S.C. Code Ann. § 12-43-220 (c)(7) allows them to receive that assessment as long as they provide proof of their domicile and residency in the home. The Assessor contends that Section 12-43-220(c)(7) provides an exception to the general rule that rental property will not qualify for the four percent assessment ratio that is limited solely to individuals who rent their home fifteen (15) days or less.

Section 12-43-220 (c)(7) provides that the owner-occupant of a legal residence is not disqualified from receiving the four percent assessment if the taxpayer’s residence meets the requirements of Internal Revenue Code §280A(g), and the taxpayer otherwise is eligible to receive the residential assessment. To meet Internal Revenue Code §280A(g) “a dwelling unit

[must be] is used during the taxable year by the taxpayer as a residence” and the dwelling unit may only be “actually rented for less than fifteen (15) days during the tax year.” As clearly established by the specific testimony of the taxpayer, the property at issue in the instant proceedings was available for rental throughout the summer of 2008, and was actually rented for a period of no fewer than ninety-one (91) days during that period.

Petitioners nonetheless rely upon the reasoning espoused in Muriel V. Metts v. Charleston County Assessor, Docket No. 06-ALJ-17-0865-CC, that the criteria of less than fifteen (15) days for rentals is not a mandatory time frame to obtain the preferred assessment, but rather a “safe harbor” whereby taxpayers are assured they will receive that assessment. In that case, however, as specifically noted by the court, the Assessor “conceded that Metts is entitled to the four percent assessment.” That concession certainly changed the court’s analysis because Section (c)(7) was examined from the perspective of a taxpayer who was otherwise eligible to receive the four percent assessment rather than a taxpayer who was **not** otherwise eligible to receive the four percent assessment. In other words, when examining the implication of Section (c)(7) the ALC was reviewing the inverse both from a logical and statutory construction perspective of the case.

For example, in Metts the Court correctly explained that the Assessor’s argument ran aground upon the rocks of the “fallacy of denying the antecedent.” Irving M. Copi & Carl Cohen, Introduction to Logic 325 (5th ed. 1998); Ruggero J. Aldisert, Logic for Lawyers: A Guide to Clear Legal Thinking 160 (National Institute for Trial Advocacy 3d ed. 1997).² Examination of that fallacy does not resolve the disputed meaning of Section 12-43-220 (c)(7) in this instance. Indeed, as the court found in Metts under the principles of logic, simply because Section 12-43-220 (c)(7) grants an exclusion to one class, (those renting for less than fifteen days) it does not infer that those renting for more than fourteen days must be excluded. Nevertheless, there is also no inverse logical conclusion that those renting for more than fourteen days must be exempt.

² This is illustrated in a hypothetical syllogism as:

If A, then B.
Not A.
Therefore, Not B.

Logic for Lawyers: A Guide to Clear Legal Thinking page 160.

Resolution of this case rather lies in the construct of Section 12-43-220 (c)(7) in the context which it exists -- the implied legislative intent emanating from creating an exception to a general excluded class. In other words, the issue is whether the exclusion from receiving the four percent assessment can be expanded outside of the words of the exception set forth in Section 12-43-220 (c)(7). Inversely, the principle at issue in this case is not *expressio unius est exclusio alterius* but the principle of *inclusio unius est exclusio alterius* (the inclusion of one is the exclusion of another). German Evangelical Lutheran Church of Charleston v. City of Charleston, 352 S.C. 600, 576 S.E.2d 150 (2003). In Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000), the South Carolina Supreme Court recognized: "Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed." 533 S.E.2d at 582 (quoting Norman J. Singer, Sutherland Statutory Construction § 47.23 at 227 (5th ed.1992)).³ In Sutherland Statutory Construction the authors further explained that:

A statute which provides that a thing shall be done in a certain way carries with it an implied prohibition against doing that thing in any other way. Thus, the method prescribed in a statute for enforcing the rights provided in it is likewise presumed to be exclusive. For example, when there is a limited form of recoupment included in a statute, all other forms of recoupment must be deemed to have been excluded.

Norman J. Singer & J.D. Shambie Singer, 2A Sutherland Statutory Construction § 47:23, 25 (7th ed). Furthermore, "[a] court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." Id at 436; see also Mid-State Auto Auction v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (when determining legislative intent, courts should consider the language of the statute as a whole).

Applying these principles, I find that the exception under Section 12-43-220(c)(7) is limited to those owner-occupied legal residences which are rented for fewer than fifteen (15) days during the relevant tax year. Since Petitioners rental period is clearly outside the limited exception authorized by that Section, their property is ineligible for the preferential assessment sought.

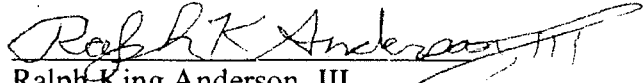
³ Interestingly, "[t]his rule is based on logic and common sense. It expresses the concept that when people say one thing they do not mean something else." Norman J. Singer & J.D. Shambie Singer, 2A Sutherland Statutory Construction § 47:25 (7th ed.)

ORDER

Based upon the above Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED that the Assessor assess the Petitioner's property at the six percent tax ratio.

AND IT IS SO ORDERED.


Ralph King Anderson, III
Chief Administrative Law Judge

April 12, 2010
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 12th day of April 2010
By: Frank M. Scott
Judicial Law Clerk

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Gregory Ford and Leslie Ford,

Petitioners,

v.

Beaufort County Assessor,

Respondent.

Docket No. 09-ALJ-17-0179-CC

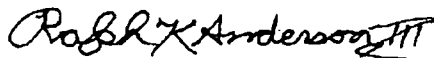
**ORDER ON MOTION
FOR RECONSIDERATION**

A hearing was held in this matter on November 17, 2009, at the Administrative Law Court. This Court thereafter determined that the Petitioners' property should be assessed at the six percent tax ratio. Petitioners thereafter filed a timely Motion for Reconsideration of that decision. I generally find that Petitioners' arguments are without merit or are a reiteration of their arguments made in the hearing into this matter. See 11 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2810.1 (2d ed. 1995) (While Rule 59(e) motions may be appropriate to preserve an issue raised in a contested case for appellate review or to ask the court to decide an issue which has been raised but not ruled upon, they "may not be used to relitigate old matters."). Nevertheless, I do briefly address the following:

Petitioner contends the Court improperly referred to Petitioner's requested relief as an exemption rather than a deduction. Whatever term is utilized, the four percent ratio has the same effect as an exemption or deduction – the taxpayer liability is reduced. Therefore, the same principles of statutory construction concerning exemptions or deductions are relevant regardless of the label that is used.

IT IS THEREFORE ORDERED that the Petitioners' Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED.

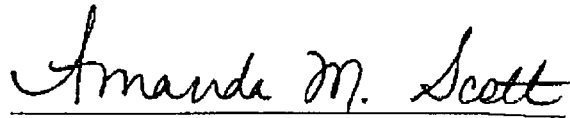


Ralph King Anderson, III
Chief Administrative Law Judge

May 24, 2010
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Amanda M. Scott, 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).

A handwritten signature in cursive script that reads "Amanda M. Scott". The signature is written in black ink and is positioned above a horizontal line.

Amanda M. Scott
Judicial Law Clerk

May 24, 2010
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Gregory Ford and Leslie Ford

Petitioners,

vs.

Beaufort County Assessor,

Respondent.

**PETITIONER'S PRE-HEARING
STATEMENT**

DOCKET NO. 09-ALC-17-0179-CC

Gregory Ford and Leslie Ford, ("Fords" or "Petitioners") hereby submit this Pre-Hearing Statement per Order for Pre-Hearing Statements dated May 14, 2009. Petitioners reserve the right to update and supplement this Pre-Hearing Statement prior to the Hearing in this case.

1. **Nature of Proceeding:** This is a contested proceeding in which Petitioners seek review of the decision issued on April 7, 2009 by the Beaufort County Tax Assessor ("Respondent"). Petitioners seek to appeal the decision denying the 4% assessment ratio for year 2008.

2. **Statutory provision(s) conferring subject matter jurisdiction:**

S.C. Code Ann. § 12-60-2540

3. **The specific statutory and regulatory provisions giving rise to the controversy:**

S.C. Code Ann. § 12-43-220 (c)(7)

S.C. Code Ann. § 12-43-220 (c)(2)(i)

S.C. Code Ann. § 12-60-2120 (B)

S.C. Code Ann. § 12-37-220 (A)(5)

4. **Issues to be presented:**

What assessment ratio are Petitioners entitled to and qualified to be assessed for 2008?

Should Petitioners have to pay personal property tax on their primary home

furnishings?

5. **Action requested:** Re-assessment of the Fords' residence for calendar year 2008 under the four percent (4%) assessment ratio for primary residence status, and a declaratory ruling that the Fords are not required to pay business personal property tax on home furnishings with respect to those furnishings located in their primary residence.

6. **Brief summary of facts to be presented at the hearing:**

The Fords have been citizens of Beaufort County for 35 years and property owners for most of that time. They currently live in the Folly Field area, at [REDACTED] Road, Hilton Head, SC. The Fords rented out their home a total of 84 days from June through August of 2008.

During the period in which the home was rented, Petitioners lived in a rented apartment. They claimed no primary residence for property tax purposes other than the Folly Field home during 2008 and were domiciled at the home during January through May and September through December of 2008.

Respondent issued an assessment of \$59,898 for the Fords for 2008 and issued a Personal Property Tax Notice to Petitioners showing taxes due of \$12,808.57 for tax year 2008. The assessment was based upon a 6 percent (6%) assessment ratio, which resulted in a \$9,000 increase in property taxes on their primary home. Furthermore, they have recently been asked to file a business property tax return and pay personal property tax on their furnishings, most of which they have had for 20+ years.

On November 22, 2008, Petitioners provided written notice of their objection to Respondent's assessment and requested a conference with Respondent to discuss their objection.

Oral presentations from both the Petitioners and the Respondent were heard on March 25, 2009 at the Tax Equalization Board Meeting.

Respondent responded via letter to Petitioners on April 7, 2009 in which it rendered a final decision denying Petitioners' objection.

Petitioner filed a request for a contested case hearing on April 13, 2009.

7. **Summary of any motions expected:** Petitioners expect to file a Motion for Summary Judgment, as the facts in this case are not largely in dispute.

8. **A list of proposed witnesses and exhibits is as follows:**

List of Witnesses:

Mr. Gregory Ford

Mrs. Leslie Ford

Those witnesses proposed by the Respondent.

List of Exhibits:

Proof of Residency documents: Valid driver's licenses, voter registration cards, vehicle registrations, income tax returns, etc.

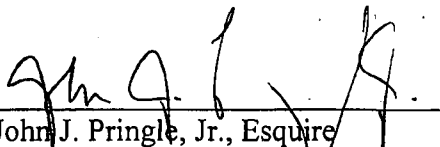
The assessment in question and the correspondence described above.

9. **Statement of needed discovery:** The Petitioners do not anticipate the need to conduct discovery, but reserve the right to do so in the event that the case involves the presentation of testimony.
10. **Whether Petitioner requires Pre-Hearing Scheduling Conference or issue an order regarding motions, discovery, etc.:** Petitioners request a pre-hearing scheduling conference in order to discuss a possible Stipulation of Facts and a briefing schedule for Motions for Summary Judgment.
11. **Estimated time for hearing:** If a hearing takes place, the Petitioners estimate one-half day for hearing.
12. **Dates Petitioners will not be available for hearing in next 90 days:**
- June 1, 2009
June 5, 2009
June 10-11, 2009
June 15-19, 2009
July 6-13, 2009
July 27-31, 2009
August 3-10, 2009
August 17-20, 2009
August 24, 2009
September 3, 2009
13. **Email address:** jpringle@ellislawhorne.com
crogers@ellislawhorne.com

Respectfully submitted,

ELLIS, LAWHORNE & SIMS, P.A.

By:



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Attorneys for Gregory and Leslie Ford

May 29, 2009
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Gregory Ford and Leslie Ford

Petitioners,

vs.

Beaufort County Assessor,

Respondent.

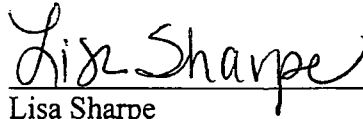
CERTIFICATE OF SERVICE

(Contested Case)

DOCKET NO. 09-ALC-17-0179-CC

This is to certify that I have caused to be served this day, one (1) copy of **Petitioners' Pre-hearing Statement** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

Beaufort County Assessor
P.O. Box 458
Beaufort SC 29901



Lisa Sharpe
Paralegal

May 29, 2009
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gregory Ford and Leslie Ford,	)	
	)	DOCKET NO: 09-ALJ-17-0179-CC
Petitioners,	)	
	)	
Vs.	)	<u>BEAUFORT COUNTY</u>
	)	<u>ASSESSOR'S PRE HEARING</u>
Beaufort County Assessor,	)	<u>STATEMENT</u>
	)	
Respondent.	)	

1. The nature of this proceeding (What is this case about?):

RESPONSE:

This matter is before the Administrative Law Court upon a demand for contested case hearing, filed on behalf of the taxpayers, Gregory Ford and Leslie Ford. By their demand, the taxpayers have challenged the assessor's denial of the 4% residential assessment, for the tax year 2008, on the taxpayer's real property, with improvements thereon, located at [REDACTED], Hilton Head Island, South Carolina, and identified on the relevant tax maps as R510-009-000-34B-000. It is the contention of the assessor that that subject property, which was rented by the taxpayer for no fewer than 90 days during the tax year 2008, has failed to meet the requirements for the 4% residential assessment as set forth within Section 12-43-220 (c) (1), and that his actions, in denying the 4% residential assessment, were in accordance with the relevant law.

2. The statutory provision(s) conferring subject matter jurisdiction to the Division and other applicable statutes and regulations (What law applies to this case, if you know):

RESPONSE:

Jurisdiction is conferred upon this Court by the provisions of Section 12-60-2540, South Carolina Code of Laws 1976 as amended.

Statutes applicable to the action include S.C. Code Ann. Section 12-43-220 (c) (1) and S.C. Code Ann. Section 12-43-220 (c) (7) (supp. 2007).

3. The issues to be presented for determination, including any claims or defenses expected to be raised (What are the main points that support your position and your reply to the State Agency's position:

RESPONSE:

The sole issues before the Court concern:

- a. whether the subject property satisfies the requirements imposed by the relevant statute for the 4% residential assessment;
- b. whether the assessor was correct in his determination that the subject property failed to satisfy the requirements for the 4% residential assessment.

The evidence will show that the subject property, at [REDACTED], Hilton Head Island, South Carolina (R510-009-000-34B-000), was, during the tax year 2008, rented by the taxpayers for no fewer than 90 days. Under the circumstances, the subject property fails to qualify for the 4% residential assessment under either the specific provisions of Code Section 12-43-220 (c) (1), (which disqualifies rented property for the 4% assessment), were under the provisions of Code Section 12-43-220 (c) (7), (which provides a limited exception to the statutory disqualification for rented property).

The propriety of the assessor's action, in denying the 4% residential assessment to the subject property, is supported by the provisions of South Carolina Code Section 12-43-220 (c) (1) and (7).

Code Section 12-43-220 (c) (1), in addressing the availability of the 4% assessment, states, in relevant part, as follows:

The legal residence and not more than 5 acres contiguous thereto, when owned totally or in part in fee and or life estate and occupied by the owner of the interest...are taxed on an assessment equal to 4% of the fair market value of the property.

The section continues by stating that:

If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this 4% value does not apply to those businesses or rental properties.

By its specific provisions, Section 12-43-220 (c) (1) sets forth three criteria which must be satisfied in order for a particular real property to qualify for the 4% assessment:

- a. that the property be a legal residence of the taxpayers;
- b. that the property be owned and occupied by the taxpayer;
- c. that the residence for which the 4% assessment is claimed be neither rented, nor the location of any business for profit.

Clearly, by the specific provisions of Section 12-43-220 (c) (1) a property which is rented (even if that property is the primary residence of the taxpayer), fails to satisfy the statutory criteria for the special assessment. Therefore, in the absence of any relevant exception, such property, including the subject residence, is neither qualified for, nor otherwise entitled to, the 4 % residential assessment.

The provisions of section 12-43-220 (c) (1), which disqualify a rented residence from receiving the 4 % residential assessment, are subject to the provisions of Code Section 12-43-220 (C) (7). The latter section states, in relevant part, as follows:

Notwithstanding any other provision of law, the owner/occupant of the legal residence is not disqualified from receiving the 4% assessment ratio allowed by this item if the taxpayer's residence meets the requirements of Internal Revenue Code Section 28 A (g)... and that taxpayer otherwise is eligible to receive the 4% assessment ration.

Per its specific provisions, Internal Revenue Code Section 280 A (g) applies only to "...a dwelling unit [which] is used during the taxable year by the taxpayer as a residence and [where] such dwelling unit is actually rented for less than fifteen (15) days during the tax year..." Thus, the provisions of the referenced Internal Revenue Code Section 280 A (g) (providing for preferential income tax treatment of certain property), apply only to property meeting the requirements of that section, i.e., a dwelling unit used during the taxable year by the taxpayer as a residence, where such dwelling unit is actually rented for a period of fewer than 15 days during the taxable year.

The relevant provisions of Code Section 12-43-220 (c) (1), (in the absence of any authorized exception), disqualify rental property from the 4% assessment available under the code. The sole exception to that disqualification is set forth within Section 12-43-220 (c) (7) which preserves the eligibility of the 4% assessment where the owner-occupant occupied legal residence of the taxpayer is actually rented for a period of fewer than 15 days during the particular taxable year. To the extent that the owner-occupied legal residence is rented for more than 15 days during the taxable year, the property fails to qualify for the available exception, and, correspondingly, fails to qualify for the 4% assessment under Section 12-43-220 (c) (1).

4. The action requested of the Division, if any, (i.e. What do you want the Court to do?):

RESPONSE:

The Court should conclude that the subject real property is not qualified for the 4 % residential assessment available under Section 12-43-220. Specifically, the Court should determine that the provisions of Section 12-43-220 (c) (1) (in the absence of any applicable exception), make available the 4 % residential assessment only to the legal residence of the taxpayer, where such residence is owned and occupied by the taxpayer, and where such residence is not rented for any period during the taxable year. The Court should further conclude that the sole exception to the statutory disqualification for rental property is that set forth in Section 12-43-220 (c) (7), which preserves the eligibility of the 4% residential assessment only in those instances where the owner-occupied legal residence of the taxpayer is actually rented for a period of fewer than 15 days during the relevant taxable year. The Court should further conclude that the subject property, which was rented for no fewer than 90 days during the tax year 2008, fails to qualify for the exception set forth within Section 12-43-220 (c) (7). Inasmuch as the property fails to qualify for the limited exception authorized by Section 12-43-220 (c) (7), the availability for the 4% residential assessment is determined by the reference to the provisions of Section 12-43-220 (c) (1), which disqualify rental property for the 4% residential assessment.

5. A brief summary of the facts to be presented at the hearing:

RESPONSE:

The evidence will show that the subject property, at [REDACTED], Hilton Head Island, South Carolina (R510-009-000-34B) was, during the tax year 2008, rented by the taxpayers for no fewer than 90 days. Under the circumstances, the subject property fails to qualify for the 4% residential assessment under either the specific provisions of Section 12-43-220 (c) (1) (which disqualifies rented property for the 4% assessment), or under the provisions of Section 12-43-220 (c)(7) which provides a limited exception to the statutory disqualification for rented property).

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion (As required by the Rules of the ALC, all motions should be submitted to the Division within fifteen (15) days before the date of the scheduled hearing. Returns should be submitted at least five (5) days before the scheduled hearing):

RESPONSE:

It is not currently anticipated that any motions will be raised at the final hearing on the contested case.

7. A list of proposed witnesses and exhibits:

RESPONSE:

A. witnesses:

1. Edward Hughes, Beaufort County Assessor, P.O. Box 1267, Beaufort, South Carolina, 29901;
2. Robert Reames, Beaufort County Deputy Assessor, P.O. Box 1267, Beaufort, South Carolina, 29901;

The Beaufort County Assessor reserves the right to designate and/or call as witnesses any persons the identities of whom may be made available prior to the contested case hearing.

B. exhibits:

1. copies of correspondence "to whom it may concern", from "concerned tax paying neighbor", received by the office of the assessor on August 12, 2008;
2. a copy of the VRBO (Vacation Rental By Owner) listing for the subject residence, dates September 23, 2008 (found at WWW.VRBO.COM/146037);
3. correspondence, dated August 26, 2008, from Carolyn Smalls, of the office of the Beaufort County assessor, seeking information concerning rental of the subject property;
4. handwritten notes, by taxpayer Leslie Ford, written in response to Carolyn Smalls' request to August 26, 2008;
5. correspondence, dated September 17, 2008, from Carolyn Smalls, office of the Beaufort County assessor, to Gregory and Leslie Ford, seeking specific information relating to rental of the subject property, with handwritten notes submitted by Leslie Ford in response;
6. letter dated October 3, 2008, from Ed Hughes, Beaufort County assessor, to Gregory and Leslie Ford (confirming the assessor's denial of the taxpayers' application for 4 % residential assessment on the subject property);
7. correspondence, dated October 13, 2008, from taxpayer Leslie Ford to Beaufort County Tax Equalization Board (Rey Appeal of subject real property tax assessment);
8. a copy of South Carolina Code Section 12-43-220, specifically including Sections 12-43-220 (c) (1) and Section 12-43-220 (c) (7);
9. a copy of Internal Revenue Code Section 280 (A) (g);
10. a copy of correspondence, dated April 7, 2009, from Robert Cummins, Jr., Chairman, Beaufort County Tax Equalization Board, to the taxpayers, advising of the decision of the board, denying 4% residential assessment on the subject property.

8. A statement regarding the necessity of discovery, if any:

RESPONSE:

It is not currently anticipated that the matter will require any pre hearing discovery.

9. The estimated time required for the hearing, and any dates that you or your witnesses are unavailable in the next three months:

RESPONSE:

It is estimated that a hearing on the contested case will require approximately 4 hours.

It is anticipated that the assessor, and/or those persons appearing on his behalf in this matter, will be unavailable during the followings dates:

June, 1, 3, 5, 8, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26 and 29;

July, 10, 13, 14, 15, 16, 17, and 23;

August, 3, 4, 5, 6, 7, 14, 17, 18, 19, 20, 21, and 24, 25, and 28

10. Please note if any party deems it necessary for the undersigned to conduct a prehearing scheduling conference or issue and order regarding motions, discovery, etc.

RESPONSE:

It is not anticipated that any pre-hearing scheduling conference, and/or any order relating to motions or discovery, will be necessary.

11. Any dates in the next one hundred twenty (120) days when you will not be available for a hearing; and

RESPONSE:

It is anticipated that the assessor, and/or those persons appearing on his behalf in this matter, will be unavailable during the followings dates:

June, 1, 3, 5, 8, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26 and 29;

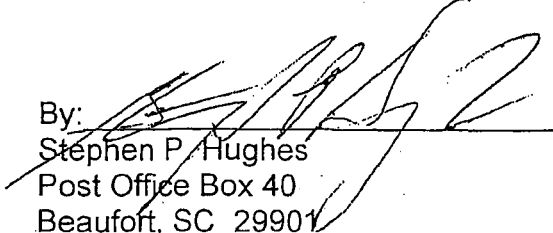
July, 10, 13, 14, 15, 16, 17, and 23;

August, 3, 4, 5, 6, 7, 14, 17, 18, 19, 20, 21, 24, 25, and 28

September, 25 and 28

12. Any email address where you can be reached. steve@hghpa.com, also email to cece@hghpa.com and athena@hghpa.com

HOWELL, GIBSON & HUGHES, P.A.

By: 
Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Beaufort County Assessor

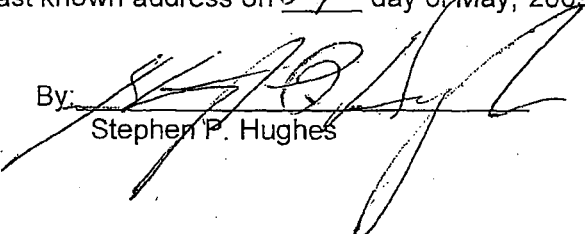
Beaufort, South Carolina

May 18, 2009

Note: Send your original Prehearing Statement and Certificate of Service to Judge Matthews at the address on the Order for Prehearing Statements and send a copy of both documents to the State Agency involved.

CERTIFICATE OF SERVICE

I certify that I served the foregoing Prehearing Statement upon all counsel/parties of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 29th day of May, 2009.

By: 
Stephen P. Hughes

NOV 29 2009

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Gregory Ford and Leslie Ford

Petitioners,

VS.

Beaufort County Assessor,

Respondent.

DOCKET NO. 09-ALC-17-0179-CC

PETITIONERS' POST-HEARING BRIEF

Petitioners, Gregory Ford and Leslie Ford ("Petitioners" or "taxpayers") respectfully submit this post-hearing brief.

INTRODUCTION

Petitioners, longtime residents of Beaufort County, live at [REDACTED], Hilton Head Island. [REDACTED] is the petitioners' legal residence and domicile. Like many of their neighbors in Beaufort County, Petitioners make their home available for rent during a portion of the summer months. Petitioners' limited rental of their home does not disqualify them from the four percent assessment ratio provided for in *S.C. Code Ann.* § 12-43-220 (1976). The Assessor's reading of the statute prohibiting residences from being rented is inconsistent with the plain language of the statute. The 14 day rental safe harbor referenced in § 220 (7) protects taxpayers in certain situations, but does not disqualify those who do not enjoy its protection. To the extent the statute contains an ambiguity, there is no authority for the proposition that such an ambiguity must or should be resolved against the Petitioners. As Petitioners' legal residence and domicile, which they own and occupy, [REDACTED] should be assessed at the four percent ratio.

APPLICABLE LAW

S.C. Code Ann. § 12-43-220, South Carolina Code of Laws 1976, as amended, governs this

case. Specifically, the issue before the Court is whether or not the Property should be classified as owner-occupied residential property pursuant to *S.C. Code Ann.* § 12-43-220(c)(1) and (c)(7) and taxed on an assessment equal to four percent of its fair market value in accordance therewith for tax year 2008.

ANALYSIS

I. THE ASSESSOR'S CLAIM THAT ANY RENTAL OF AN OWNER-OCCUPIED LEGAL RESIDENCE DISQUALIFIES THAT RESIDENCE FROM RECEIVING THE FOUR PERCENT ASSESSMENT IS NOT SUPPORTED BY THE PLAIN AND UNAMBIGUOUS LANGUAGE OF THE STATUTE.

The Assessor takes the position, that one isolated sentence found in the middle of *S.C. Code Ann.* § 12-43-220(c)(1) ("Subsection (c)(1)") requires that any rental of an owner occupied legal residence disqualifies that property from receiving the four percent assessment. That reading is contrary to the plain language of Subsection (c)(1) and indeed the plain language of *S.C. Code Ann.* § 12-43-220 as a whole. The cardinal rule of statutory construction is to give effect to the intent of the legislature. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where possible, legislative intent should be determined by the language of the statute. *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 44, 161 (2007). If the statutory language is plain and unambiguous, then its terms should be applied according to their clear and definite meaning; and "there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995). The literal language of a statute should be disregarded only when the result is "so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention." *Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

Moreover, the Assessor's reading ignores the context of the terms used in Subsection (c)(1), and indeed destroys the meaning of "legal residence" so clearly expressed therein. See *Southern Mutual Church Ins. Co. v. S.C. Windstorm and Hail Underwriting Ass'n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991) ("*Southern Mutual*") ("Clearly, words in a statute must be construed in context. According to the doctrine of *noscitur a sociis*, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute."); and *Creech v. S.C. Public Service Commission*, 200 S.C. 127, 138, 20 S.E.2d 645, 649 (1942) ("*Creech*") ("The Court may not, in order to give effect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent.").

In order to reach its flawed conclusion, the Assessor improperly conflates "legal residence" with "property" and misreads the following language: "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." (emphasis added). However, it is clear throughout Subsection (c)(1) (and in the provision relied upon by the Assessor) that "property" and "legal residence" are two separate, distinct, and different concepts.

The General Assembly established this clear distinction between "property" and "legal residence" in the first sentence of Section (c)(1), and maintains this difference consistently throughout this provision:

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment ratio equal to four percent of the fair market value of the property.

Subsection (c)(1) treats "legal residence," five acres of property contiguous to that legal residence,

and any *additional* dwellings thereon occupied by immediate family members of the owner, as three separate and distinct things. Our South Carolina Supreme Court has provided a definition of “contiguous” in S.C. Code Ann. § 12-34-220 demonstrating that “legal residence” and the “property” “contiguous thereto” are separate and distinct. In *SCDOR v. Sonoco Products Co.*, 378, S.C. 385, 662 S.E.2d 599 (2008), the Court, in the absence of a specific statutory definition, relied on secondary sources to define contiguous as follows:

In terms of secondary sources, “contiguous” commonly means, “being in actual contact: touching along a boundary or at a point; adjacent; next or near in time or sequence.” *Webster's New Collegiate Dictionary* 243 (1981). In the legal field, it has been defined as: “[i]n close proximity; neighboring; adjoining; near in succession; in actual close contact; touching at a point or along a boundary; bounded by or traversed by.” *Black's Law Dictionary* 290 (5th ed.1979).

378 S.C. 392. Thus a “legal residence” and any property contiguous to it may touch and be close to one another, but are not the same thing.

The next portion of Subsection (c)(1) maintains this distinction between “legal residence” and “property” in the context of “leased or rented property”:

When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is the same ratio as provided by this item.

Therefore, a taxpayer can qualify for the four percent rate if he owns and occupies a legal residence on land he leases. This provision maintains the distinction between the “legal residence” and (leased or rented) “property,” with the effect that the taxpayer is entitled to the four percent assessment for the “legal residence” but not the “leased property.”

Furthermore, the next portion of Subsection (c)(1) allows that a taxpayer can not only qualify his legal residence located on leased land, but can receive the four percent assessment for

certain property that touches his legal residence:

If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item.

As long as the taxpayer is responsible for the taxes on the leased land, the taxpayer can receive the four percent rate for up to five acres of leased property contiguous to his legal residence. Because the provision allowing the four percent assessment *for* leased property is a completely different situation from the previous provision allowing the four percent assessment for a legal residence located *on* leased property (but not for the leased property itself), it is additionally clear that the General Assembly intended to treat “legal residence” and “property” as two separate things. More specifically, if there is one mechanism whereby a “legal residence” is entitled to the assessment, and another whereby “leased property” can so qualify, then the two terms cannot mean or connote the same thing.

This clear and consistent distinction between “legal residence” and “property” continues in the provision on which the Assessor improperly relies:

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.

Lawmakers used “this” as an adjective specifically modifying “property” to reference the “property” described in the preceding sentences. Accordingly, it follows from a straight-forward reading of this provision and Subsection (c)(1)’s above-referenced distinctions between “legal residence” and “property” that “this property” refers to the up to 5 acres of property contiguous to a taxpayer’s legal residence, *but not to the taxpayer’s “legal residence.”* Thus, a reading of the provision based its plain language and consistent with the other provisions therein is: if this property, *not to exceed five acres contiguous to his legal residence*, 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.

The Assessor would have this Court define terms in Subsection (c)(1) in a way that is not only inconsistent with the plain language thereof, but also inconsistent with the clear meaning and context of those terms as used elsewhere in the very same part of *S.C. Code Ann.* § 12-34-220. *Southern Mutual; Creech*. Section (c)(1) *never* references property outside the specific context of acreage contiguous to a “legal residence,” and accordingly *never* uses “legal residence” interchangeably with “property”. Moreover, Subsection (c)(1) throughout differentiates between “legal residence,” “property . . . not to exceed five acres contiguous to his legal residence,” “rented mobile homes,” “residences which are rented,” and “business for profit.” “Where the same word is used more than once in a statute it is presumed to have the same meaning throughout unless a different meaning is necessary to avoid an absurd result.” *Busby v. State Farm Mut. Auto. Ins. Co.*, 280 S.C. 330, 333, 312 S.E.2d 716, 718 (S.C.App. 1984). By distinctly and separately setting forth each item, the legislature distinguished between “legal residence” on one hand, and “this property” and the other homes, residences and businesses located on the 5 acres contiguous to the “legal residence” on the other.

Consistency with the overarching purpose of *S.C. Code Ann.* § 12-43-220 supports such a reading. *Hinton v. S.C. Dept. of Probation, Parole and Pardon Services*, 357 S.C. 327, 332, 592 S.E.2d 335, 337 (Ct. App. 2004) (“A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly.”). The obvious purpose of Subsection (c)(1) is to ensure that the four percent assessment ratio uniformly applies to the legal residence and up to five contiguous acres, but not if those contiguous acres contain structures plainly ineligible but for their proximity to the legal residence. Similarly, the specific reference to mobile homes coupled with the antecedent reference to land leases suggests that the

contingency surrounding “this property” is designed to deal with a particular set of circumstances presented by mobile home parks or other land lease communities. Neither of these scenarios apply to Petitioners. Whether taking the statute as a whole or focusing on discrete words and clauses, the reading suggested by Respondent is not consistent with the plain language thereof.

II. THE PLAIN READING OF § 12-43-220(c)(1) FURTHER REQUIRES THAT PETITIONERS LEGAL RESIDENCE, WHICH THEY OWN AND OCCUPY, BE ASSESSED AT A FOUR PERCENT RATIO.

The Assessor’s reading otherwise contravenes the plain language of the statute, with respect to “legal residence” and “domicile.” Recall that § 12-43-220(c)(1) provides: “The legal residence ... when owned ... and occupied by the owner of the interest ... [is] taxed on an assessment equal to four percent of the fair market value of the property. . . [f]or purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.”

██████████ is clearly the legal residence and domicile of Petitioners’ per the statute. The law of domicile is well established: one may only have a single domicile at any given time, but one cannot be without a domicile. 28 CJS, Domicile, § 3 (2009). “The important facts in determining the domicile of a person who has two residences are the physical character of each residence, time spent and things done in each place, and whether or not there is an intention to return to the original domicile.” 28 CJS, Domicile, § 13 (2009). A change in domicile requires “clear proof of an intent to abandon the old domicile and acquire a new one.” *Gasque v. Gasque*, 246 S.C. 423, 427, 143 S.E.2d 811, 812 (1965). No such intent exists here, and there has been no allegation, much less proof, that Petitioners have any domicile other than ██████████.

With respect to domicile, a recent S.C. Attorney General opinion reasoned,

“just because an individual is absent from his or her home and temporarily resides in another location he or she does not automatically establish a new residence. To the contrary, an

individual may be absent, but so long as that individual has the intent to return and to remain there permanently, he or she does not effectuate a change in residency.”

Op. S.C. Atty. Gen., August 13, 2008. 2009 WL 2844864 (S.C.A.G.). A subsequent attorney general opinion concluded, “whether or not the taxpayer ... may receive the special assessment ratio depends on whether the taxpayer has the intent to treat the property as his legal residence or domicile.” Op. S.C. Atty. Gen., August 27, 2009. 2009 WL 2844864 (S.C.A.G.).

The statute is replete with provisions that emphasize the status of the home, without mechanically focusing on arbitrary time periods. In fact, subsection (c)(2)(i) plainly states that the owner occupant need only be domiciled “for some period” or qualified “for any part of the year”:

(2)(i) 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.

S.C. Code Ann. § 12-43-220(c)(2)(i) (emphasis added).

In addition, a homeowner applying for the four percent ratio is required to certify to the following: “[u]nder penalty of perjury I certify that: (A) the residence which is the subject of this application is my legal residence and where I am domiciled *at the time of this application*.” *S.C. Code Ann.* § 12-43-220(c)(2)(ii) (emphasis added).

The Assessor’s misapplication of the statute deprives the domicile and legal residence provisions of meaning, and contravenes the plain meaning of the statute. The overarching purpose of *S.C. Code Ann.* § 12-43-220 is to ensure the four percent assessment ratio accrues to the benefit of a taxpayer’s legal residence or domicile. Reading Subsection (c)(1) as a general bar to the four

percent ratio for any rental grossly oversimplifies the domicile inquiry and places too much import on the rental issue – in effect, allowing the tail to wag the dog.

III. 12-43-220(c)(7) OPERATES AS A SAFE HARBOR TO PROTECT TAXPAYERS FROM AN OVERREACHING APPLICATION OF THE LAW, AND DOES NOT DISQUALIFY A LEGAL RESIDENCE OUTSIDE THAT SAFE HARBOR.

As set out above, the statute contains no general rule that rental of a home disqualifies it from the four percent assessment. Despite a plain reading to the contrary, the Assessor reads an absolute bar for rented property into the statute and tortures the language to characterize subsection (7) as an exception. The Assessor submits that because Petitioners do not meet the narrow circumscription of § 12-43-220(c)(7) dealing with *de minimis* rental they are not eligible for the four percent assessment ratio. Subsection (c)(7), however, also makes its effect plain: "the owner-occupant of a legal residence is not disqualified from receiving the four percent assessment ratio allowed by this item if the taxpayer's residence meets the requirements of Internal Revenue Code § 280A(g) as defined in Section 12-6-40(A) and the taxpayer otherwise is eligible to receive the four percent assessment ratio." The statute is silent as to homeowners who rent for more than 15 days.

I.R.C. § 280A(g) does not deal with property tax, rather it addresses taxable income, which generally includes rental income from real property. 280A(g) provides an exclusion for *de minimis* rental income collected for rental periods of less than fifteen days per year. The exclusion applies irrespective of whether real property is a legal residence.

280A(g) seemingly was co-opted for convenience. Considering the statute and Internal Revenue Code together, § 12-43-220(c)(7) effectively states that a taxpayer is *not disqualified* from receiving the four percent assessment ratio if her residence is rented for less than fifteen days and she otherwise qualifies. Homeowners who rent for more than fifteen days are simply not addressed.

As noted above, the Assessor incorrectly argues that the general rule is any rental of property renders it ineligible for the four percent assessment ratio. The Assessor then argues that § 12-43-220(c)(7) is merely an exception to the general rule. Obviously there is no general rule upon which the Assessor can rely. However, assuming purely *arguendo* that there were, the Assessor in effect argues that by declaring some homeowners are not disqualified from receiving the four percent ratio, all others are necessarily disqualified. The Assessor looks to the canon of constructions “*expressio unius est exclusio alterius*” which holds that “to express or include one thing implies the exclusion of another, or of the alternative.” *South Carolina Dept. of Consumer Affairs v. Rent-A-Center, Inc.*, 345 S.C. 251, 256, 547 S.E.2d 881, 883 - 884 (S.C.App. 2001). The application of the maxim, however, is limited: “[it] should be used to accomplish legislative intent, not defeat it. The maxim “is a rule of statutory construction; it is not a rule of substantive law. Accordingly, [it] ‘should be used with care.’ ” *Id.* (quotations in original) (internal citations omitted).

In *Metts v. Charleston County Assessor*, the Administrative Law Court reasoned “[t]he Assessor’s argument that subsection (7) operates as an exclusion is logically flawed because it infers the validity of the inverse of the actual statutory language.” The Court reasoned:

[i]t is a fundamental principle of logic that the inverse of a statement does not necessarily have the same truth value of the original statement but must be independently proven. In other words, the inverse does not necessarily follow from the original statement. Accordingly, the “*expressio unius est exclusio alterius*” principle of statutory construction upon which the Assessor relies has no application here.

(2007) (internal citations omitted). Petitioners would point out that the Court of Appeals affirmed *Metts* in an unpublished opinion based in part on the plain language of *S.C. Code Ann. § 12-43-220*. *Charleston County Assessor v. Metts*, Unpublished Opinion No. 2008-UP-640 (S.C.Ct.App. filed November 17, 2008)*

*No precedential value. See attached **Exhibit One**.

The Assessor's construction also defeats legislative intent. Where a provision is designed to carve out a safe harbor, it contravenes legislative intent to expand the narrowly drawn safe harbor to create a far-reaching bright-line rule. By the Assessor's reading, the exception overtakes the rule. If the legislature had intended to achieve this result – effectively exclude by inclusion – they could have simply replaced the general rule with the fifteen day threshold of § 12-43-220(c)(7). “Fundamental logic requires that if the General Assembly wants to preclude taxpayers who rent their dwelling units for more than fifteen days from receiving the four percent assessment ratio, it must independently say so.” *Metts v. Charleston County Assessor*, 06-ALJ-0865-CC. The General Assembly did not say so, and so this provision cannot be used to deny Petitioners the four percent assessment.

IV. AS A GENERAL RULE, TAXPAYERS RECEIVE THE BENEFIT OF DOUBT IN ENFORCEMENT OF TAX STATUTES, AND THERE IS NO AUTHORITY FOR THE PROPOSITION THAT ANY PUTATIVE AMBIGUITY IN THIS STATUTE MUST BE RESOLVED AGAINST THE TAXPAYERS.

Alternatively, if ambiguous, statutory provisions should be given a “reasonable construction consistent with the purpose of the statute.” *Moon v. City of Greer*, 348 S.C. 184, 188, 558 S.E.2d 527, 529 (S.C.App. 2002). The prevailing law of statutory construction favors the taxpayer: “[i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt.” *S.C. Nat'l Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 376 S.E.2d 512 (1989) (citing *Cooper River Bridge v. S.C. Tax Comm'n*, 182 S.C. 72, 188 S.E. 508 (1936)); see *Columbia Ry., Gas & Elec. Co. v. Carter*, 127 S.C. 473, 121 S.E. 377 (1924) (same); and *State v. Charron*, 351 S.C. 319, 569 S.E.2d 388 (Ct.App.2002) (same (quoting *Columbia Ry., Gas & Elec. Co.*)). Accordingly, § 12-43-220 should be construed in favor of the Fords.

The Assessor's office relies upon *Tolpa v. Beaufort County Assessor*, 08-ALJ-17-0088-CC (August 11, 2008) in construing the statute against the Fords. The *Tolpa* opinion, however, errs in its reliance upon *SCANA Corp. v. S. C. Dep't of Revenue*, 2008 WL 2572595 (2008) for the proposition that "statutory ambiguities will be resolved against a taxpayer claiming an exemption." (emphasis added). The above-referenced *SCANA v. SCDOR* opinion was subsequently withdrawn after a shift in the court and a new opinion was substituted reaching a different result. See *SCANA Corp. v. S.C. Dep't of Revenue*, 384 S.C. 388, 683 S.E.2d 468 (2009). In the substituted opinion, the court found "no reasonable ambiguity" and applied the statute in favor of the taxpayer. Only the dissent maintained an ambiguity existed that should be resolved against the taxpayer. *As a result, there is no authority whatsoever for the proposition that there is "legislative grace" involved in the construction of S.C. Code Ann. § 12-43-220.*

Moreover, a look behind the cases cited in the dissent for this proposition reveals a lineage of decidedly different and readily distinguished legal and factual issues.¹ In each of the cited cases, a deduction or exemption was in play. The Fords have never claimed a deduction or sought to be brought within an exemption. § 12-43-220 merely provides the assessment ratio for a *classification*. § 12-43-220 begins with an opening clause punctuated by a colon. A colon, as

¹ *M. Lowenstein & Sons, Inc. v. S.C. Tax Comm'n*, 277 S.C. 561, 290 S.E.2d 812 (1982) concerned tax implications of creating and utilizing special paper corporations under federal law. *Davis Mech. Contractors, Inc. v. Wasson*, 268 S.C. 26, 231 S.E.2d 300 (1977) dealt with recovery of corporate income taxes under a deduction for establishing a new business. *C.W. Matthews Contracting Co. v. S.C. Tax Comm'n*, 267 S.C. 548, 230 S.E.2d 223 (1976) also dealt with corporate income taxes under a deduction for establishing a new business. *S. Soya Corp. v. Wasson*, 252 S.C. 484, 167 S.E.2d 311 (1969).

Other cases in the *SCANA* progeny are similarly distinguishable. In *State v. Life Ins. Co. of Georgia*, 254 S.C. 286, 292, 175 S.E.2d 203, 206 (1970), a foreign insurance company sought to have their liability for license fees reduced under a statute promoting local investments by insurers. *Guaranty Bank & Trust Co. v. S. C. Tax Comm'n*, 254 S.C. 82, 90, 173 S.E.2d 367, 370 (1970) dealt with a trustee seeking a deduction of gain based upon the reinvestment of condemnation proceeds. *York County Fair Assoc. v. South Carolina Tax Commission*, 249 S.C. 337, 154 S.E.2d 361, 363 (1967) dealt with the tax-exempt status of an organization. *Bovain v. Canal Ins.*, 383 S.C. 100, 678 S.E.2d 422 (2009) addressed farm-to-market exemptions for forest products. *Home Medical Systems, Inc. v. South Carolina Dept. of Revenue*, 382 S.C. 556, 677 S.E.2d 582 (2009) interpreted a sales tax exemption for prescription medicine and prosthetic devices. *TNS Mills, Inc. v. South Carolina Dep't of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) dealt with the time period for filing for an exemption. *John D. Hollingsworth On Wheels, Inc. v. Greenville County Treasurer*, 276 S.C. 314, 278 S.E.2d 340 (1981) dealt with an exemption for manufacturers.

used here, indicates that everything that follows is an elaboration of what precedes the colon. Therefore, everything in Subsection (c) must be read in the context of the opening clause: “[e]xcept as otherwise provided, the ratio of assessment to value of property in each *class* shall be equal and uniform throughout the State. All property presently subject to ad valorem taxation shall be *classified* and assessed as follows:” (emphasis added). The “class” of taxpayers entitled to the four percent assessment is defined as those “owners” who “occupy” their “legal residence,” and that four percent assessment is applied uniformly to those particular owners.²

Importantly, property tax exemptions are addressed in an entirely different chapter of Title 12, the state tax code; § 12-37-210 *et seq.* enumerates a litany of exemptions from property tax. Given that § 12-43-220, by its very words, deals with classifications and that exemptions are addressed in a separate chapter, it necessarily follows that any interpretation of § 12-43-220 should be under the general rule of construction for tax statutes and construed in favor of the Petitioners. *In fact, a recent case construing various provisions of S.C. Code Ann. § 12-43-220 in a dispute between a tax payer and the taxing authority makes no reference to any construction of any ambiguities in that statute against the taxpayer. See Sonoco Products Co. v. SCDOR, 378 S.C. 385, 662 S.E.2d 599 (2008);*

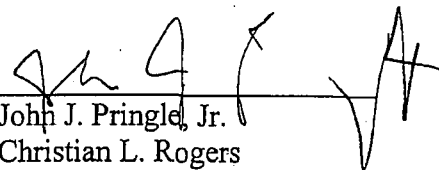
CONCLUSION

The Assessor’s application of § 12-43-220(c)(1) and (c)(7) to disqualify Petitioners’ legal residence from the four percent assessment ratio is unsupported by the plain language of the statute, and is inconsistent with its purpose. Therefore, Petitioners request that the Court enter an order stating that the subject property at [REDACTED] is entitled to be assessed at the four

² As discussed with the Court at the hearing, this also demonstrates why *Tolpa*’s purported reliance on the “uniformity” of taxation under this statute is also misplaced.

percent assessment ratio and requiring Beaufort County to refund the appropriate amount to the Petitioners, and grant such other relief as is just and proper.

ELLIS, LAWHORNE & SIMS, P.A.



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Attorneys for Petitioners

November 23, 2009
Columbia, South Carolina

Exhibit One

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Muriel V. Metts, Respondent,

v.

Charleston County Assessor, Appellant.

Appeal From the Administrative Law Court
Paige J. Gossett, Administrative Law Judge

Unpublished Opinion No. 2008-UP-640
Submitted November 3, 2008 - Filed November 17, 2008

AFFIRMED

County Attorney Joseph Dawson, III, Deputy County
Attorney Bernard E. Ferrara, Jr., and Assistant
County Attorney Bernice M. Jenkins, all of North
Charleston, for Appellant.

Muriel V. Metts, pro se, of Sullivan's Island, for
Respondent

PER CURIAM: The Charleston County Assessor (Assessor) appeals from an order of the Administrative Law Court (ALC) granting Muriel V. Metts a four-percent special property tax assessment ratio. Metts received the four-percent assessment ratio until 2006. In 2005, the Legislature amended the tax assessment ratio statute to guarantee a four-percent assessment ratio for properties that otherwise qualified but were rented out for less than fifteen days during the tax year. Because Metts rented her home out for 85 days in 2006, the Assessor prepared her tax bill for that year using the higher six-percent assessment ratio.

We affirm^[1] pursuant to Rule 220(b), SCACR, and the following authorities. As to the question whether the ALC erred in its judgment: S.C. Code Ann. § 1-23-610 (Supp. 2007) ("The review of the administrative law judge's order must be confined to the record"; appellate court may reverse the ALC if the ALC's decision is "affected by [an] error of law."); S.C. Code Ann. § 12-43-220(c)(1) (Supp. 2007) ("The legal residence . . . [is] taxed on an assessment equal to four percent of the fair market value of the property."); S.C. Code Ann. § 12-43-220(c)(2)(i) (Supp. 2007) (finding four percent assessment ratio applies when "the owner-occupant [has] owned and occupied the residence as his legal residence and [has] been domiciled at that address for some period during the applicable tax year"); S.C. Code Ann. § 12-43-220(c)(7) (Supp. 2007) (renting out a residential property for fewer than fifteen days during the tax year does not preclude that property from receiving the four percent assessment ratio); and Russo v. Nationwide Mut. Ins. Co., 334 S.C. 455,

458, 513 S.E.2d 127, 128 (Ct. App. 1999) ("In statutory construction, legislative intent prevails where it can be reasonably ascertained from the plain meaning of the statutory language."). As to the question whether the ALC properly applied rules of statutory construction: Aiken v. World Fin. Corp., 373 S.C. 144, 644 S.E.2d 705 (2007) (finding issues not raised and ruled upon in the trial court will not be considered on appeal).

AFFIRMED.

ANDERSON, HUFF, and GEATHERS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR..

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gregory Ford and Leslie Ford

Petitioners,

vs.

Beaufort County Assessor,

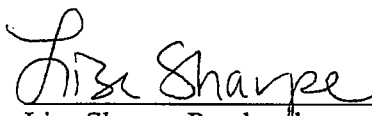
Respondent.

DOCKET NO. 09-ALC-17-0179-CC

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of **Petitioners' Post-Hearing Brief** via electronic mail and by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

sphughes@hghpa.com
Stephen P. Hughes, Esquire
Howell, Gibson and Hughes, P.A.
Post Office Box 40
Beaufort, South Carolina 29901-0040


Lisa Sharpe, Paralegal

November 23, 2009
Columbia, South Carolina

FILED

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SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gregory Ford and Leslie Ford,	)	
	)	DOCKET NO: 09-ALJ-17-01279-CC
Petitioners,	)	
	)	
Vs.	)	<u>BEAUFORT COUNTY</u>
	)	<u>ASSESSOR'S BRIEF ON</u>
Beaufort County Assessor,	)	<u>ISSUES REQUESTED BY</u>
	)	<u>THE COURT</u>
Respondent.	)	

As directed by the Court, the Respondent Beaufort County Assessor (the "Assessor") respectfully submits this brief on the relevant South Carolina Code Sections, applicable case law, and discussion of the same, in support of the Assessor's position that the Petitioners, Gregory and Leslie Ford, are not entitled to the 4% residential assessment on their property, located at [REDACTED], [REDACTED], Hilton Head Island, South Carolina, for the tax year 2008.

South Carolina Code §12-43-220 establishes the assessment ratios for property within the state. Subsection (c)(1) establishes the criteria which must be satisfied in order for a taxpayer to obtain the preferential 4% residential assessment ratio (as opposed to the standard 6% assessment ratio normally imposed):

- a. that the property be the legal residence of the taxpayer;
- b. that the property be owned and occupied by the taxpayer; and
- c. that the residence for which the 4% assessment ratio is sought be neither rented nor used as a business for profit.

Under the circumstances, absent a relevant exception, rental property, even if utilized as the owner-occupied legal residence of the taxpayer, fails to qualify for the 4% assessment.

The South Carolina Code, however, at §12-43-220(c)(7), provides a limited exception to the general rule (as set forth within Code §12-43-220(c)(1)), that rental property will not qualify for the 4% assessment ratio. Section (c)(7) provides that the owner-occupant of a legal residence is not disqualified from receiving the 4% assessment ratio if the taxpayer's residence meets the requirements of Internal Revenue Code §280A(g), and the taxpayer otherwise is eligible to receive the residential assessment ratio. Per its specific provisions, Internal Revenue Code §280A(g), in turn, applies only to "... a dwelling unit [which] is used during the taxable year by the taxpayer as a residence and [where] such dwelling unit is actually rented for less than fifteen (15) days during the tax year..." Thus the available exception under §12-43-220(c)(7) is limited to those owner-occupied legal residences which are rented for fewer than fifteen (15) days during the relevant tax year. As clearly established by the specific testimony of the taxpayer, the property at issue in the instant proceedings was available for rental throughout the summer of 2008, and was actually rented for a period of no fewer than ninety-one (91) days during that period. Such a rental period is clearly outside the limited exception authorized by Subsection (c)(7), and renders the property ineligible for the preferential assessment sought by the taxpayers.

It is the contention of the Respondent Assessor that the statutory requirements are clear. However, to the extent that the Court may determine that the statutory provisions are ambiguous, such a determination nonetheless lends no support to the arguments of the taxpayers.

The South Carolina Supreme Court has consistently held that ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer. In State v. Life Ins. Co. of Ga., 254 S.C. 286, 175 S.E.2d 203 (1970), the Court 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 the exemption, he must clearly bring himself within the constitutional or statutory language upon which he relies.'" (Quoting York County Fair Assoc. v. S.C. Tax Comm'n, 249 S.C. 337, 154 S.E.2d 361 (1967)). This recitation followed a 1964 opinion, in which the Court had stated that language in a statute giving rise to an exemption must be given "... its plain, ordinary meaning and construed strictly against the claimed exemption." Chronicle Publishers, Inc. v. S.C. Tax Comm'n, 244 S.C. 192, 136 S.E.2d 261 (1964).

The Supreme Court has set forth an identical standard for construction of statutory provisions granting deductions from taxation. The standard is evidenced by the Supreme Court's declaration that language of "... a deduction statute ... is not to be liberally construed. The plaintiff must place himself squarely within the terms of the statute." Lowenstein & Sons, Inc. v. S.C. Tax Comm'n, 277 S.C. 561, 290 S.E.2d 812 (1982). Similarly, the Court, in Davis

Mechanical Contractors v. Wasson, 268 S.C. 26, 231 S.E.2d 300 (1977), noted that statutory language purportedly granting deductions must be strictly construed against the claimed deduction.

As noted hereinabove, the 4% assessment ratio is available only to those residential properties which satisfy the legislatively imposed requirements. Absent satisfaction of those requirements, the property is assessed, in accordance with the general rule, at 6%.

The preferential assessment sought by the taxpayer here is, therefore, clearly a matter of legislative grace, and the taxpayer seeking the relief afforded by the preferential assessment must clearly bring himself within the terms of the authorizing statute. Guaranty Bank & Trust Co. v. S. C. Tax Comm'n, 254 S.C. 82, 90, 173 S.E.2d 367, 370 (1970).

The South Carolina Supreme Court has clearly recognized that "... tax deductions are a matter of legislative grace and the taxpayer must establish compliance with the statutory conditions imposed." Davis, supra. Moreover, the exemption effected by the 4% residential assessment is clearly analogous to a tax deduction, inasmuch as both are matters of legislative grace. SCANA Corp. vs. S.C. Department of Revenue, 384 S.C. 388, 683 S.E.2d 468 (2009)(Beatty, J., dissenting, comparing tax credits to tax deductions). Furthermore, statutory provisions creating deductions and exemptions are subject to identical rules of construction.

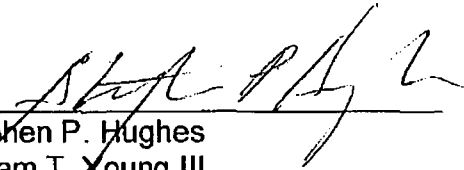
Inasmuch as the Supreme Court has clearly required that ambiguities within statutes purportedly affording benefits as a matter of legislative grace be

strictly construed against the taxpayer, any ambiguity found within the provisions of §12-43-220 must be resolved against the taxpayers, Ford, and in favor of the Assessor.

Finally, it should be noted that the specific issue currently before this Court was addressed in a prior opinion, by Judge John D. McLeod of the Administrative Law Court, in the matter of Tolpa v. Beaufort County Assessor, Docket No. 08-ALJ-17-0088-CC. There, the taxpayer, Tolpa, contended that he was entitled to the preferential 4% residential assessment ratio on his legal residence, despite his having rented the residence for a period of no fewer than 134 days during the relevant tax year. In affirming the respondent Assessor's denial of the taxpayer's claim, Judge McLeod noted, inter alia, that the statutory grant of the preferential assessment was a matter of "legislative grace," and resolved any ambiguity against the taxpayer. Although not dispositive, it is submitted that the opinion of Judge McLeod is thoughtful and well-reasoned, and is entitled to due consideration by the Court here.

Based upon those considerations set forth hereinabove, it is respectfully submitted that the Petitioners have failed to satisfy the statutory requirements governing eligibility for the 4% assessment sought for the tax year 2008. Under the circumstances, the determination of the Beaufort County Tax Equalization Board, denying the 4% residential assessment, should be affirmed by this Court.

HOWELL, GIBSON & HUGHES, P.A.

By: 

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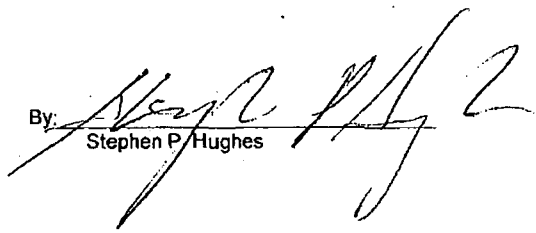
Attorneys for Beaufort County Assessor

Beaufort, South Carolina

November 23, 2009

CERTIFICATE OF SERVICE

I certify that I served the foregoing Respondent's Brief 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 23rd day of November, 2009.

By: 

Stephen P. Hughes

Gregory Ford and Leslie Ford)
)
 Petitioners,) **DOCKET NO. 09-ALC-17-0179-CC**
)
 vs.)
) **MOTION FOR RECONSIDERATION**
 Beaufort County Assessor,)
)
 Respondent.)

INTRODUCTION

Yet the Court bases its Opinion on an “isolated phrase” -- S.C. Code Ann. § 12-43-220(c)(7)—that is only one small portion of S.C. Code Ann. § 12-43-220 (the “Statute”), one

sentence of S.C. Section 12-43-220(c)(1), and a faulty analysis of the term “property,” while ignoring numerous other provisions in the Statute, its context, and its purpose. The Court has not addressed numerous arguments made by Petitioners regarding the Statute, has mischaracterized others, and has even determined – without citation to any authority-- that any doubts regarding the application of Statute should be resolved against the Petitioners.

ARGUMENTS

I. THE 4% RATIO IS NOT AN EXEMPTION OR DEDUCTION, AND ANY SUBSTANTIAL DOUBT AS TO THE MEANING OF S.C. CODE ANN. § 12-43-220 MUST BE RESOLVED IN FAVOR OF THE PETITIONERS.

The Court characterizes this case as a “tax exemption matter,” and construes the language of § 12-43-220 (the “Statute”) against Petitioners. (Order, p. 5). The Court, however, did not cite any authority for the proposition that property tax assessment ratios are characterized as exemptions or deductions, or more specifically that any ambiguities in this Statute or of any tax classification statute should be construed against Petitioners. Moreover, none of the cases cited in the Order involve classifications for assessment. (Order, p. 3). “Exemption” is not defined in § 12-43-220, or used to describe any of the tax assessment ratio classifications enumerated therein. Neither the General Assembly nor South Carolina’s appellate courts have deemed any particular assessment ratio as an “exemption” or “deduction.” The General Assembly freely uses the word “exemption” elsewhere; yet it is conspicuously absent in the Statute. In fact, as noted in Petitioners’ Post-Hearing Brief (p. 13), Title 12 has an entirely different chapter setting out property tax exemptions (S.C. Code Ann. § 12-37-210 *et seq*), and that chapter actually references the way property is *classified* pursuant to the Statute in the context of allowing the completely different tax *exemptions* thereunder. See S.C. Code Ann. § 12-37-220(e)(iv).

As described in Plaintiffs' Post-Hearing Brief (pp. 11-13), the most recent South Carolina case dealing with the applicability of competing assessment ratios, Sonoco Products Co v. SCDOR, 378 S.C. 385, 662 S.E.2d 599 (2008) ("Sonoco"), explored the ambiguity of a statutory term – "contiguous"-- but neither used the word "exemption" nor construed ambiguity against the taxpayer in deciding whether to apply the 10.5% ratio for manufacturing or the 6% ratio for other property. Based upon the lack of authority for the proposition that the Statute's assessment ratios constitute either an "exemption" or a "deduction," as well as the Sonoco case, the Petitioners must receive the benefit of the doubt (to the extent ambiguities arise) in this case.

II. "LEGAL RESIDENCE" AND "PROPERTY" ARE DIFFERENT TERMS WITH DIFFERENT MEANINGS AND DIFFERENT APPLICATIONS.

A. The Court Failed to Address Petitioners' Arguments that Property "Contiguous To" the Legal Residence is a Separate Term Pursuant to the Statute.

The Court did not address Petitioners' arguments (pp. 3-4) that the term "contiguous" as used in the Statute demonstrates that "legal residence" and property "contiguous" to the legal residence are independent, different and distinct terms throughout the Statute. Section (c)(1) provides that a 4% assessment ratio applies to a taxpayer's "legal residence and not more than five acres contiguous thereto." The Court's analysis of "legal residence" and "property" and its conclusions regarding those terms does not take that language into consideration.

B. The House Is the Legal Residence that is Taxed, and Structures are Indeed Taxed Independent of the Property on Which They Sit, and the Property on Which Legal Residences Sit Does Not Receive the Assessment for the Legal Residence

In support of the assertion that "legal residence" is only used for identification purposes, the Court states "[i]n fact, it is not the house which is the legal residence that is taxed, but the property

upon which the legal residence is located.” (Order at Page 4). In addition, the Court ruled (p. 5):

Furthermore, as explained above, though there must be a distinct residence to generate the right to a four percent assessment, it is the property upon which that residence is located that receives the preferred assessment.

Both of these statements are incorrect. In the context of the “legal residence,” the house is in fact the property that is taxed. “For property tax purposes the term ‘Legal Residence’ shall mean the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled.” S.C. Code Ann. Regs § 117-1800. As this regulation makes clear, the “legal residence” being taxed is the “home or dwelling place,” and not the property on which that house sits.

The Statute also clearly demonstrates this fact. It is true that the property (land) on which the legal residence sits is also taxed, but the Statute is clear that these are separate assessments, and the ratio applied to that property may or may not be taxed at the same assessment ratio as the legal residence. As described in Petitioners’ Post-Hearing Brief (p. 4), the second sentence of § 12-43-220(c)(1) expressly provides that a “legal residence” can receive the 4% assessment ratio even when located on “leased or rented property”:

When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is the same ratio as provided by this item.

While the “legal residence” receives the 4% assessment, the “leased or rented property” is not entitled to the 4% assessment, unless the lessee satisfies the next sentence of the Statute (as described below). The “leased or rented property” does not receive the “preferred assessment” when

the lessee does not pay the taxes on the leased property, demonstrating that those two terms connote different things in the Statute. That the “legal residence” and the property on which it sits can be taxed at different assessment ratios proves Petitioners’ point that the two terms are distinct and different within the context of the Statute. Moreover, even the provisions ultimately relied upon by the Court (“rented mobile homes or residences”) reference the assessment ratio applicable to the *structure*, not the property on which it sits.

- C. The second sentence of § 12-43-220(c)(1) clearly states that a “legal residence” is distinguished from the “property on which the residence lies,” and the Court incorrectly concluded otherwise.**

Similarly, The Court’s analysis of the second sentence of § 12-43-220(c)(1), (Order at P. 4) is at odds with the plain language of that provision:

The added distinction is that though leased property may not normally receive such an assessment, it does if the owner of a residence on the property occupies that residence as their legal residence. It is thus bringing the property under the umbrella of the tax treatment of the property upon which the residence lies. Such a result does not support the supposition that legal residences are distinctly treated under this law but rather the property is considered as a whole. (Order at p. 4).

The legal residence is treated differently and distinctly from the property on which it sits for assessment purposes. The taxpayer obtains the “assessment *for the residence*,” not for the “rented or leased property” upon which the legal residence sits. Merely owning and occupying the legal residence on the leased property does not entitle the owner to the 4% ratio for the leased land. That scenario is addressed in the third sentence of § 12-43-220(c)(1) and requires something more than merely owning and occupying the legal residence. Therefore, the legal residence does not come under the “umbrella” of the tax treatment of the leased property, but rather is treated independently,

and the “property” (in the Court’s analysis consisting of the legal residence and the leased property on which it sits) is not considered as a whole.

D. The Statute Makes Clear that The Payment of Taxes on the Leased Property is the Avenue Through Which Leased Property Obtains the 4% Assessment Ratio.

The third sentence of § 12-43-220(c)(1) demonstrates again that the “legal residence” is a distinct term from “leased property” in the Statute:

If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item.

This provision unambiguously provides that even the taxpayer entitled to the 4% assessment for the legal residence must “be liable for taxes on the leased property” in order to receive the 4% assessment *for that leased property*. Based on this clear language, the Court is incorrect that “the legal residence is the avenue through which that property obtains the preferred assessment ratio.” (Order at Page 4). While the legal residence is a predicate requirement, the “avenue” for obtaining the 4% assessment ratio is paying the taxes on the leased land. Without the payment of taxes on the leased land, even a taxpayer with his legal residence on that land is not entitled to the 4% assessment with respect to that leased land. Conversely, entitlement to the 4% assessment for the legal residence is not dependent upon an entitlement to the 4% assessment for the leased land upon which the legal residence sits.

E. The “Legal Residence” is Not Encompassed by the Fourth Sentence of § 12-43-220(c)(1).

The fourth sentence of S.C. Code Ann. § 12-43-220(c)(1) 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.

The Court's analysis of this provision included the following (Order at Page 5):

Petitioner maintains that ultimately the decisive phrase in terms of resolving this case is the meaning of "this property." That argument ignores the other important term "any residences" for which the statute does not provide a limitation to only other residences upon the property.

With all due respect, Petitioners "ignored" the term "any residences," because that term is only triggered if "this property" is implicated. In other words, if the Statute does not consider the "legal residence" to be located on "this property," (and it does not), then the legal residence cannot be "a rented mobile home or residence" under the plain language of the Statute. Moreover, the term "legal residence" has been specifically defined by the General Assembly S.C. Code Ann. Regs § 117-1800. As a result, the Court's "construction" of the Statute ignores the plain language found elsewhere in the Statute and this Regulation, the Statute's purpose as expressed in that plain language, the context in which various terms in the Statute are to be construed, and Petitioners' arguments on those points.

F. Treating "Property" and "Legal Residence" as Different Terms does not Render Meaningless Any Portion of § 12-43-220(c)(1).

The Court buttresses its determination that the "legal residence" is part of "this property" with the following (Page 5):

Moreover, if property is a completely distinct concept, the phrase "this property" would presumably refer to the previous sentence. That reference however would render the sentence meaningless.

It is not clear that the reference to "this property" refers solely to the preceding sentence (the third sentence of § 12-43-220(c)(1)), as opposed to all the preceding sentences of the Statute. Assuming that it does, however, it does not make that sentence or any sentence in the Statute meaningless. As

described in Petitioners' Post-Hearing Brief (pp. 5-6), the "preceding sentence" extends the 4% ratio to leased land (upon which a legal residence is located) only if the taxpayer is responsible for the taxes on the leased land. The sentence referencing "this property" excludes from the 4% assessment ratio those *structures* (showing that structures are taxed) on the five acres contiguous to the legal residence ("this property") that are rented—but not the legal residence itself, or the leased land. Clearly the exclusion has meaning when applied according to its plain language.

G. The Court's Ultimate Conclusion Likewise is Flawed.

The Court concluded, on page 5 of the Order:

I therefore find that "this property" refers to the tract of land upon which the residence is located and that the Petitioners' residence is included within the term "any residence."

For the reasons set forth above and in Petitioners' Post-Hearing Brief, this conclusion flies in the face of the plain language of the Statute.

III. THE COURT FAILED TO ADDRESS PETITIONERS' ARGUMENTS WITH RESPECT TO THE STATUTE'S USE OF THE TERMS "LEGAL RESIDENCE" AND "DOMICILE" THROUGHOUT, AND IN SO DOING IGNORED THE PURPOSE OF THE STATUTE, ITS CONTEXT, AND HOW THE APPLICABLE TERMS ARE USED THROUGHOUT.

The Court wholly overlooked Section II of the arguments in Petitioners' Post-Hearing Brief (pp. 7-9), and Petitioners incorporate that argument herein by reference. In ruling that an isolated portion of § 12-43-220(c)(1) would prevent the Petitioners from obtaining the 4% assessment based upon the rental of their home for even one day, the Court ignores the plain language and context of numerous instances *within that very statutory provision* that mandate the contrary. Reading Subsection (c)(1) as a general bar to the four percent ratio for any rental ignores the cited language and construes only the brief language regarding rentals – allowing the tail to wag the dog. The Court

fails to explain how the provision it relies upon to deny the 4% assessment to Petitioners can be read together with the provisions cited by Petitioners. See Eagle Container Co., LLC v. County of Newberry, 379 S.C. 564, 570, 666 S.E.2d 892, 896 (2008) (“The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.”).

IV. THE COURT ERRED IN ITS ANALYSIS OF § 12-43-220(C)(7).

Contrary to the Order (p. 5), Petitioners do not “contend that even if Section 12-43-220(c)(1) precludes them from receiving a four percent assessment upon their residence because it is rented for profit during the year, that S.C. Code § 12-43-220(c)(7) allows them to receive the assessment as long as they provide proof of their domicile and residency in the home.” First, Petitioners have demonstrated that no absolute exclusion for rental exists under subsection (c)(1), and therefore, subsection (c)(7) is not an exception at all. S.C. Code § 12-43-220(c)(7) cannot provide an exception to the “general rule” contained in Section 12-43-220(c)(1) when the plain language of Section 12-43-220(c)(1) announces no such “general rule.” Second, subsection (c)(7) is a safe-harbor, a view shared by the ALC in Metts (and the Court of Appeals affirming Metts in an unpublished opinion). Third, Petitioners never sought protection under S.C. Code § 12-43-220(c)(7), but merely responded to the arguments of the Assessor that S.C. Code § 12-43-220(c)(7) served as a bar to Petitioners’ entitlement to the 4% assessment.

The Court also finds that “if a ‘primary residence’ is not restricted from being rented for profit, S.C. Code Ann. § 12-43-220(c)(7) would be “superfluous.” Reading S.C. Code Ann. § 12-43-220(c)(7) as a safe harbor, as urged by the Petitioners, does not make that provision “superfluous,” but instead considers together the plain language of the Statute, its purpose, the regulation promulgated pursuant to the Statute, and the context in which terms in the Statute are employed.

Crescent Mfg Co. v. Tax Comm'n, 129 S.C. 480, 124 S.E. 761 (1924) (“[A] statute must receive such construction as will make all of its parts harmonize with each other and render them consistent with its general scope and object.”). A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct. App. 2003). See Beaufort County v. Jasper County, 68 S.E.2d 421 (S.C. 1951) (“As between two possible constructions of a statute, that one should be adopted which effectuates rather than defeats the legislative purpose.”). The Court’s determination that S.C. Code Ann. § 12-43-220(c)(7) is an exception to a general rule prohibiting rentals of a legal residence conflicts directly with the plain language of numerous portions of the Statute, including but not limited to S.C. Code Ann. § 12-43-220(c)(1), S.C. Code Ann. § 12-43-220(c)(2)(i), and S.C. Code Ann. § 12-43-220(c)(2)(ii). See Petitioners’ Brief at pp. 7-9. Petitioners’ arguments resolve those conflicts, the Order does not.

CONCLUSION

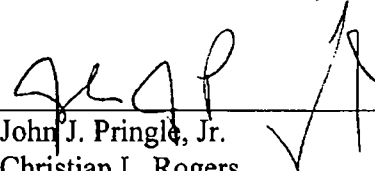
Petitioners request that the Court alter, amend, and reconsider the Order as described herein, determine that the subject property at [REDACTED] is entitled to be assessed at the four percent assessment ratio, require Beaufort County to refund the appropriate amount to the Petitioners, and grant such other relief as is just and proper.

[signature page to follow]

Respectfully submitted,

ELLIS, LAWHORNE & SIMS, P.A.

By:



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Attorneys for Gregory and Leslie Ford

April 22, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Gregory Ford and Leslie Ford

Petitioners,

vs.

Beaufort County Assessor,

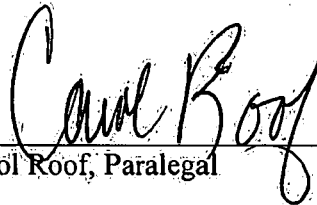
Respondent.

DOCKET NO. 09-ALC-17-0179-CC

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day, one (1) copy of **Petitioner's Motion for Reconsideration** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

Stephen P. Hughes, Esquire
Howell, Gibson and Hughes, P.A.
Post Office Box 40
Beaufort, SC 29901-0040



Carol Roof, Paralegal

April 22, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 09-ALJ-17-0179-CC

Gregory Ford and Leslie Ford,
Petitioners,

v.

Beaufort County Assessor,
Respondent.

COPY

ADMINISTRATIVE HEARING

Tuesday, November 17, 2009
10:05 a.m. - 11:43 a.m.

The hearing before the Honorable Ralph King Anderson, III, taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 17th day of November, 2009 before Jaime D. Newton, Court Reporter and Notary Public in and for the State of South Carolina:

APPEARANCES

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EXHIBITS

Petitioner's Exhibits One through Six were admitted and Respondent's Exhibits One through Six were admitted.

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.

1 THE COURT: All right. This is a hearing in the
2 matter of Gregory Ford and Leslie Ford,
3 petitioners, versus Beaufort County Assessor,
4 respondent. The docket number is 09-ALJ-17-
5 0179-CC. Are there any additional motions or
6 stipulations the parties wish to make before we
7 proceed. Mr. Pringle?

8 MR. PRINGLE: May it please the Court, Your Honor.
9 I don't believe so except that we have
10 identified and stipulated to some exhibits,
11 both for the petitioner and for the respondent.

12 THE COURT: I'll address that later.

13 MR. PRINGLE: Okay, certainly.

14 THE COURT: All right. Mr. Hughes, anything else?

15 MR. HUGHES: Nothing, Your Honor.

16 THE COURT: All right. Then I'll proceed.

17 MR. PRINGLE: Okay. Would you like a quick opening?

18 THE COURT: Quick.

19 OPENING STATEMENT BY MR. PRINGLE:

20 MR. PRINGLE: Quick. Your Honor, this case involves
21 some statutory construction particularly for
22 12-43-220 of our code and what constitutes
23 illegal residence or domicile and whether my
24 clients are entitled to the four percent
25 assessment for occupying their legal residence

1 as opposed to the six percent assessment. And
2 I believe that the evidence will show and that
3 our arguments will show that, in deed, they are
4 entitled to that four percent assessment as
5 opposed to the six percent assessment.

6 **THE COURT:** All right.

7 **OPENING STATEMENT BY MR. HUGHES:**

8 **MR. HUGHES:** May it please the Court. I'm Steve
9 Hughes of Howell, Gibson, and Hughes in
10 Beaufort appearing on behalf of the Beaufort
11 County Assessor. The sole issue before this
12 court concerns whether the taxpayer's property,
13 which is located on [REDACTED] Road, has met
14 the statutory requirements governing the
15 availability of the four percent residential
16 tax assessment. It is the position of my
17 client that the property, which was rendered in
18 2008 for a period of no fewer than 89 days,
19 fails to satisfy that statutory criteria.

20 **THE COURT:** The property was what? I couldn't hear
21 you.

22 **MR. HUGHES:** Rendered for a period of no fewer --

23 **THE COURT:** Okay, rendered.

24 **MR. HUGHES:** -- than 89 days and, thus, is
25 ineligible for the residential assessment. I

1 think we're all in agreement here that the
2 issue is ultimately governed by the provisions
3 of South Carolina code section 12-43-220C.
4 Subsection C1 of that statute sets forth, in
5 our opinion, the four criteria which must be
6 satisfied for the properties to qualify for the
7 four percent residential assessment and those
8 are generally, one, that the property actually
9 be the legal residence of the taxpayer. Two,
10 that the property be owned by the taxpayer.
11 Three, that the property be occupied by the
12 taxpayer as his legal residence and, fourthly
13 and perhaps most importantly for purposes of
14 the court's determination today, the property
15 be neither rented nor utilized for the property
16 of a given tax year. It is our position that
17 here where the property, by the taxpayer's own
18 admission, is rendered for at least a period of
19 89 days, the property fails to satisfy the
20 statutory criteria. I would offer that under
21 the circumstances of the provisions set forth
22 in the code rented property in the absence of
23 any relevant exception does not qualify for the
24 four percent assessment. The only assessment
25 set forth within section 12-43-220 is that set

1 forth in subsection C7 and that section
2 basically says that an owner occupant of a
3 legal residence will not be disqualified from
4 the residential assessment if that owner
5 satisfies two basic criteria. First, that the
6 owner and property satisfies the requirements
7 of Internal Revenue Code section 288G and,
8 secondly, that the property otherwise satisfies
9 the criteria governing the availability of the
10 assessment. Now in turn, section 288G says
11 that property qualifies under that section if
12 it is rented for no more than 14 days during
13 any tax year. Again, by the taxpayer's own
14 admission before the assessor, before the
15 Board, and in offerings before this Court, her
16 property in the tax year 2008 was rented for 89
17 days. It is our contention, obviously, that 89
18 days is well outside the statutory exception to
19 the rule and the property here simply does not
20 qualify and that's basically our position, Your
21 Honor.

22 **THE COURT:** Go ahead, Mr. Pringle.

23 **MR. PRINGLE:** Okay. Petitioner calls Leslie Ford.
24 And, Your Honor, if I could approach, I've got
25 some of the petitioner's exhibits also.

1 THE COURT: All right.

2 MR. PRINGLE: A copy for the Court.

3 THE COURT: You don't have the statutes in there, do
4 you?

5 MR. PRINGLE: I can get you a copy of the statutes.

6 MR. HUGHES: I've got one. I was going to try to
7 put it on the overhead, but --

8 THE COURT: That's good, yeah.

9 MR. HUGHES: But my laptop, for some reason, is
10 incompatible.

11 THE COURT: You can still put it on the overhead if
12 you've got a copy.

13 MR. HUGHES: Oh, yeah, I'll do that, sure. The
14 problem is that the relevant portion carries
15 over into on the second page of this statute
16 that I've got, but we can --

17 THE COURT: Raise your right hand.

18 LESLIE FORD, being duly sworn, testifies as follows:

19 MS. FORD - DIRECT EXAMINATION BY MR. PRINGLE:

20 Q: Tell me a little bit about -- tell the Court
21 your full name and address.

22 A: Martha Leslie Lynn Ford, [REDACTED],
23 Hilton Head, South Carolina.

24 Q: Okay. You mentioned that you live at [REDACTED]
25 [REDACTED]. How long have you lived at that

1 address?

2 A: Going on five years.

3 Q: Okay. Tell the Court a little bit about the
4 circumstances under which you purchased the
5 property.

6 A: Well, we did purchase the property as the site
7 of our future home. We knew we were going to
8 be building there, but there was an older home
9 on it when we bought it seven years ago, and we
10 kept it as a rental for a couple of years while
11 we were designing our house, etcetera,
12 etcetera, and then we tore that house down and
13 built the house that we currently live in.

14 Q: Okay. Has --

15 **THE COURT:** Hold on one moment.

16 **MR. PRINGLE:** Sure.

17 **THE COURT:** Go ahead.

18 **MR. PRINGLE:** Okay.

19 Q: So you purchased the house in what year?

20 A: Let me think. 2003.

21 Q: Okay. And built in?

22 A: 2005.

23 Q: Okay. Built a house in 2005. When did you
24 begin -- or did you begin living in the house?

25 **THE COURT:** Wait a second. You purchased -- you

1 said house, I think.

2 A: There was a house on the property when we
3 bought it in 2003. It was an old --

4 **THE COURT:** Okay.

5 A: -- rundown house.

6 Q: Okay.

7 A: We tore that house down and built the house
8 that we currently live in.

9 **THE COURT:** That was the missing link.

10 Q: Okay. And that was in 2005?

11 A: Yes.

12 Q: Did you begin occupying the house?

13 A: Yes, as soon as we got a CO.

14 Q: When was that?

15 A: In 2005.

16 Q: Okay. Following your occupancy in 2005, did
17 you file --

18 A: To get the four percent.

19 Q: Just let me ask the question.

20 A: Sorry.

21 Q: Did you file to get the four percent
22 assessment?

23 A: Yes.

24 Q: Okay. In what years, what tax years?

25 A: 2005 or '06.

1 THE COURT: Hold on one moment.

2 (Off the Record)

3 Q: So for 2005, did you file for the four percent
4 assessment?

5 A: I'm sorry, I'm not absolutely certain. I know
6 in '06 and '07 we got the four percent. In '05
7 I'm not really clear whether we paid basically
8 the previous value or the four percent. I'm
9 not sure because it happened that year.

10 Q: Okay.

11 A: I don't know if I paid the four percent in '05
12 because we moved in at the very end of '05.

13 Q: Okay. But in 2006 and 2007 --

14 A: Absolutely four percent.

15 Q: -- the four percent because you lived in the
16 house.

17 A: Yes.

18 Q: You occupied the house.

19 A: Correct. And we did not rent it those first
20 two years.

21 Q: Okay. During those two years did you have any
22 other house that you claimed as your legal
23 residence?

24 A: No.

25 Q: Okay. Any other house that you lived in for

1 any part of the year?

2 A: No.

3 Q: Okay. Flash forward to 2008. What happened
4 with respect to the residence in 2008?

5 A: Well, I'm a realtor and the market kind of went
6 sideways on us, so my husband and I concocted
7 this plan to rent the house out for some extra
8 income. We went to the town because I knew,
9 being a realtor I knew that you have to pay
10 accommodations tax on your rentals, and went to
11 the town and said give me the forms and I went
12 through the process and we did rent the house
13 out during the summer only in 2008 and paid the
14 11 percent accommodations tax to the
15 appropriate authority. It wasn't until the end
16 of the year that they bothered to tell me that,
17 oh by the way, the profit that you just made,
18 we're going to take.

19 Q: Okay. Well, for 2008 -- and if you could turn,
20 I believe it's to Exhibit Five, maybe Exhibit
21 Six in yours, but the spreadsheet document.

22 A: Yes.

23 Q: Okay. And can you identify that document?

24 A: Yeah, I just keep track of my rentals for lots
25 of reasons so I know who is coming in, but also

1 so I can pay the accommodations tax and just,
2 you know, I keep a spreadsheet of -- a snapshot
3 of the year and that was my rentals for 2008
4 from my computer.

5 Q: Okay. Did you create that document?

6 A: Yes.

7 Q: Okay. Tell the Court a little bit about what
8 that document shows.

9 A: It shows 13 consecutive weeks, I think that
10 comes up to 84 days. The rental amount, the
11 tax amount. The eight percent goes to South
12 Carolina, three percent goes to Hilton Head, so
13 I paid roughly \$8000 in accommodations tax.

14 Q: Okay. Let's look at this a little bit more.
15 How many weeks were involved?

16 A: Thirteen is what I think I just counted.

17 Q: Okay. So when was the house rented?

18 A: Summer only, 2008.

19 Q: Okay. For how many days was it rented?

20 A: Eighty-four.

21 Q: Okay. So was it rented for 13 weeks or 12
22 weeks?

23 A: What's 13 times seven? It was 13 weeks. I'm
24 looking at it right now, it was 13 weeks.

25 Q: So 91 days?

1 so I can pay the accommodations tax and just,
2 you know, I keep a spreadsheet of -- a snapshot
3 of the year and that was my rentals for 2008
4 from my computer.

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20 A: Eighty-four.

21 Q: Okay. So was it rented for 13 weeks or 12
22 weeks?

23 A: What's 13 times seven? It was 13 weeks. I'm
24 looking at it right now, it was 13 weeks.

25 Q: So 91 days?

1 Q: Okay.

2 A: And I thought everybody was entitled to have
3 one primary residence.

4 Q: During the time that the house was rented, did
5 you live in another place?

6 A: Yes, we rented an apartment that year in Sea
7 Pines.

8 Q: Okay. For the tax year 2008, did you claim
9 that apartment as your primary residence or as
10 your domicile?

11 A: I didn't even own it, so I wouldn't be paying
12 taxes four percent over six percent on that.
13 That was simply a rental that I entered into.

14 Q: Okay. During the tax year 2008, did you claim
15 any other residence or address as your primary
16 residence or as your domicile?

17 A: No, only the one.

18 Q: Okay. What address does your driver's license
19 show?

20 A: [REDACTED].

21 Q: Okay. What about your voter registration card?

22 A: [REDACTED].

23 Q: And what about your husband's driver's license?

24 A: The same.

25 Q: Okay. Voter registration?

- 1 A: Absolutely.
- 2 Q: Okay.
- 3 A: Taxes, utility bill.
- 4 Q: Okay.
- 5 A: Where I get my tax bill.
- 6 Q: Okay. In 2008, did you file a federal tax
- 7 return?
- 8 A: Yes.
- 9 Q: What address did that have on it?
- 10 A: [REDACTED].
- 11 Q: Okay. Did you file a South Carolina tax return
- 12 that year?
- 13 A: Yes.
- 14 Q: What address did it have on it?
- 15 A: [REDACTED].
- 16 Q: Okay. Is [REDACTED] your legal residence?
- 17 A: Yes.
- 18 Q: Is it your domicile?
- 19 A: Yes.
- 20 Q: Have you ever claimed -- well, since you moved
- 21 in in 2005 have you ever claimed any other
- 22 address, other than [REDACTED] as your
- 23 legal residence or domicile?
- 24 A: No.
- 25 Q: Okay. That's all I have. Please answer any

1 questions that Mr. Hughes or the Court may have
2 for you.

3 **THE COURT:** Mr. Hughes?

4 **MR. HUGHES:** Thank you, Your Honor.

5 **MS. FORD - CROSS EXAMINATION BY MR. HUGHES:**

6 Q: Ms. Ford, am I correct in understanding that
7 the cumulative rental proceeds that you
8 received in 2008 on the property were in the
9 amount of \$76,500?

10 A: That's correct.

11 Q: And the property was rented for a period of 91
12 days in total?

13 A: Yes.

14 Q: Is it your intention to continue renting the
15 property on an annual basis during the summer
16 months?

17 A: That depends on what happens here today.

18 Q: Did you, in fact, rent the property in 2009
19 during the summer months?

20 A: Yes.

21 Q: For how long a period?

22 A: It wasn't as good a year. I think I had maybe
23 two less weeks, so 11 weeks.

24 Q: So I assume your total proceeds from rental
25 were approximately \$60,000 in the year 2009?

1 A: Something like that, yeah. That's gross,
2 obviously that's not with all the taxes
3 associated with it.

4 Q: I understand, thank you very much.

5 THE COURT: Redirect?

6 MR. PRINGLE: No redirect.

7 THE COURT: You may step down.

8 MR. PRINGLE: That's all that the petitioner has.

9 THE COURT: Okay, going fast. Mr. Hughes?

10 MR. HUGHES: Your Honor, I apologize. To the extent
11 that the Court requires motions in accordance
12 with the rules of practice in the circuit
13 court, I would certainly make one for a
14 redirect verdict at this time.

15 THE COURT: No, that's -- VD verdicts aren't
16 required.

17 MR. HUGHES: Okay.

18 THE COURT: And also the appropriate motion would be
19 involuntary non-suit.

20 MR. HUGHES: Okay. Thank you, Your Honor. We call
21 the assessor, Ed Hughes, the assessor for
22 Beaufort County.

23 EDWARD HUGHES, being duly sworn, testifies as
24 follows:

25 MR. HUGHES - DIRECT EXAMINATION BY MR. HUGHES:

1 Q: Mr. Hughes, would you state your complete name
2 for the record, please?

3 A: Edward Lewis Hughes.

4 Q: And what is your current occupation?

5 A: I am employed full-time by Beaufort County as
6 the Beaufort County Assessor.

7 Q: And for how long a period have you been
8 involved as the Beaufort County Assessor?

9 A: I have taken this position as of the end of
10 September 2005.

11 Q: Okay. Would you describe for the Court the
12 nature of your duties and responsibilities as
13 the Beaufort County Assessor?

14 A: As county assessor I am required to discover,
15 list, and value property for ad valorem tax
16 purposes. As county assessor I'm required to,
17 on a continuous basis, maintain tax maps,
18 ownership records, building permits. As county
19 assessor I'm required to, in general, carry out
20 the duties of the assessor as set forth in the
21 South Carolina Code of Laws. As county
22 assessor I'm required to represent the office
23 and administrative ad valorem tax reviews. As
24 county assessor I'm required to administer the
25 preferential assessments and exemptions that

1 the state provides and is required by the
2 assessor to administer under law and as county
3 assessor I represent the department in a public
4 form for the public.

5 Q: And am I correct in understanding that your
6 duties include the valuation of real properties
7 in Beaufort County for tax purposes?

8 A: Yes, it does.

9 Q: And how, basically, are those real property
10 values determined in your experience?

11 A: As county assessor I'm required to value
12 property on a county wide equalization or
13 reassessment program once every five years and
14 at that five year interval fair market value is
15 determined on a specified date. The market
16 value is determined using the accepted three
17 approaches to value.

18 Q: Okay. Do your duties also include the
19 determination of assessed values for properties
20 within Beaufort County?

21 A: Yes, it's my responsibility to assure that the
22 ratio and the assessments are uniform for each
23 of the classes of property in the State.

24 Q: Would you explain, both for the Court and for
25 purposes of the record, the basic process of

1 determining assessed values?

2 A: There's two assessed values in the State. The
3 default assessed value is six percent. There
4 is a preferential assessed value of four
5 percent that is applicable to owner occupied
6 legal residences and also the agricultural use
7 property. The assessment ratio is used in the
8 calculation of taxes. The assessed value is
9 multiplied by the -- either the fair market
10 value or the, now under the state law, the
11 limited or cap value of the property, to
12 determine an assessment or a total assessment.
13 That is then most applied by the applicable
14 mileage rate for the political subdivision in
15 which the property is located.

16 Q: And how do you go about, in the first instance,
17 determining which assessment ratio is
18 appropriate in terms of determining assessed
19 value of a given residential property?

20 A: All property is assessed at the default six
21 percent and it's assessed at four percent when
22 the taxpayer or representative of that taxpayer
23 makes application to the assessor's office for
24 the residential preferential assessment or the
25 agricultural use assessment.

1 Q: Okay. Now, obviously this case involves a
2 taxpayer's claim to entitle them to the four
3 percent residential assessment. Is there a
4 procedure which you typically utilize as
5 Beaufort County Assessor to determine whether
6 or not a particular applicant is, in fact,
7 qualified for the four percent residential
8 assessment?

9 A: Yes, there is. The procedure initially is the
10 property owner or the representative would make
11 application to my office on an application form
12 specific to the residential four percent
13 assessment ratio. At the time of application
14 we will ask the taxpayer to submit to us
15 supporting documentation in their claim as
16 legal residence or domicile, notwithstanding,
17 we require at the minimum a copy of their
18 driver's license, owner registration. Often
19 times a voter registration card, a copy of
20 their South Carolina state income tax return,
21 and in some instances other information as
22 deemed necessary by myself.

23 Q: And do you rely upon any particular provision
24 of the code in order to make a determination as
25 to whether or not the assessment is available

1 in a particular instance?

2 A: Yes, I do. With respect to the four percent
3 owner occupied preferential assessment, that
4 section of the code of laws is 12-43-220C1
5 through C7..

6 Q: And what do you understand to be the
7 qualifications which must be satisfied in order
8 for a particular property owner to be eligible
9 for that particular preferential assessment?

10 A: The property owner must first own the property
11 in the tax year for which they seek the
12 preferential assessment. They must occupy that
13 property, they must make a claim of legal
14 residence or domicile and the property must not
15 be rented.

16 Q: Okay. Is there any exception of which you are
17 aware to what you consider to be the
18 prohibition against qualifying rental property
19 for the residential assessment?

20 A: Yes, there is. Section 12-43-220C7 provides a
21 means by which the property owner is permitted
22 to rent the legal residence for no greater than
23 14 days in a given tax year and if that is
24 done, less than 14 days, 14 days or less, then
25 the residential assessment ratio is not

1 forfeited. If, however, the property is rented
2 for greater than 14 days or what we commonly
3 refer to as the 15 day rule then under the
4 statute the property does not qualify.

5 Q: Okay. Now, you have had an opportunity to
6 consider the eligibility of Ms. Ford's property
7 for a four percent residential assessment claim
8 for the tax year 2008, correct?

9 A: That's correct.

10 Q: And my understanding is that that four percent
11 assessment for the tax year 2008 was denied.

12 A: Yes, it was.

13 Q: Am I correct in understanding that the
14 assessment of four percent had been granted for
15 the previous tax year?

16 A: Yes, it was.

17 Q: Would you explain to the Court the
18 circumstances by which the residential
19 assessment was denied in the tax year 2008?

20 A: I believe in late August of 2008 we received an
21 anonymous note from a concerned taxpayer
22 stating that the property located at [REDACTED]
23 [REDACTED] was, in fact, rented and this taxpayer
24 was concerned how this property owner was a
25 recipient of the special assessment ratio and,

1 in fact, had rented it. As a result of that
2 anonymous correspondence, as a course of
3 business my office has established a form
4 letter in which we will send that to the
5 property owner asking them to, one, confirm if
6 the property, in fact, is rented. And, two, if
7 it is to provide to us information regarding
8 that rental.

9 Q: Let me ask you if you can identify this
10 document which we've marked as Respondent's
11 Exhibit Number One.

12 A: Yes, Exhibit One is, in fact, that anonymous
13 correspondence my office received on August 12,
14 2008.

15 MR. HUGHES: Your Honor, we would offer this
16 obviously as Respondent's Exhibit Number One, I
17 believe without objection.

18 MR. PRINGLE: No objection.

19 THE COURT: It's admitted.

20 (Respondent's Exhibit Number One was admitted.)

21 Q: And you were just telling the Court that in
22 response to that your office took --

23 THE COURT: Well, I will state for the record
24 there's a reference to the last sentence being
25 fraud. I'm going to ignore that aspect of the

1 sentence.

2 **MR. HUGHES:** It was not offered for that at all,
3 Your Honor. That's fine with us.

4 **Q:** Mr. Hughes, would you explain to the Court the
5 process which would have followed, and in this
6 case did follow, the receipt of assessor's
7 office of Exhibit Number One?

8 **A:** Yes, my classification administrator, Ms.
9 Carolyn Smalls, signed the letter asking the
10 Fords for information to confirm whether the
11 property was rented. I believe we received a
12 copy of that letter with some handwritten notes
13 on the bottom indicating that the property was
14 rented, but other than that, there was little
15 information with regard to the period of rent,
16 how the rental was offered to the market place,
17 etcetera. I believe there was a second --

18 **Q:** Let me stop you there and ask if you can
19 identify this document for the Court.

20 **A:** This is a letter dated August 26, 2008
21 addressed to Gregory and Leslie Ford at [REDACTED]
22 [REDACTED] asking the property owner that it's
23 recently come to the attention of my office
24 that the tax parcel in question may be a rental
25 and if they would please respond within 30 days

1 of the date of this letter with regard to
2 information regarding the rental.

3 **MR. HUGHES:** And, Your Honor, again we would offer
4 this as Respondent's Exhibit Two, I believe
5 without objection.

6 **MR. PRINGLE:** No objection.

7 **THE COURT:** It's admitted.

8 **(Respondent's Exhibit Number Two was admitted.)**

9 **Q:** And can you identify this document, Mr. Hughes?

10 **A:** This is a copy of Carolyn Smalls' August 26,
11 2008 letter addressed back to Ms. Smalls signed
12 by Leslie Ford indicating that this is our
13 personal home, we rent it out for a few weeks
14 in the summer. However, we reside in it for
15 the remainder of the year and they will move
16 back in as full-time residents and will not
17 rent it again until June of 2009 and it invited
18 us to call if we had any questions and provided
19 a contact phone number.

20 **MR. HUGHES:** Your Honor, I'd offer that as
21 Respondent's Exhibit Number Three again, I
22 believe, without objection.

23 **MR. PRINGLE:** No objection.

24 **THE COURT:** It's admitted.

25 **(Respondent's Exhibit Number Three was admitted.)**

1 Q: Was there any follow-up by the office of the
2 assessor to the information you provided within
3 Exhibit Three, Mr. Hughes?

4 A: Yes, there was a second letter. Again, this is
5 part in parcel of our normal office procedures
6 wherein we ask if there is, in fact, a
7 confirmation from the taxpayer that the
8 property is under rent and we ask for specifics
9 with regard to that rental. Included would be
10 the period under rent, the minimal rental
11 period, the maximum rental period, how the
12 property is being offered for rent, and things
13 of this nature that would give my office an
14 indication as to whether or not there was a
15 breach under the statute with regard to that
16 section of the code I earlier testified to.

17 Q: Can you identify this document for the Court?

18 A: Yes, I can. This is a letter dated September
19 17, 2008. Again, signed by our senior real
20 property technician, Carolyn Smalls, and this
21 is in reference to our first letter dated
22 August 26th wherein we now ask Mr. and Ms. Ford
23 for specific information relative to the rental
24 of the property known as [REDACTED].

25 Q: Did the assessor's office receive any

1 information responsive to that particular
2 correspondence?

3 A: Yes, we did. Again, we received a copy of our
4 letter signed by Leslie Ford indicating that
5 the property is available for summer weekly
6 rentals. It is our primary home the rest of
7 the year, she notes, and she gave us the
8 vacation rental by owner web address and signed
9 this.

10 MR. HUGHES: Your Honor, we would offer this as
11 Respondent's Exhibit Number Four, again I
12 believe without objection from the petitioner.

13 MR. PRINGLE: No objection.

14 THE COURT: It's admitted.

15 (Respondent's Exhibit Number Four was admitted.)

16 Q: Did you or anyone within your office follow-up
17 upon the information provided by Ms. Ford
18 within Exhibit Four?

19 A: Certainly. Ms. Carolyn Smalls accessed the
20 vacation rental by owner website and we pulled
21 off the information from that website relative
22 to information about the property and also the
23 rental period and the stream of income from
24 that rental period.

25 Q: Can you identify this document for the record

1 or the Court?

2 A: Yes, I can. This is the VRBO, which is
3 vacation rental by owner, of the subject
4 property located at [REDACTED]. Indicates
5 all the amenities associated with this
6 residence, the features relative to its
7 proximity to the beach, and also indicates the
8 rates in U.S. dollars for the rental period
9 commencing the end of May through the middle of
10 August.

11 Q: And what, if any, significance was the VRBO
12 listing to you in your determination of the
13 eligibility of the property for four percent
14 assessment for the tax year 2008?

15 A: This indicated to us that the current section
16 of the code, which limits the rental periods to
17 no greater than 14 days, was exceeded by both
18 the taxpayer and, thus under our opinion, was
19 disqualified from receiving the four percent
20 special assessment ratio.

21 MR. HUGHES: Your Honor, we would offer this as
22 Respondent's Exhibit Number Five, again without
23 objection.

24 MR. PRINGLE: No objection.

25 THE COURT: It's admitted.

1 (Respondent's Exhibit Number Five was admitted.)

2 Q: Was there any request of the taxpayer for any
3 additional information or documentation in
4 connection with your consideration of her claim
5 to the four percent assessment?

6 A: No, there wasn't.

7 Q: Okay. What was the determination that was
8 ultimately rendered by your office with regard
9 to the eligibility of the property for the four
10 percent assessment?

11 A: The four percent assessment ratio was removed
12 from the property in a letter dated to Mr. and
13 Ms. Ford dated October 3, 2008.

14 Q: Is that a letter that you have before you
15 today?

16 A: Yes, that is Exhibit Number Six and within that
17 letter I indicated that the property, based on
18 the information that we had received from the
19 taxpayer, exceeded the 14 or 15 day rule. I
20 provided to the owners, Mr. and Ms. Ford, the
21 applicable section of the South Carolina code
22 and laws and I also indicated that they felt if
23 my decision was incorrect that they had an
24 option within 30 days of the date of that
25 letter to file an application to the Beaufort

1 County tax legalization board.

2 MR. HUGHES: Your Honor, we would offer that letter
3 denying the request of assessment as
4 Respondent's Exhibit Number Six, again I
5 believe without objection.

6 MR. PRINGLE: No objection.

7 THE COURT: It's admitted.

8 (Respondent's Exhibit Number Six was admitted.)

9 Q: Has there been any change in the determination
10 by the office of the Beaufort County Assessor
11 concerning the ineligibility of the property
12 for the four percent assessment for the tax
13 year 2008?

14 A: No.

15 Q: Okay. Did you believe it necessary that any
16 additional information or documentation be
17 provided to you in order to make an appropriate
18 determination concerning the availability of
19 the assessment?

20 A: No, I did not.

21 Q: Did you consider all of the documentation and
22 information that was offered by the taxpayer in
23 support of her contention that she was entitled
24 to the four percent assessment?

25 A: Yes, I did.

1 Q: Okay. Can you explain to the Court again in a
2 nutshell why the assessment was denied in this
3 particular case?

4 A: Well, again, a fair reading of the statute
5 indicates that there's really four criteria for
6 receiving the preferential assessment ratio
7 and, again, the property must be owned and
8 occupied in the tax year that they seek the
9 exemption. The property must be declared as
10 the legal residence and the property must not
11 be rented. However, there was a 2005 amendment
12 to the code that offered the rental period of
13 no greater than 14 days to recipients of the
14 four percent assessment ratio and they would
15 retain that. I believe that legislation
16 centered around such activities in the State of
17 South Carolina such as the Heritage Golf
18 Tournament in Hilton Head, I believe the
19 overflow housing situation during the Master's
20 Golf Tournament in Georgia, and it was at that
21 time that those individuals would not forfeit
22 the eligibility of the four percent providing
23 they did not rent for no greater than 14 days.
24 Q: Now, in this case I believe it is conceded that
25 for at least a portion of the tax year the

1 property at issue here did, in fact, function
2 as the taxpayer's primary residence.

3 A: Yes, sir.

4 Q: And that, I take it, is not sufficient to
5 qualify one for the four percent residential
6 assessment?

7 A: No, it is not.

8 Q: And that is, again, because of what
9 considerations?

10 A: As I stated, the statute is, in my opinion,
11 very clear with regard to the period of time
12 for which legal residence recipients of the
13 four percent assessment ratio may rent their
14 domicile out during the tax year in question.
15 In the instant case that rental period was, I
16 believe, 91 days. Far in excess of the 14 day
17 maximum under the current law.

18 Q: Would a rental for a period in excess of the
19 statutory authorized exception, that is for
20 something greater than 14 days, render the
21 property, as a matter of course, ineligible for
22 the four percent residential assessment ratio?

23 A: Yes, it would.

24 Q: I don't believe I have any further questions.
25 Mr. Pringle may. Thank you.

1 THE COURT: Mr. Pringle?

2 MR. HUGHES - CROSS EXAMINATION BY MR. PRINGLE:

3 Q: Mr. Hughes, we can agree, can't we, that the
4 Fords actually owned [REDACTED] in 2008,
5 correct?

6 A: Yes, sir.

7 Q: Okay. And we can agree that they occupied [REDACTED]
8 [REDACTED] as their legal residence for some
9 part of 2008, correct?

10 A: Well, I denied the legal residence four percent
11 application in 2008, sir.

12 Q: Okay. So do you disagree that [REDACTED]
13 is their legal residence?

14 A: For tax year 2008, I do. I disagree. It is
15 not their legal residence based upon my
16 interpretation of the statute. That's correct.

17 Q: Okay. Not their legal residence. To your
18 knowledge, did they claim another residence as
19 their legal residence?

20 A: I don't believe they did, but I'm not sure of
21 that.

22 Q: Okay. So the answer is no?

23 A: No.

24 Q: Okay. And we can agree that they lived at that
25 address for some part of the year, correct?

1 A: It's my understanding that's correct.

2 Q: Okay. Tell me again your four rules or the
3 four criteria for, I guess under your legal
4 residency or entitlement to the four percent.

5 A: Well, it's really not under mine. I think a
6 fair reading of the statute would indicate that
7 the property owner, in the tax year for which
8 they seek the special assessment ratio, must
9 own the property.

10 Q: Uh-huh (affirmative response).

11 A: They must occupy the property.

12 Q: Uh-huh (affirmative response).

13 A: They may make a declaration that it's their
14 legal residence and the property, under 12-43-
15 220C1 the property, if it's rented, it doesn't
16 qualify. However, the exception to that is 12-
17 43-220C7 in which the rental period cannot
18 exceed any greater than 14 days. Under those
19 circumstances the property would qualify.
20 However, the instant case, the property was
21 rented for greater than 14 days and, thus, did
22 not meet the four test criteria for receiving
23 that special assessment ratio.

24 Q: Okay. And you'd agree with this statement that
25 property must be owned and occupied as the

1 legal residence sometime during the tax year?

2 A: Yes, I would. That's in the code.

3 Q: Okay. And what about the prospect that there
4 are no minimum number of days?

5 A: Could you rephrase the question?

6 Q: The statement that there are no minimum number
7 of days in order to qualify as a legal
8 residence.

9 A: I believe the statute says it has to be
10 occupied sometime during the tax year in which
11 they seek the special assessment ratio.

12 Q: Okay. And there's no minimum number of days?

13 A: I believe you could occupy it one day, sir.

14 Q: And be entitled to have it be your legal
15 residence.

16 A: Yes, sir.

17 Q: But you just finished telling me that you
18 denied legal residence.

19 A: I denied it based on the renting of the legal
20 residence for greater than 14 days.

21 Q: Okay. But you said that's not their legal
22 residency, is that right?

23 A: I disallowed and disqualified them from
24 receiving the four percent assessment ratio for
25 tax year 2008 because they did not meet the

1 test under the current statute with regard to
2 renting.

3 Q: Okay. So under your interpretation they could
4 live in it one day, but as long as they didn't
5 rent it for more than 15 days they would still
6 be entitled to the --

7 A: I believe that would be a valid interpretation
8 of the code if you read it. A fair reading
9 would indicate you have to occupy it sometime
10 during the tax year. There's no minimum dates.

11 Q: Uh-huh (affirmative response).

12 A: I think prior to that language I believe the
13 state may have had some apportioned rules based
14 on the number of days of occupancy versus the
15 non-occupancy, but currently the statute says
16 sometime during the tax year.

17 Q: Okay. But it's the rental, not the fact that
18 they might not have actually occupied it.

19 A: Yes, sir, the rental is what disqualified them.

20 Q: Okay. All right. I believe that's all I have.

21 **MR. HUGHES - REDIRECT EXAMINATION BY MR. HUGHES:**

22 Q: Mr. Hughes, assuming that the property were, in
23 fact, the only legal residence claimed by the
24 taxpayer and assume further that that same
25 legal residence had been rented by the taxpayer

1 for a period of greater than 14 days. Under
2 those circumstances do you have any opinion as
3 to whether or not the property would qualify
4 for the residential assessment?

5 A: Again, if it was rented for greater than 14
6 days it would not qualify for the four percent
7 assessment ratio.

8 Q: So the mere fact that the property might serve
9 as a taxpayer's legal residence would not
10 entitle the taxpayer to the residential
11 assessment in the absence of qualifying for the
12 remaining criteria required by the code, is
13 that correct?

14 A: That's correct.

15 Q: I think that's all I have. Thank you very
16 much.

17 THE COURT: Re-cross on that?

18 MR. PRINGLE: No re-cross.

19 THE COURT: You may step down.

20 MR. HUGHES: Your Honor, the assessor would call no
21 further witnesses.

22 THE COURT: All right. Hold on one moment. Mr.
23 Pringle, any reply?

24 MR. PRINGLE: I don't believe I've got any reply.
25 Although, as a housekeeping issue I did not

1 move my --

2 **THE COURT:** I saw that.

3 **MR. PRINGLE:** -- exhibits in and I was just going to
4 ask that they be -- even though she testified
5 to all of them I think that I would like to
6 move my exhibits in.

7 **THE COURT:** One through Six?

8 **MR. PRINGLE:** One through Six.

9 **THE COURT:** Any objection?

10 **MR. HUGHES:** None, Your Honor.

11 **THE COURT:** Okay. They're admitted.

12 (Petitioner's Exhibit Numbers One through Six were
13 admitted.)

14 **MR. PRINGLE:** Okay. No reply from us.

15 **THE COURT:** All right.

16 **MR. PRINGLE:** But we'd like the opportunity to
17 close.

18 **THE COURT:** Yeah, that's fine.

19 **MR. PRINGLE:** Okay.

20 **THE COURT:** You want to take a break or are y'all
21 ready to go?

22 **MR. PRINGLE:** Maybe just a quick one.

23 **THE COURT:** Okay. We'll just take a short break.

24 **MR. PRINGLE:** Okay.

25 (Off the record from 10:46 a.m. to 10:53 a.m.)

1 THE COURT: All right. Proceed.

2 MR. PRINGLE: All right. May I go first and last,
3 too?

4 THE COURT: Yeah.

5 MR. PRINGLE: Okay.

6 THE COURT: Well, my rule is, which you know is, you
7 got to open in full if you go first, so that's
8 all.

9 CLOSING STATEMENT BY MR. PRINGLE:

10 MR. PRINGLE: Your Honor, this case is all about
11 statutory interpretation of the construction of
12 12-43-220. You've got some guidance and I
13 think with the Court's approval, you know, to
14 ask to either brief this or provide proposed
15 orders about the law and what might be helpful
16 to the Court. There are two previous ALC cases
17 that have addressed this very issue. The Metts
18 case and the Tolbrook case. Metts case was
19 Judge Gossett, Tolbrook case was Judge McLeod
20 and took different views on what the statute
21 meant with respect to the 15 days that we're
22 talking about here. From the petitioner's
23 perspective, this statute gives you the four
24 percent if we're talking about your legal
25 residence. If the owner occupies it and then

1 you can show it's your domicile and that you --
2 as the case law from South Carolina suggests,
3 that you don't have some other place that you
4 claim as your legal residence or domicile,
5 you're entitled the four percent assessment.
6 Now, the discussion from respondent about that
7 renters are not allowed the four percent is not
8 found in the plain language of the statute. In
9 C1, the reference that respondents make, there
10 is a specific reference to rental properties
11 that are contained on a larger piece of
12 property where the owner occupier may claim on
13 one structure and there are other structures
14 that are rented, but there is no where in there
15 that it says plainly that properties that are
16 rented are not entitled to the four percent and
17 I think the other language that's plainly in
18 the statute that talks about the fact that you
19 must own -- you know, occupy the structure for
20 part of the year and that establishes it as his
21 or her legal residence demonstrates that that
22 four percent is available to the petitioner and
23 those who --

24 **THE COURT:** Say that again.

25 **MR. PRINGLE:** Well, looking at the particular thing.

1 Owner occupant must have actually owned -- it's
2 2I, C2I says to qualify for the special
3 property tax assessment ratio allowed by this
4 item the owner occupant must have actually
5 owned and occupied the residence as his legal
6 residence and then domiciled at that address
7 for some period during applicable tax year. We
8 satisfied that and no language in C1 takes that
9 away from us.

10 **THE COURT:** The language in C1.

11 **MR. PRINGLE:** That's referred to by respondents for
12 the prospect that rentals are not -- are
13 accepted or not allowed for the four percent
14 assessment.

15 **THE COURT:** All right. So that provision says to
16 qualify.

17 **MR. PRINGLE:** That's right.

18 **THE COURT:** You don't interpret to qualify to mean
19 you just meet that and that's it, do you?

20 **MR. PRINGLE:** Well, I do. You know, that you've
21 actually owned and occupied the residence as
22 the legal residence for some period during the
23 applicable tax year.

24 **THE COURT:** So under your theory you could just pick
25 one day out of the year to occupy the legal

1 residence or occupy a piece of property, any
2 piece of property, you know, even one that you
3 rent out during the entire summer months and
4 all that and still get the four percent
5 assessment?

6 MR. PRINGLE: Well, certainly I say first under
7 these facts we've got --

8 THE COURT: I know, I'm not --

9 MR. PRINGLE: Yeah.

10 THE COURT: What I'm doing right now is I want to
11 see where your interpretation goes of the
12 statute and then I'll come back to this case.

13 MR. PRINGLE: Well, under those facts I don't know
14 whether it would go as far to say that that
15 would be their -- that that would absolutely
16 qualify them as their legal residence, but
17 certainly under the facts of this case they --

18 THE COURT: Well, if then that wouldn't absolutely
19 qualify them as their legal residence, you
20 can't use the phrase to qualify to be an all
21 encompassing term if there is a potential
22 exception to that line of thinking. So that's
23 why I wanted to go down that road first
24 because, Mr. Pringle, I know you're very
25 bright, so I want to figure you're going to

1 discuss this with me. And so there is an
2 exception to it, so to qualify doesn't mean you
3 get it because there's --

4 MR. PRINGLE: Not necessarily, but that language
5 demonstrates that the touchstone is --

6 THE COURT: Well, I agree, sir.

7 MR. PRINGLE: Yeah.

8 THE COURT: The touchstone is.

9 MR. PRINGLE: Uh-huh (affirmative response).

10 THE COURT: I just want to see how far we go with
11 this touchstone.

12 MR. PRINGLE: Uh-huh (affirmative response).

13 THE COURT: Because the touchstone could also mean
14 this is where you go to get in the door.

15 MR. PRINGLE: Uh-huh (affirmative response).

16 THE COURT: But can you get kicked out of the door
17 and you're arguing that you can't is what --

18 MR. PRINGLE: Well, we certainly can under the facts
19 of this case.

20 THE COURT: Okay.

21 MR. PRINGLE: I don't know how it may work if, for
22 instance, you had one day, ten days, 30 days,
23 60 days, 90 days.

24 THE COURT: Okay.

25 MR. PRINGLE: But, certainly, the case law regarding

1 legal residence and domicile that's come down
2 in South Carolina has indicated that you --
3 generally, you have one legal residence and you
4 don't have another legal residence until you
5 have an intent to abandon the old one and have
6 a new one and in this case there's no question
7 but this is the only residence that they've
8 claimed as their legal residence and their only
9 domicile.

10 **THE COURT:** Well, is it possible not to have a legal
11 residence?

12 **MR. PRINGLE:** It could be. Not under the facts of
13 this case. I suppose that there are -- you
14 know, that there are instances where -- I mean,
15 and perhaps when -- beyond ownership.

16 **THE COURT:** Yeah, you live with another.

17 **MR. PRINGLE:** Could be, could be. With respect to
18 this exception under seven, that provision is
19 a safe harbor, and if you look at the language
20 there it says not withstanding any other
21 provision of law, the owner occupant of a legal
22 residence is not disqualified from receiving
23 the four percent assessment ratio if the
24 taxpayer's residence meets the requirements of
25 IRC code section and the taxpayer otherwise is

1 eligible to receive the four percent assessment
2 ratio. That does not mean that he's
3 disqualified if he goes over. It doesn't mean
4 the --

5 **THE COURT:** It doesn't have the inverse.

6 **MR. PRINGLE:** The inverse. And, in fact, if you
7 look at Judge Gossett's opinion regarding in
8 Metts, there was actually a lot of discussion
9 about logic that goes over my head about the
10 stating the inverse proposition or the adverse
11 and some other discussion of that. So we view
12 that as --

13 **THE COURT:** The doctrine of?

14 **MR. PRINGLE:** Exclusio -- you know, that if it
15 doesn't speak to something it implies the --

16 **THE COURT:** Expressio unius est exclusio alterius?

17 **MR. PRINGLE:** That's right.

18 **THE COURT:** Okay.

19 **MR. PRINGLE:** But clearly we see that as being a safe
20 harbor and in part, you know, not just because
21 of the language that's contained in it, but
22 also because of the fact that if that meant
23 what the respondents say it does then it's the
24 tail subsection wagging the statute dog
25 meaning, you know, that it replaces or, you

1 know, guts everything that's contained in here
2 about owning and occupying and establishing
3 your legal residence and so I think -- you
4 know, I'm not sure exactly the reasons that
5 it's got in here, but I do believe that the
6 General Assembly did not intend to turn the
7 entire analysis into a determination of whether
8 it's 15 days or 14 days or, you know, on those
9 particulars. So for those reasons I think
10 looking at the statute as a whole, at the plain
11 language of the statute and this safe harbor,
12 it's clear that this, in deed, was my client's
13 legal residence and their domicile during 2008
14 and that they are entitled to the four percent
15 assessment.

16 **THE COURT:** How about six, does it affect section
17 six? Is that affected at all?

18 **MR. PRINGLE:** Well, I think it supports the idea
19 that seven is not -- is a safe harbor because
20 by mentioning 90 days it's a recognition that
21 the 15 days is not some sort of absolute bar.
22 That, you know, certainly that that was chosen
23 for a specific instance where, in deed the
24 residential property may have been rented for
25 90 days before occupancy -- again, probably

1 still not dispositive for legal residence in
2 this case, but the fact that they chose 90 and
3 not 15, I think demonstrates that there's no
4 magic about 15, other than that it is a safe
5 harbor.

6 **THE COURT:** Okay.

7 **CLOSING STATEMENT BY MR. HUGHES:**

8 **MR. HUGHES:** Your Honor, obviously I would take
9 issue with most of the contentions asserted by
10 counsel for the petitioner..

11 **THE COURT:** Well, I would hope so or we'd be wasting
12 our time.

13 **MR. HUGHES:** In the first place, our contention is
14 that the statutory provisions setting forth the
15 criteria for the four percent assessment are
16 perfectly clear and they require, again, that
17 the property be the legal residence of the
18 taxpayer, that it be owned by the taxpayer,
19 that it be occupied by the taxpayer as his
20 legal residence, and again most importantly,
21 that the property be neither available for rent
22 or the location of any business for profit.
23 Those are the clear criteria set forth in
24 section 12-43-220C1. The only exception to the
25 general statutory prohibition against

1 qualifying rental property for a four percent
2 assessment is that set forth in subsection C7.
3 C7 continues to qualify rental property for the
4 residential assessment if all the other
5 criteria are satisfied and the period of rental
6 is fewer than 15 days. If that were not the
7 case section C7 would be completely
8 superfluous. The general provision as set
9 forth in C1, the sole statutory exception is
10 set forth in C7. Now, the idea that this is a
11 safe harbor, I think has been incorrectly
12 resolved by Judge Gossett and her opinion in
13 the matter of Metts. The fact is if this were,
14 in fact, a safe harbor the language of the
15 general statute would say something to the
16 affect that excessive rental will not
17 disqualify the property from the four percent
18 residential assessment and the safe harbor
19 language would be 14 days or fewer will not
20 constitute excessive rental. That would be a
21 safe harbor. This is an exception. Section C7
22 is a statutory exception to the general
23 prohibition that rental property will not
24 qualify for the residential assessment ratio,
25 which is a preferential residential assessment,

1 which a preferential assessment authorized by
2 statutory provisions. Now, with regard to
3 section C2, the fact is the statute goes on to
4 say that a residence which has been qualified
5 as a legal residence for any part of the tax
6 year is entitled. In this case that's a direct
7 reference to the qualification for the four
8 percent residential assessment: Property which
9 is -- in order to qualify for the four percent
10 residential assessment it, again, has to be
11 legal residence occupied, owned, and not
12 subject to rental. And, again, the only
13 exception to the statutory prohibition against
14 qualifying rental property for the special
15 assessment is that set forth in section C7,
16 which is the 14 day exclusion. With regard to
17 Judge Metts' opinion, I would advise the Court,
18 without fear of contradiction, that it is not
19 dispositive here. The fact is --

20 **THE COURT:** That's true.

21 **MR. HUGHES:** -- that opinion was premised primarily
22 upon the stipulation by the Charleston County
23 Assessor that if C7 were not applicable, if the
24 sole statutory exception were not applicable,
25 then in that event the property, the taxpayer's

1 property in that case, would qualify. There
2 have been on such stipulations here. We have
3 contended from day one and long prior to the
4 adoption of C7 that rental property does not
5 qualify.

6 **THE COURT:** Well, isn't that distinction kind of in
7 name only, though, because when you say that
8 that was a stipulation here, the sole basis of
9 your claim, though, is 123 -- well, 12-43-220C
10 because if that is not -- if that exception
11 does not preclude them then could they not get
12 the exemption?

13 **MR. HUGHES:** The statutory scheme --

14 **THE COURT:** Or four percent assessment.

15 **MR. HUGHES:** The statutory scheme -- and not to
16 belabor the point. The statutory scheme is
17 primarily set forth in 12-43-220C1. That sets
18 forth the fundamental criteria which generally
19 must be satisfied in order for property to
20 qualify for the four percent assessment and
21 that includes --

22 **THE COURT:** How did they not meet that?

23 **MR. HUGHES:** They have rented the property. This
24 property is subject to rental, this property is
25 subject to rental. This property, within

1 section C1, refers to all property upon which
2 a taxpayer claims entitlement to the
3 residential assessment. And that is a blanket
4 prohibition against the availability of rental
5 property for the residential assessment. The
6 sole exception to that is C7 and, again --

7 **THE COURT:** All right. Hold on one moment because I
8 haven't read this in its entirety. Where is
9 the rental exception that you refer to?

10 **MR. HUGHES:** If you look at C1, Your Honor.

11 **THE COURT:** I'm looking at it.

12 **MR. HUGHES:** And you go down to approximately eight
13 lines from the bottom and it begins -- excuse
14 me, approximately five lines from the bottom.
15 If this property has located on it any rental
16 mobile homes or residences which are rented or
17 any business for profit, this four percent
18 value does not apply to those businesses or
19 rental properties. And, obviously, in terms of
20 our determination this property refers to any
21 property upon which a taxpayer claims
22 entitlement of the four percent residential
23 assessment. And, again, as articulated by
24 Judge McLeod -- and I realize that case is of
25 no precedential value to this Court, but the

1 fact is he explains that the statute seeks
2 uniformity and any other construction of this
3 case would deprive the statutory fact of the
4 desired -- of uniformity in the assessment of
5 properties.

6 **THE COURT:** Go ahead.

7 **MR. HUGHES:** Okay. Having said that, again, I
8 believe that our interpretation is correct.
9 Rental properties in the absence of a relevant
10 exception do not qualify for the residential
11 assessment. The only relevant exception here
12 being that set forth in C7, which is not a safe
13 harbor, but it's not contrast in exception. To
14 the extent that the Court may deem the statutes
15 to be ambiguous, there is a long line of
16 authority in South Carolina which clearly says
17 that statutory grounds of exemptions are to be
18 construed -- ambiguities in statutory grounds
19 of exceptions are to be construed against the
20 taxpayer. Our Supreme Court --

21 **THE COURT:** For exemptions.

22 **MR. HUGHES:** I beg your pardon?

23 **THE COURT:** For exemptions.

24 **MR. HUGHES:** Yeah, exactly, Your Honor. And this,
25 effectively, is an exemption. The utilization

1 of a four percent assessment is effectively an
2 exemption from a portion of the tax that would
3 otherwise be owned by the taxpayer and our
4 Supreme Court has, in any number of opinions as
5 I'm sure this Court is aware, note that
6 statutory exemptions are --

7 **THE COURT:** I've cited them.

8 **MR. HUGHES:** I beg your pardon?

9 **THE COURT:** I've cited them so I would hope I know
10 them.

11 **MR. HUGHES:** Certainly, Your Honor. But the fact is
12 our Courts have recognized that statutory
13 exemptions are matters of legislative grace,
14 and in instances of statutory grounds, which
15 are matters of legislature grace, any
16 ambiguities in the statute are not to be
17 strained or liberally construed in favor of the
18 taxpayer and any ambiguities are to be resolved
19 against the taxpayer and in favor of the
20 assessor and in this case, to the extent there
21 is any ambiguity, I would strongly urge that
22 the appropriate application of the proper rule
23 of construction renders my client correct in
24 this instance. Any ambiguity has a result in
25 favor of the assessor. The assessor has

1 determined that the statutory criteria are the
2 four that I've cited. Utilizing those four
3 statutory criteria with no relevant exception,
4 the property here simply does not qualify for
5 the assessment sought by this taxpayer. And,
6 again, this is a preferential assessment. This
7 is a preferential assessment, which this
8 taxpayer claims it is clearly her
9 responsibility to bring herself clearly within
10 statutory provisions upon which she relies.
11 She has not done it and that is basically our
12 position and, again, I would cite firmly -- and
13 I realize the Court is aware of this -- the
14 Tolpa opinion which addresses --

15 **THE COURT:** The what opinion?

16 **MR. HUGHES:** The Tolpa opinion issued by Judge
17 McLeod considered a case that was factually
18 virtually identical to the one before the Court
19 and, again, although it's not of any
20 precedential value, I think it is a well
21 reasoned opinion which bears some consideration
22 by this Court. Thank you.

23 **THE COURT:** Mr. Pringle.

24 **CLOSING STATEMENT BY MR. PRINGLE:**

25 **MR. PRINGLE:** Your Honor, very briefly.

1 THE COURT: Let me stop you before you go much
2 further.

3 MR. PRINGLE: Okay.

4 THE COURT: So, according to what I've heard at this
5 point in time, if I read 143-220C1, your client
6 has been qualified up to the point that there
7 is a provision here that says if this property
8 has residences which are rented -- I'm cutting
9 things out, so I can go straight to the heart.

10 MR. PRINGLE: Sure.

11 THE COURT: If this property has residences which
12 are rented for profit -- rented, period. This
13 four percent value does not apply to those
14 rented or rental properties.

15 MR. PRINGLE: Uh-huh (affirmative response).

16 THE COURT: And then you turn to seven, which says
17 not withstanding any other provision of law,
18 which is the one that says that you can't use
19 the provision. That's the exception. The
20 owner of the legal residence is not
21 disqualified because they were disqualified by
22 the previous sentence. From receiving the four
23 percent assessment. So there's where I'm
24 having --

25 MR. PRINGLE: Sure.

1 THE COURT: Although, I think Judge Gossett was one
2 of the brightest judges we've ever had here.

3 MR. PRINGLE: Well, here's why I disagree with that
4 whole analysis and in part, you know -- first
5 of all, it wasn't until we saw the pre-hearing
6 statement that there was a discussion that C1
7 somehow -- that the rental nature of this
8 disqualified the petitioner as opposed to just
9 C7 and I know that that's not dispositive of
10 anything necessarily, but certainly the
11 correspondence from the assessor doesn't say
12 rental properties aren't subject to the four
13 percent and, oh, by the way, you don't meet
14 this exception.

15 THE COURT: Yeah.

16 MR. PRINGLE: So, I mean, neither here nor there.
17 However, in the way they created this it's
18 skillful. Well, first of all --

19 THE COURT: It's skillful?

20 MR. PRINGLE: Yeah, there's got to be an exception.

21 THE COURT: Well, I'll be glad to tell the
22 Legislature they --

23 MR. PRINGLE: Got to be an exception. It's got to
24 be an exception because no rentals -- you know,
25 so that makes the hill a little bit steeper for

1 us and then you don't meet this other
2 exception. You know, the proposition that no
3 rental properties are subject to the four
4 percent tax. The problem with that and where
5 it all collapses is that language in C1 -- and
6 you note that counsel didn't quote that
7 provision until you asked him to. You know, it
8 wasn't contained in any documents. It
9 certainly doesn't clearly say rentals shall not
10 receive the four percent tax. What it says is,
11 if you look at the preceding sentence, if the
12 lessee of property upon which he is located is
13 legal residence is liable for taxes on a leased
14 property then the property upon which he is
15 liable for taxes not to exceed five acres must
16 be assessed as the same ratio provided in this
17 item, four percent. If this property --
18 referring to the previous sentence -- has
19 located on it any rented mobile homes or
20 residences which are rented or any business for
21 profit, this four percent value does not apply
22 to those businesses or rental properties.
23 Clearly making a distinction between rental
24 properties and legal residence. The legal
25 residence that's located there and that's where

1 this thing goes off the rails, is that they
2 have claimed that --

3 **THE COURT:** Well, when you say off the rails -- and
4 I don't want you to lose your train of thought
5 -- but the ambiguity here is if this property.

6 **MR. PRINGLE:** Uh-huh (affirmative response).

7 **THE COURT:** So does if this property talk in general
8 about this property or, as you say, this
9 property being the preceding sentence? Because
10 under your interpretation it has to be the
11 preceding sentence, correct?

12 **MR. PRINGLE:** It's the preceding sentence and what
13 that shows is that legal residence is something
14 distinct and different from rented residences.

15 **THE COURT:** Okay.

16 **MR. PRINGLE:** And that if the General Assembly had
17 meant to say a legal residence shall not be
18 rented, they certainly would have said it in --
19 they would have said it, which they didn't say
20 here, and they would have said it a lot more
21 clearly than any of this language, which
22 clearly applies to something else. And once
23 you don't have the proposition that -- you
24 don't start from the presumption that rentals
25 aren't subject to four percent then it's clear

1 that C7 is, in deed, a safe harbor and you
2 don't start from the proposition that, well,
3 you have to prove otherwise to overcome a
4 bigger hurdle. I mean, what the statute says
5 is if it's your legal residence and you occupy
6 it and it's your domicile and I think that's,
7 you know, why we win the case and, certainly,
8 I disagree with the proposition that these are
9 necessarily exemptions and that the legislative
10 grace comes into play. I mean, that's a
11 specific statutorily mandated assessment for
12 owner occupied homes. It's not an exemption
13 from anything. I mean, I still -- it may be,
14 but in any event, you know, we've shown that --
15 you know, that we're entitled to it. But I
16 don't know that there's necessarily that -- I'm
17 not sure there are ambiguities. I think the
18 plain language here indicates that this is --
19 when it's our legal residence and we own it and
20 we occupy it and it's our domicile that we're
21 entitled to the four percent and, certainly,
22 this language contained in C1 doesn't change
23 that or announce a rule that rentals are not
24 entitled to the four percent assessment. Just
25 to close, certainly in contrast to counsel for

1 respondents, we certainly like the Metts
2 opinion and we believe that, you know, with all
3 due respect to Judge McLeod, you know, looking
4 -- you know, not considering that plain
5 language in this citation to the title of the
6 statute as far as classifications shall be
7 equal and uniform, not particularly helpful to
8 the analysis of what's actually in the statute.

9 I mean, they have some -- give us some clue as
10 to the purpose, but you know, not particular
11 dispositive for purposes of actually what's in
12 the statute and how it works. So for that
13 reason I ask that my clients be allowed the
14 four percent assessment.

15 **THE COURT:** All right. Do y'all wish a brief it
16 further?

17 **MR. HUGHES:** Delighted to brief it further, Your
18 Honor.

19 **THE COURT:** Off the cuff right now, what I said
20 earlier to Mr. Pringle would appear to be
21 significant and that is when you refer to this
22 property, so if I start there and say that
23 that's significant then if that is significant
24 then -- and it is an ambiguity as to where it
25 refers to then that would take me to the

1 principles of statutory construction. I'm
2 aware that the principles of statutory
3 construction set forth that any -- I forgot the
4 exact term that I've read in the past. It
5 isn't exclusion.

6 **MR. HUGHES:** Deductions, Your Honor.

7 **THE COURT:** Deductions. Which this isn't a
8 deduction, so I think this case very well may
9 turn on the application of the strict
10 construction principle in regard to this case
11 and if it does kick in against the petitioner,
12 you lose. If it doesn't, you've got a viable
13 argument.

14 **MR. HUGHES:** I would point out that the Court's
15 interpreting those same sorts of statutory
16 constructions have basically utilized
17 exemptions and deductions interchangeably, Your
18 Honor.

19 **THE COURT:** Well, that's where I'm aware of the
20 deduction phrase. I haven't gone and done
21 research concerning exclusions is what I'm
22 getting at and so I'm not aware of one way or
23 the other. I've heard plenty of these cases,
24 but I don't have all the case log memorized, I
25 can tell you that. All right.

1 **MR. HUGHES:** Neither do I, Your Honor. Thank you.
2 Would you like a briefing?

3 **THE COURT:** If y'all wish to brief, you know, I'll
4 just tell you one specific area that I think is
5 pertinent, but I don't want to wait a long
6 time, you know, because I don't ask y'all to do
7 anything close to a Brandeis Brief. We're
8 talking about the other end of that scale. So
9 how about four or five days, is that -- I mean,
10 I don't know what y'all have got scheduled.

11 **MR. HUGHES:** Monday? Is that when you'd like them
12 submitted?

13 **THE COURT:** I said in four to five days.

14 **MR. HUGHES:** Monday?

15 **THE COURT:** Oh, Monday. That would be fine. I
16 wouldn't want you to work over the weekend.
17 Does Monday?

18 **MR. PRINGLE:** Monday will be fine.

19 **THE COURT:** Okay. All right. With that said, just
20 submit me something by Monday and it doesn't
21 have to be lengthy at all.

22 **MR. HUGHES:** I'm assuming I can put it in the mail
23 on Monday afternoon?

24 **THE COURT:** You may.

25 **MR. PRINGLE:** Yes, sir, thank you.

1 THE COURT: I do prefer you also to email it to me.

2 MR. PRINGLE: Word?

3 THE COURT: Yeah. All right. Thank you very much.

4 MR. HUGHES: Thank you, Your Honor.

5 (There being nothing further, the hearing was
6 concluded at 11:43 a.m.)

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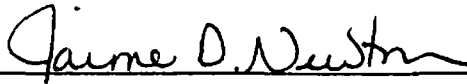
25

CERTIFICATE

This is to certify that the within hearing consisting of Sixty-Four (64) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on July 16, 2010.



Jaime D. Newton
Court Reporter

Notary Public for South Carolina
My Commission Expires: 5/14/2017



COUNTY COUNCIL OF BEAUFORT COUNTY

Office of the Assessor

Multi Government Center • Post Office Box 458

Beaufort, South Carolina 29901-0458

Phone: (843) 470-2522 Fax: (843) 470-2512

Web Site: www.bcgov.net

October 3, 2008

Gregory and Leslie Ford

Hilton Head Island, SC 29928

785-6100

Re: Assessor's Notice of Final Determination
2008 Special Assessment (4%) Ratio Application
Parcel: R510 009 000 034B 0000

Dear Mr. and Mrs. Gregory Ford:

The application submitted for the Special Assessment ratio is denied for tax year 2008. The basis for the denial is the captioned property is rented for more than 14 calendar days during the tax year for which you applied for the special assessment ratio. The limitation on renting legal residential property is 14 days or less and is found in section 12-43-220 (c) (7) of the Code of Laws of South Carolina.

(7) 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 if the taxpayer's residence meets the requirements of Internal Revenue Code Section 280A(g) as defined in Section 12-6-40(A) and the taxpayer otherwise is eligible to receive the four percent assessment ratio.

If this action is unsatisfactory, you may appeal in writing to the Beaufort County Equalization Board. This process will be initiated upon receipt of your written notice of intent to appeal in the Assessor's office. Notice of intent to appeal must be received in the Office of the Assessor within thirty (30) days of the date of this final determination letter. Failure to timely appeal in writing to the Beaufort County Equalization Board will constitute a waiver of your rights to continue the appeal for the 2008 tax year.

Please contact me if you have any questions.

Sincerely,

Edward Hughes
Beaufort County Assessor



BEAUFORT COUNTY TREASURER
PO DRAWER 487
BEAUFORT SC 29901-0487

FORWARDING SERVICE REQUESTED

2008 BEAUFORT COUNTY PROPERTY TAX BILL

The School Tax Credit Savings is the amount of school operations tax deducted from owner-occupied residential property ONLY; owner-occupied residential property qualifies for the credit. If your tax notice shows no credit, and the residence is your legal owner-occupied home, please contact Beaufort County Assessor's office at 843-470-2522

43328 1 AV 0.324

043328

FORD GREGORY W LESLIE L
JTROS

43328
199

HILTON HEAD ISLAND SC 29928-5456

TAX YEAR	KEY #	PARCEL ID	DISTRICT NAME	TYPE	TYPE PCA	MORTGAGE CODE
2008	00362440	R510 009 000 034B 0000	HILTON HEAD PSD #1	REAL PROPERTY	6115-11	
LOT B-7 FOLLY FIELD						2007 TAXES 4,285.49

BREAKDOWN			ACCOUNT DATA	
DESCRIPTION	MILL	TAX/FEE	DESCRIPTION	AMOUNT
COUNTY	51.90	3,108.71	LAND VAL	250,000
SCH OPER	102.60	6,145.54	BLDG VAL	748,300
SCH DEBT	28.00	1,677.14	TAXABLE	998,300
MUNICIPAL	19.36	1,159.63	ASSESSED	59,898
PSD	5.70	341.41	# LOTS	1.0
PSD FEES		300.00		
SWU FEE		76.14		
TOTALS -	207.56	12,808.57		

APPRaised VALUE	
998,300	
LESS EXEMPTIONS	
HOMESTEAD EXEMPTION	
OTHER EXEMPTIONS	
TAXABLE VALUE	998,300
ASSESSED VALUE	59,898
TAX AMOUNT	12,432.43
SCHOOL TAX CREDIT SAVINGS	
FEES ADDED	376.14
PRIOR YEAR TAXES	

TOTAL DUE 12,808.57

OUTSTANDING RECAP			
TAX YEAR	TAX DUE	PENALTY	TOTAL
2008	12,808.57		12,808.57
TOTAL	12,808.57		12,808.57

PAY AFTER	AMOUNT
IF RECEIVED AFTER JAN 15, 2009 (3%)	13,192.83
IF RECEIVED AFTER FEB 01, 2009 (10%)	14,089.43
IF RECEIVED AFTER MAR 17, 2009 (15%)	14,729.86
IF RECEIVED AFTER MAR 31, 2009 (\$75)	14,804.86
IF RECEIVED AFTER AUG 31, 2009 (\$50)	14,854.86

RETAIN TOP PORTION FOR YOUR RECORDS
Return this stub for change of address

ADDRESS CHANGE (please print)

Property Owner: FORD GREGORY W LESLIE L
Account Key: 440
Account Number: R510 009 000 034B 0000

New Address: _____

12,432.43
- 4285.49
= 8146.94

300% increase

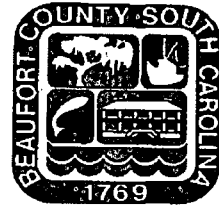
Signature

Date

125

COUNTY COUNCIL OF BEAUFORT COUNTY
TAX EQUALIZATION BOARD

Post Office Box 1267
Beaufort, South Carolina 29901-1267
Phone (843) 470-2511 Fax (843) 470-2569



April 7, 2009

Mrs. Leslie Ford

[REDACTED]
Hilton Head, SC 29928

Dear Mrs. Ford:

Re: Tax Equalization Board Conference
For: R510 009 000 034B 0000

The appeals process is a procedure that is afforded every property owner in the state of South Carolina. Since the amount of taxes relates directly to property value (market value), it is important for property owners to be aware of valuation concepts as they relate to their property, as well as surrounding properties. We understand the concerns of taxpayers in watching how and where their hard-earned money is spent.

The Beaufort County Tax Equalization Board has given careful consideration to the facts concerning the issue at hand in the appeal of the above-described property, which was presented to the board on Wednesday, March 25, 2009. After examining the available written information and hearing the oral presentations from both you (the property owner) and the Beaufort County Assessor, the board determined that the assessed ratio is to remain at 6% for tax year 2008.

If this ruling is unsatisfactory, the right of appeal is granted to **Administrative Law Court**. The appeal must be made in writing within thirty (30) days from the date of this letter and sent to the **Administrative Law Court, Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, SC 29201**.

Sincerely,

Robert Cummins, Jr.
Robert Cummins, Jr., Chairman

C: Gary Kubie
Ed Hughes
Robert C. Reames
Eunice Wynn

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10 RW
N.S.

RECORDED
2003 Oct -29 12:29 PM
Sham Q. Rennie
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 01858 PG 1381
FILE NUM 2003083090
10/20/2003 01:03:48 PM
REC'D BY R WEBB RCPT# 192734
RECORDING FEES 10.00
County Tax 478.50
State Tax 1,131.00
Transfer Tax 1,087.50

Q₃

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

TITLE TO REAL ESTATE

USEA-#18704-1

KNOW ALL MEN BY THESE PRESENTS, THAT IT,

PARRISH INVESTMENTS, LLC(hereinafter "Grantor");

in the State aforesaid --- for and in --- consideration of the sum of **FOUR HUNDRED THIRTY-FIVE THOUSAND AND NO/100 (\$435,000.00)** Dollars to it in hand paid at and before the sealing of these presents by **GREGORY W. FORD and LESLIE L. FORD**, (hereinafter "Grantees"), of [REDACTED] Hilton Head Island, South Carolina, 29926, in the state aforesaid ---for which --- the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said **GRANTEES**, as joint tenants with rights of survivorship and not as tenants in common, their heirs and assigns, forever, in fee simple, the following described property, to-wit:

SEE "EXHIBIT A" ATTACHED HERETO AND MADE A PART HEREOF.

Beaufort County Tax Map Reference: **DMP #R510-009-0000-34B**

This being the same property conveyed to the within Grantor by Deed recorded in the Register of Deeds Office for Beaufort County, South Carolina in OR Book 1649 at Page 1431.

This deed was prepared in the law offices of Wilson & Bratt, P.A., P.O. Box 21668, Hilton Head Island, SC 29925, by William F. Bratt, Esquire.

ADD DMP Record 10/26/2003 09:47:37 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R510	009	000	034B	0000	00

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **GRANTEES**, as joint tenants, with rights of survivorship, and not as tenants in common, their heirs and assigns, forever, in fee simple.

AND it does hereby bind itself and its Successors and Assigns, to warrant and forever defend, all and singular, the said Premises unto the said **GRANTEES**, their Heirs and Assigns, against itself and its successors, and all persons whomsoever now and hereafter lawfully claiming, or to claim the same or any part thereof.

WITNESS its Hand and Seal this 13th day of October in the year of our Lord two thousand three.

**SIGNED AND DELIVERED
IN THE PRESENCE OF:**

PARRISH INVESTMENTS, LLC

Will F. Smith
(Witness)
Carol A. Jones
(Notary Public)

BY: William M. Parrish
William M. Parrish, Manager/President

STATE OF SOUTH CAROLINA §
§
COUNTY OF BEAUFORT §

ACKNOWLEDGMENT
under S.C. Code § 30-5-30(C)

I, the undersigned notary public, do hereby certify that the duly authorized officer of the within named Grantor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 13th day of October, 2003.

Carol A. Jones (SEAL)
Notary Public for South Carolina
My Commission expires: 4/15/09

EXHIBIT A

All that certain piece, parcel or lot of land with all improvements thereon, situated, lying and being on Hilton Head Island, in the County of Beaufort, the State of South Carolina, known as Lot B-7, Section B, Folly Field Subdivision, the said lot being as shown on the plats of the said subdivision made by Fred C. Hack, register land surveyor, in May, 1954, and March, 1958, and recorded in Plat Book P-9 at Page 36, and in Plat Book P-11 at Page 15, respectively, the said lot being rectangular in shape and measuring Eighty (80') feet on its Southeastern and Northwestern sides, and One Hundred Twenty-Five (125') feet on its Northeastern and Southwestern sides, and being bounded on the Northeast by Ghost Crab Way, formerly known as Second Avenue; on the Southeast by Sand Dollar Road, formerly known as Palmetto Street; and on the Southwest by Lot B-8 of the said subdivision; and on the Northeast by Lot B-18 of the said subdivision.

The property conveyed herein is conveyed subject to those easements, covenants and restrictions recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book D-86 at Page 511 and in Deed Book D-78 at Page 68.

2008 DATE	fee		1st received	2nd received		tax 8% to SC	tax 3% to HH	
31-May Mary Alexander	\$5,500	\$6,105	\$3,080	\$3,080		\$440.00	\$165.00	
7-Jun Pam Teague	\$5,500	\$6,105	\$3,080	\$3,080		\$440.00	\$165.00	
14-Jun Becker	\$6,000	\$6,660	\$3,360	\$3,360		\$480.00	\$180.00	
21-Jun Jennifer Henderson	\$6,000	\$6,660	\$3,360	\$3,360		\$480.00	\$180.00	
						\$1,840.00	\$690.00	taxes due
28-Jun Dr. Bland	\$6,500	\$7,215	\$3,640	\$3,640		\$520.00	\$195.00	
5-Jul Nolan & Ryan Swanson	\$6,000	\$6,660	\$3,360	\$3,360		\$480.00	\$180.00	
12-Jul Matthew Partsh	\$6,000	\$6,660	\$3,360	\$3,360		\$480.00	\$180.00	
19-Jul Linda Thomas	\$6,000	\$6,660	\$3,360	\$3,360		\$480.00	\$180.00	
26-Jul Chris Cerar	\$6,000	\$6,660	\$3,360	\$3,360		\$480.00	\$180.00	
2-Aug Jacklyn Roscoe	\$6,000	\$6,660	\$3,360	\$3,360		\$480.00	\$180.00	
9-Aug Stacy Fronczak	\$6,000	\$6,660	\$3,330	\$3,360		\$480.00	\$180.00	
16-Aug Celisse Lundy	\$5,500	\$6,105	\$3,052	\$3,052		\$440.00	\$165.00	
23-Aug Terry Timmins	\$5,500	\$6,105	\$0	\$6,105		\$440.00	\$165.00	
	\$76,500	\$84,915	\$39,702	\$45,837	\$85,539	\$4,280.00	\$1,605.00	taxes due

Rental Income and accommodation tax payments.

Proof of Residency



BEAUFORT COUNTY TREASURER

PO DRAWER 487
BEAUFORT SC 29901-0487

FORWARDING SERVICE REQUESTED

SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES
DRIVER LICENSE

FORD, LESLIE L
HILTON HEAD ISLAND SC 29928

DL# 003313125
Expires: 08-09-2015

Class: D Hgt: 5-04 Wgt: 130
Sex: F DOB: 08-09-1959
Issued: 08-12-2005 07205 M 1

leslie ford

Restrictions: A

43328 1 AV 0.324

043328
FORD GREGORY W LESLIE L
JTROS

43328
199
HILTON HEAD ISLAND SC 29928-5456



Your Touchstone Energy® Partner
eck box and make address
r telephone correction on back.

Form 1040 U.S. Individual Income Tax Return 2007

Department of the Treasury — Internal Revenue Service

For the year Jan 1 - Dec 31, 2007, or other tax year beginning , 2007, ending

Label
(See Instructions.)

Use the
IRS label.
Otherwise,
please print
or type.

Presidential
Election
Campaign

Your first name MI Last name

GREGORY W. FORD

If a joint return, spouse's first name MI Last name

LESLIE L. FORD

Home address (number and street). If you have a P.O. box, see instructions.

City, town or post office. If you have a foreign address, see instructions.

HILTON HEAD, SC 29928

Check here if you, or your spouse if filing jointly, want \$3 to go to this

*****AUTO**5-DIGIT 29928
FORD GREGORY W (LESLIE)
HILTON HEAD ISLAND SC 29928-5456

785

STATE FARM INSURANCE COMPANIES

State Farm Mutual Automobile Insurance Company

11350 Johns Creek Parkway
Duluth GA 30098

AT2 54DF -1282 A

003926

FORD, LESLIE & SPENCER T

HILTON HEAD SC 29928-5456

STATE OF S.C. VOTER REGISTRATION NOTIFICATION

COUNTY: BEAUFORT PRECINCT: HILTON HEAD 6B

REG. NO: REG. DATE: 09-15-1984

FORD, LESLIE L 29928

HILTON HEAD ISL

SIGNATURE OF ELECTOR

FOLD HERE

SEX: F RACE: W DOB: 08-09-1959

SOCIAL SECURITY NUMBER:

VOTE AT:

FIRST PRESBYTERIAN CHURCH

540 WILLIAM HILTON PKWY

MEMBER, CLERK OR DEPUTY OF THIS BOARD OF REGISTRATION

132

MAILING ADDRESS

GREG FORD 14SEF IP

HILTON HEAD SC 29928-5456

RECEIVED

AUG 12 2008

BEAUFORT COUNTY
ASSESSOR'S OFFICE

To whom it may concern:

The owners of the property located at [REDACTED]
Road tax id R510-009-000-034B-0000(Leslie and
Gregory Ford owners)are claiming the house as their
permanent residence, and being taxed at the 4% rate..

They are not in residence and are renting the house
out on the weekly rental market during the summer
weeks for income purposes.

Not sure how they can be granted the 4% rate when it
is clearly a rental income producing property?

I would think the assessor would want know about
such fraud.

Concerned Tax paying neighbor

Key # 362440

CONCERNED TAX PAYER

HILTON HEAD ISLAND, SC.
29928

BLAINE COUNTY OFFICE OF
THE ASSESSOR

P.O. Box 458

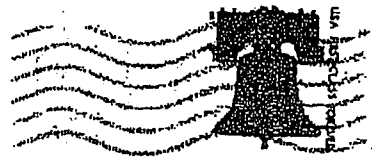
BLAINE, SC 29901-0458

TAX PAYER

[REDACTED]
Clinton Hays, SC

SAVANNAH GA 313

29908 JUL 2008 PM 2 T

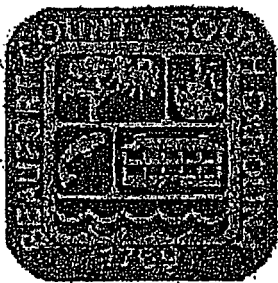


BLANTON COUNTY OFFICE OF
ASSESSOR

P.O. BOX 458

BLANTON, SC 29901-0458





COUNTY COUNCIL OF BEAUFORT COUNTY
Office of the Assessor
Multi-Government Center X Post Office Box 458
Beaufort, South Carolina 29901-0458
Phone: (843) 470-2522/2519 Fax: (843) 470-2512
Web Site: www.bcgov.net/assessor

Ed Hughes, County Assessor

August 26, 2008

Gregory and Leslie Ford

Hilton Head Island SC 29928

RE: R510 009 000 034B 0000
Key #362440

Dear Property Owner:

Recently, it has come to my attention that the above referenced tax parcel is a rental property receiving the Legal Residence Special Assessment ratio of 4%. A change in legal residence or use requires the owner to notify the assessor within six months of the change.

Please submit in writing information and or explanation regarding the change in use. Failure to respond within thirty-days (30) of this letter will result in the removal of the special assessment ratio for the current tax year.

Sincerely,

A handwritten signature in cursive script, reading "Carolyn Smalls".

Carolyn Smalls
Real Property Admin. Tech.

/cs



COUNTY COUNCIL OF BEAUFORT COUNTY
Office of the Assessor

Multi-Government Center X Post Office Box 458
Beaufort, South Carolina 29901-0458
Phone: (843) 470-2522/2519 Fax: (843) 470-2512
Web Site: www.bcgov.net/assessor

Ed Hughes, County Assessor

August 26, 2008

Gregory and Leslie Ford

Hilton Head Island SC 29928

RE: R510 009 000 034B 0000
Key #362440

RECEIVED

SEP 02 2008

BEAUFORT COUNTY
ASSESSOR'S OFFICE

Dear Property Owner:

Recently, it has come to my attention that the above referenced tax parcel is a rental property receiving the Legal Residence Special Assessment ratio of 4%. A change in legal residence or use requires the owner to notify the assessor within six months of the change.

Please submit in writing information and or explanation regarding the change in use. Failure to respond within thirty-days (30) of this letter will result in the removal of the special assessment ratio for the current tax year.

Sincerely,

Carolyn Smalls

Carolyn Smalls
Real Property Admin. Tech.

/cs

Dear Ms. Smalls -
This is our personal home. We rent it
out for a few weeks in the summer, but
live in it the rest of the year. We are
back in full time residence now & will not
rent it again until June '09. Call
if you have any questions.
Leslie Ford
816-0710



COUNTY COUNCIL OF BEAUFORT COUNTY

Office of the Assessor

Multi Government Center • Post Office Box 458

Beaufort, South Carolina 29901-0458

Phone: (843) 470-2522 Fax: (843) 470-2512

Web Site: www.bccgov.net

RECEIVED

SEP 22 2008

BEAUFORT COUNTY
ASSESSOR'S OFFICE

September 17, 2008

Gregory and Leslie Ford

Hilton Head Island SC 29928

Re: Application for Special Assessment Ratio

Tax Year 2008

R510 009 000 034B 0000

Address: [REDACTED]

Dear Mr. and Mrs. Gregory Ford

Reference to our letter of August 26, 2008 please provide the assessor's office with specific information regarding the rental including: rental dates, dates the property is available for rent, minimum rental period, maximum rental period, terms of the short-term leases and specific information on how the residence is marketed as a rental.

Renting of residential property may affect eligibility for the special assessment ratio.

Please contact me if you have any questions.

Sincerely,

Carolyn Smalls

Carolyn Smalls

Sr. Real Property Records Technician

Our home is only available
for summer weekly rentals.
It is our primary home
the rest of the year. It is
marketed thru!

www.VRBO.com/146037

Thank you,
Leslie Ford

Hilton Head Island Rental



VRBO® is Vacation Rentals By Owner

[SHARE](#) [120](#)

[Home](#) > [USA](#) > [South Carolina](#) > [Hilton Head Island](#) > [Island Areas](#) > [Folly Field](#) > [Private Homes](#)

[Edit](#)

Vacation Rentals by Owner Listing #146037

New Home - 2nd Row Ocean on Beachwalk

Location: Private Homes, Folly Field, Island Areas, Hilton Head Island, South Carolina, USA (2 minute walk to the BEACH!)

Accommodations: House - 7 Bedrooms - 6.5 Baths - (Sleeps 14)



In a word ... magnificent! - Hilton Head Island House Rental

features 4,400 sq. feet of luxury living!

The vacation you always dreamed of awaits you at this beautiful, new and luxurious, 7 bedroom, 6.5-bath, 2nd row ocean home on [REDACTED] Road in desirable Folly Field. The home features multiple living areas, 3 Master Suites and multiple balconies. The beach path to one of the Island's most private beaches is directly across the street and the beach is a short 2 minute walk from the front door.

The raised style of the home allows for garage parking for up to 3 cars at ground level, as well as a glimpse of the ocean from the house. This custom home

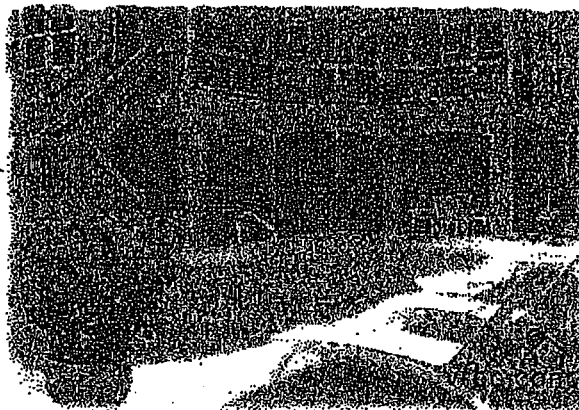
The main level starts with a large front porch which is the perfect place to relax for your morning coffee or after a day at the beach. Other features include a large open great room with a big screen TV and entertainment area plus a formal dining room anchored by a gourmet kitchen complete with granite countertops, stainless appliances and a wine refrigerator. Dining Room table seats 8, breakfast table seats 4 plus 3 barstools. There is also porch seating for 6. There are three bedrooms on the main level including a fabulous master suite that has a sumptuous master bath including a 6' whirlpool tub, two sinks in a granite countertop, a huge custom tile and stone shower and separate water closet. The two additional bedrooms are joined by a large bath with two sinks and a separate tub and water closet area.

The upper level features a family game room with a foosball table, TV/DVD, games, an oversized leather sectional, wet bar and a refrigerator plus 4 additional bedrooms [2 are Masters!]. Each

bedroom has a private bath. All baths feature custom tile/stone tub and/or shower surrounds. There are three separate sun porches on the upper level offering lovely views and breezes.

The pool level features a large swimming pool (15' x 30') complete with 4 in-pool seats and plenty of additional seating. There is a Hot Tub which seats 5 comfortably and a fabulous party bar with a refrigerator, microwave, stereo and TV for viewing from both the bar and the pool! There's also a ping pong table in the garage for your enjoyment. One BONUS you're sure to appreciate is that the pool offers full sun in the morning and most of the day, but for the late afternoon heat, there's lots of shade!

Hilton Head offers an array of activities. Water sports, boating, golf, tennis, fishing, biking, playgrounds, shopping, day trips to Savannah, Beaufort & Charleston are all offered here. Folly Field (located north of Palmetto Dunes and south of Port Royal) is conveniently located for all activities. Two parks are close by with outdoor grills, picnic tables and playgrounds. Bike ride to Shelter Cove or ride on the hard sand of the beach. The beach area is very quiet as if it were your own private beach making a peaceful day at the beach for you and the family. Body surf the waves or take a long peaceful walk to the south into the open folly area where you can see the birds of the marsh or head north along the beach by the private homes in Port Royal Plantation. Summer months offer fireworks at Shelter Cove on Tuesday nights. Visit the famous lighthouse in Sea Pines Resort at Harbour Town or the Salty Dog at South Beach.



Large swimming pool, Hot Tub and party kitchen with TV!
The fun starts here, - Hilton Head Island House Rental

Vacation Rental Features				
Amenities:	Air Conditioning: 2 zone	Washer: Private	Dryer: Private	Linens Provided: Beach towels are not provided.
Beds	Garage: 6-car garage King Bed (2): 2 Kings	Parking for RV/Boat/Trailer Queen Bed (3): 3 Queens	Twin/Single Bed (4): 4 Twins	
Entertainment	Jetted Tub in Bath (2): Jetted tub in two of the	Private Hot Tub: At the pool deck	Private Pool: Large pool with 4 in-pool seats.	System (2) Football Ping Pong/Table Tennis

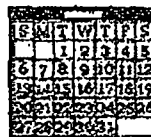
	Masters			
Kitchen	Full Kitchen	Cooking Utensils Provided	Refrigerator (3): One on each level.	Dishwasher Microwave (2): In kitchen and bar.
	Ice Maker	Catering Available		
Outdoor Features	Gas/Electric BBQ Grill Deck/Patio (2): Wonderful pool bar/summer kitchen adjacent to the swimming pool and Hot Tub, Pool bar includes 4 bar stools, refrigerator, microwave and large TV, The fun starts here!			
View/Location	Balcony (3)	Lanai		
Communications	Beach View	Ocean View		
	Telephone (4)	Broadband Internet	WiFi (Wireless Internet)	
Suitability	No Pets Allowed	Minimum Age Limit for Renters: 25 unless accompanied by parent	Smoking Not Allowed	
Activities (on site and nearby)	Golf	Tennis	Shopping	Sightseeing
	Restaurants	Kayaking	Sailing	Boating
	Waterskiing	Parasailing	Jet Skiing	Shelling
	Swimming	Snorkeling/Diving	Surfing	Windsurfing
	Biking	Wildlife Viewing	Hiking	Fishing
			Health/Beauty	Basketball
			Spa	Court
	Antiquing	Cinemas/Movie Theaters	Live Theatre	Museums
			Miniature golf	Horseback Riding

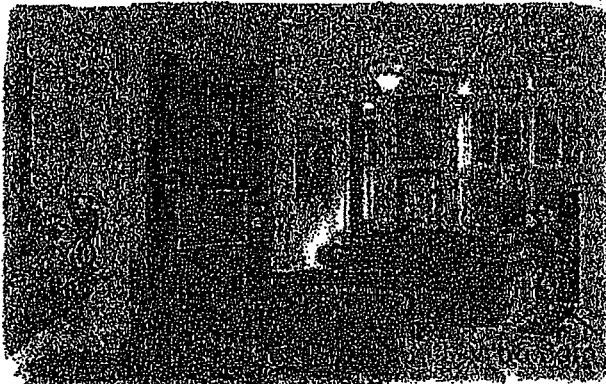
Rates (in US Dollars): Personal Currency Assistant™

Only available for summer weekly rentals .. \$5500 - \$6500/week
 May 30-June 13 and August 15-29; \$5700/week
 June 13- July 4 and July 11-August 15; \$6200/week
 July 4-July 11; \$6500/week

Note: Until confirmed, rates are subject to change without notice.

Dates available: Summer Only
 Before contacting us, please check our calendar





Designer furnished throughout, elegant yet comfy. - Hilton Head
Island House Rental

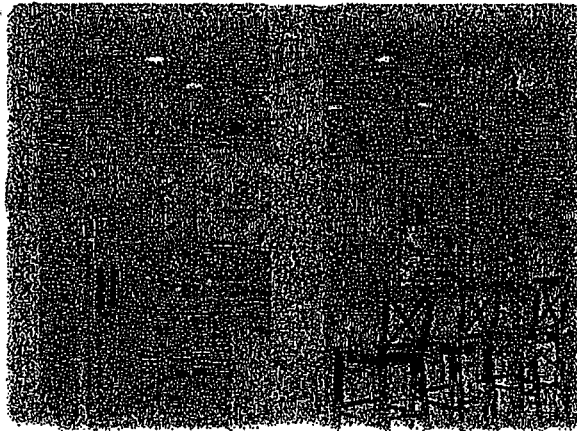
Phone: (843) 816-0710 (South Carolina, US
6821

Please say: "I saw your listing #146037 on

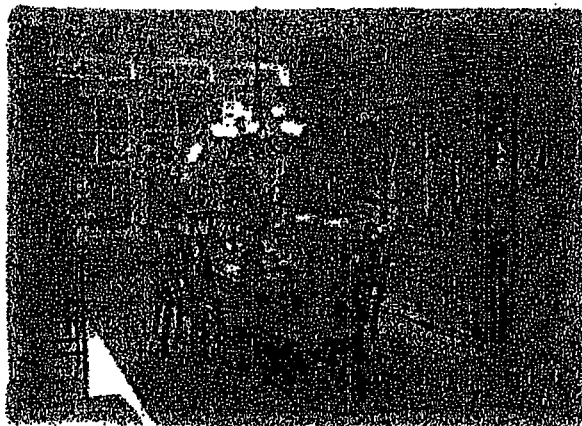
Links to more information:

[CLICK HERE - Virtual Tour of 21 Sand Dol](#)

Note: Each property is individually owned



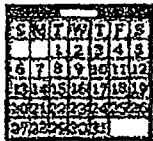
Gourmet kitchen with granite countertops, Bosch dishwasher and wine refrigerator



Bring your favorite seafood recipes and enjoy!

Dates available: Summer Only

Before contacting us, please check [our calendar](#) for your desired dates.



Phone: (843) 816-0710 (South Carolina, USA) or Toll Free (800) 343-6821

Please say: "I saw your listing #146037 on VRBO"

[Home](#) > [USA](#) > [South Carolina](#) > [Hilton Head Island](#) > [Island Areas](#) > [Folly Field](#) > [Private Homes](#)

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Vacation Rentals by Owner-Listing #146037

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This listing was first published here on September 12, 2007.

Hilton Head Island Rental

Date last modified - September 12, 2008

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COUNTY COUNCIL OF BEAUFORT COUNTY

Office of the Assessor

Multi-Government Center • Post Office Box 458

Beaufort, South Carolina 29901-0458

Phone: (843) 470-2522

Fax: (843) 470-2512

Web Site: www.bcgov.net

October 3, 2008

Gregory and Leslie Ford

Hilton Head Island, SC 29928

Re: Assessor's Notice of Final Determination
2008 Special Assessment (4%) Ratio Application

Parcel: R510 009 000 034B 0000

Dear Mr. and Mrs. Gregory Ford:

The application submitted for the Special Assessment ratio is denied for tax year 2008. The basis for the denial is the captioned property is rented for more than 14 calendar days during the tax year for which you applied for the special assessment ratio. The limitation on renting legal residential property is 14 days or less and is found in section 12-43-220 (c) (7) of the Code of Laws of South Carolina.

(7) 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 if the taxpayer's residence meets the requirements of Internal Revenue Code Section 280A(g) as defined in Section 12-6-40(A) and the taxpayer otherwise is eligible to receive the four percent assessment ratio.

If this action is unsatisfactory, you may appeal in writing to the Beaufort County Equalization Board. This process will be initiated upon receipt of your written notice of intent to appeal in the Assessor's office. Notice of intent to appeal must be received in the Office of the Assessor within thirty (30) days of the date of this final determination letter. Failure to timely appeal in writing to the Beaufort County Equalization Board will constitute a waiver of your rights to continue the appeal for the 2008 tax year.

Please contact me if you have any questions.

Sincerely,

Edward Hughes
Beaufort County Assessor

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No. 2009-ALJ-17-0179-CC

Gregory Ford and Leslie Ford.....Appellants,

v.

Beaufort County Assessor Respondent.

FINAL BRIEF OF APPELLANTS

John J. Pringle, Jr.
Christian L. Rogers
Austin M. Smith
ELLIS, LAWHORNE & SIMS, P.A.
1501 Main Street, 5th Floor (29201)
Post Office Box 2285
Columbia, South Carolina 29202
Telephone: (803) 343-1270
Facsimile: (803) 799-8479
Attorneys for Appellants

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STATEMENT OF ISSUES ON APPEAL

- I. Did the ALC err in its construction of S.C. CODE ANN. § 12-43-220(c)(1) in upholding Respondent's decision to deny Appellants' application for the 4% Assessment Property Tax Ratio for Appellants' home?

STATEMENT OF THE CASE

Gregory and Leslie Ford ("Appellants") initiated this action by appealing the Beaufort County Assessor's ("Respondent's") decision to deny Appellants' application for the 4% Assessment Property Tax Ratio for Appellants' home at [REDACTED] Road, Hilton Head Island, South Carolina for the tax year 2008. The Beaufort County Tax Equalization Board upheld Respondent's decision, and Appellants filed a timely appeal to the South Carolina Administrative Law Court ("ALC") by seeking a contested case hearing pursuant to S.C. CODE ANN. § 12-60-2540. A hearing was held before Judge Ralph King Anderson, III on November 17, 2009 at the offices of the ALC. On April 12, 2010 Judge Anderson issued an order upholding Respondent's decision (the "Order") (R. pp. 1-8). On April 22, 2010, Appellants filed a Motion for Reconsideration (R. pp. 47-58), and the ALC denied same via order dated May 24, 2010 (R. pp. 9-10). This appeal followed.

STANDARD OF REVIEW

Under the South Carolina Administrative Procedures Act, the Court may reverse or modify the decisions of the ALC if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. S.C. CODE ANN. § 1-23-610(C).

STATEMENT OF FACTS

Appellants, longtime residents of Beaufort County, live at [REDACTED] Road, Hilton Head Island. [REDACTED] Road is the appellants' legal residence and domicile. Like many of their neighbors in Beaufort County, Appellants make their home available for rent during a portion of the summer months. Appellants' limited rental of their home does not disqualify them from the four percent assessment ratio provided for in S.C. CODE ANN. § 12-43-220 (1976) (the "Statute"). The Respondent's (and the ALC's) misreading of an isolated subpart of the Statute to prohibit residences from being rented is inconsistent with the plain language of the Statute, as well as its purpose and its context. The 14 day rental safe harbor referenced in § 220 (c)(7) of the Statute protects taxpayers in certain situations, but does not disqualify those who do not enjoy its protection. To the extent the Statute contains an ambiguity, there is no authority for the proposition that such an ambiguity must or should be resolved against the Appellants. As Appellants' legal residence and domicile, which they own and occupy, [REDACTED] Road should be assessed at the four percent ratio.

ARGUMENTS

I. THE ALC ERRED IN ITS CONSTRUCTION OF S.C. CODE ANN. § 12-43-220(C)(1), BECAUSE THE PLAIN AND UNAMBIGUOUS LANGUAGE OF THE STATUTE DEMONSTRATES THAT "LEGAL RESIDENCE" AND "PROPERTY" ARE DIFFERENT TERMS WITH DIFFERENT MEANINGS AND DIFFERENT APPLICATIONS.

The ALC erroneously concluded that one isolated sentence found in the middle of the Statute, S.C. CODE ANN. § 12-43-220(c)(1) ("Subsection (c)(1)"), requires that any rental of an owner occupied legal residence disqualifies that property from receiving the

four percent assessment. Subsection (c)(1) provides, (with the language relied upon by the ALC in emphasis):

(c)(1) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property. If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a residence by the income beneficiary of the trust. When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. *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.* For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

The ALC conflated “this property” and “legal residence” and concluded that the Appellants’ legal residence was not entitled to the 4% assessment because it was rented during 2008.

I therefore find that “this property” refers to the tract of land upon which the residence is located and that the Appellants’ residence is included within the term “any residence.”

Order at Page 5 (R. p. 5).

As described more fully herein, the ALC ensnared the Appellants' "legal residence" into a classification clearly specified for something different ("this property"). Such a reading is contrary to the plain language of Subsection (c)(1) and indeed the plain language of the Statute as a whole. The cardinal rule of statutory construction is to give effect to the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where possible, legislative intent should be determined by the language of the statute. State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 44, 161 (2007). If the statutory language is plain and unambiguous, then its terms should be applied according to their clear and definite meaning; and "there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995). The literal language of a statute should be disregarded only when the result is "so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention." Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). It is clear throughout Subsection (c)(1) (and in the provision relied upon by the Respondent and ALC) that "property" and "legal residence" are two separate, distinct, and different concepts.

A. "Legal Residence" and "Property Contiguous To" the Legal Residence Are Different Terms Pursuant to the Statute.

The term "contiguous" as used in the Statute demonstrates that "legal residence" and property "contiguous" to the legal residence are independent, different and distinct terms throughout the Statute. As a result, "this property" does not include or encompass the "legal residence." Subsection (c)(1) provides that a 4% assessment ratio applies to a taxpayer's

“legal residence and not more than five acres contiguous thereto.” The ALC’s analysis of “legal residence” and “property” and its conclusions regarding those terms does not take that language into consideration.

The General Assembly established this clear distinction between “property” and “legal residence” in the first sentence of Subsection (c)(1), and maintains this difference consistently throughout this provision:

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment ratio equal to four percent of the fair market value of the property.

Subsection (c)(1) treats “legal residence,” five acres of property contiguous to that legal residence, and any *additional* dwellings thereon occupied by immediate family members of the owner, as three separate and distinct things. Our South Carolina Supreme Court has provided a definition of “contiguous” in S.C. CODE ANN. § 12-34-220 demonstrating that “legal residence” and the “property” “contiguous thereto” are separate and distinct. In SCDOR v. Sonoco Products Co., 378, S.C. 385, 662 S.E.2d 599 (2008), the Court, in the absence of a specific statutory definition, relied on secondary sources to define contiguous as follows:

In terms of secondary sources, “contiguous” commonly means, “being in actual contact: touching along a boundary or at a point; adjacent; next or near in time or sequence.” *Webster’s New Collegiate Dictionary* 243 (1981). In the legal field, it has been defined as: “[i]n close proximity; neighboring; adjoining; near in succession; in actual close contact; touching at a point or along a boundary; bounded by or traversed by.” *Black’s Law Dictionary* 290 (5th ed.1979).

378 S.C. 392. Thus a “legal residence” and any property “contiguous” to it may touch and be close to one another, *but are not the same thing*.

B. Pursuant to the Statute, the House Is the “Legal Residence” that is Taxed, and Structures are Taxed Independently of the Property on Which They Sit

In order to reach the flawed conclusion above, the ALC incorrectly reasoned that “property” and not the “legal residence” is taxed pursuant to the Statute: “[i]n fact, it is not the house which is the legal residence that is taxed, but the property upon which the legal residence is located.” (Order at p. 4) (R. p. 4). In addition, the ALC ruled (Order, p. 5) (R. p. 5):

Furthermore, as explained above, though there must be a distinct residence to generate the right to a four percent assessment, it is the property upon which that residence is located that receives the preferred assessment.

Both of these conclusions are incorrect. In the context of the “legal residence,” the house is in fact the property that is taxed. “For property tax purposes the term ‘Legal Residence’ shall mean the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled.” S.C. CODE ANN. Regs § 117-1800. As this regulation makes clear, the “legal residence” being taxed is the “home or dwelling place,” and not the property on which that house sits.

The Statute also clearly demonstrates this fact. It is true that the property (land) on which the legal residence (the structure) sits is also taxed, but the Statute is clear that these are separate assessments, and the ratio applied to the property may or may not be taxed at the same assessment ratio as the legal residence.

The third sentence¹ of Subsection (c)(1) maintains this distinction between “legal residence” and “property” in the context of “leased or rented property”:

When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is the same ratio as provided by this item.

Therefore, a taxpayer can qualify for the four percent rate if he owns and occupies a legal residence on property he leases. This provision maintains the distinction between the “legal residence” and (leased or rented) “property,” with the effect that the taxpayer is entitled to the four percent assessment for the “legal residence” but not the “leased property.”

While the “legal residence” receives the 4% assessment, the “leased or rented property” is not entitled to the 4% assessment, unless the lessee satisfies the next sentence of the Statute (as described below). The “leased or rented property” does not receive the “preferred assessment” when the lessee does not pay the taxes on the leased property, demonstrating that those two terms connote different things in the Statute. That the “legal residence” and the property on which it sits can be taxed at different assessment ratios proves Appellants’ point that the two terms are distinct and different within the context of the Statute. Moreover, even the provisions ultimately relied upon by the ALC (“rented mobile homes or residences”) reference the assessment ratio applicable to the *structure*, not the property on which it sits.

Similarly, the ALC’s analysis of the third sentence of Subsection (c)(1), is at odds with the plain language of that provision. The Order reads:

¹ The second sentence of Subsection (c)(1) is not applicable to this case.

The added distinction is that though leased property may not normally receive such an assessment, it does if the owner of a residence on the property occupies that residence as their legal residence. It is thus bringing the property under the umbrella of the tax treatment of the property upon which the residence lies. Such a result does not support the supposition that legal residences are distinctly treated under this law but rather the property is considered as a whole.

(Order at p. 4) (R. p. 5).

The legal residence is treated differently and distinctly from the property on which it sits for assessment purposes. The taxpayer obtains the “assessment *for the residence*,” not for the “rented or leased property” upon which the legal residence sits. Merely owning and occupying the legal residence on the leased property does not entitle the owner to the 4% ratio for the leased land. That scenario is addressed in the third sentence of Subsection (c)(1) and requires something more than merely owning and occupying the legal residence. Therefore, the legal residence does not come under the “umbrella” of the tax treatment of the leased property, but rather is treated independently, and the “property” (in the ALC’s analysis consisting of the legal residence and the leased property on which it sits) is not considered as a whole.

C. The Statute Makes Clear that The Payment of Taxes on Leased Property (not the “Legal Residence”) is the Avenue Through Which Leased Property Obtains the 4% Assessment Ratio.

The fourth sentence of Subsection (c)(1) demonstrates again that the “legal residence” is a distinct term from “leased property” in the Statute. Subsection (c)(1) provides that a taxpayer can not only qualify his legal residence located on leased land, but can receive the four percent assessment for certain property that touches his legal residence:

If the lessee of property upon which he has located his legal

residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item.

As long as the taxpayer is responsible for the taxes on the leased land, the taxpayer can receive the four percent rate for up to five acres of leased property contiguous to his legal residence. Because the provision allowing the four percent assessment *for* leased property is a completely different situation from the previous provision allowing the four percent assessment for a legal residence located *on* leased property (but not for the leased property itself), it is additionally clear that the General Assembly intended to treat “legal residence” and “property” as two separate things. More specifically, if there is one mechanism whereby a “legal residence” is entitled to the assessment, and another whereby “leased property” can so qualify, then the two terms cannot mean or connote the same thing.

This provision unambiguously provides that even the taxpayer entitled to the 4% assessment for the legal residence must “be liable for taxes on the leased property” in order to receive the 4% assessment *for that leased property*. Based on this clear language, the ALC is incorrect that “the legal residence is the avenue through which that property obtains the preferred assessment ratio.” (Order at p. 4) (R. p. 4). While the legal residence is a predicate requirement, the “avenue” for obtaining the 4% assessment ratio is paying the taxes on the leased land. Without the payment of taxes on the leased land, even a taxpayer with his legal residence on that land is not entitled to the 4% assessment with respect to that leased land. Conversely, entitlement to the 4% assessment for the legal residence is not dependent upon an entitlement to the 4% assessment for the leased land upon which the

legal residence sits.

D. The “Legal Residence” is Not Encompassed by the Fourth Sentence of Subsection (c)(1), because it is not “this Property.”

This clear and consistent distinction between “legal residence” and “property” continues in the provision on which the ALC relies, the fourth sentence of Subsection (c)(1), which 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.

Lawmakers used “this” as an adjective specifically modifying “property” to reference the “property” described in the preceding sentences. Accordingly, it follows from a straightforward reading of this provision and Subsection (c)(1)’s above-referenced distinctions between “legal residence” and “property” that “this property” refers to the up to 5 acres of property contiguous to a taxpayer’s legal residence, *but not to the taxpayer’s “legal residence.”* Thus, a reading of the provision based its plain language and consistent with the other provisions therein is:

if this property, *not to exceed five acres and contiguous to his legal residence*, 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.

The ALC construed the terms in Subsection (c)(1) in a way that is not only inconsistent with the plain language thereof, but also inconsistent with the clear meaning and context of those terms as used elsewhere in the very same part of the Statute. Subsection (c)(1) *never* references property outside the specific context of acreage contiguous to a “legal residence,”

and accordingly *never* uses “legal residence” interchangeably with “property.” Moreover, Subsection (c)(1) throughout differentiates between “legal residence,” “property . . . not to exceed five acres contiguous to his legal residence,” “rented mobile homes,” “residences which are rented,” and “business for profit.” “Where the same word is used more than once in a statute it is presumed to have the same meaning throughout unless a different meaning is necessary to avoid an absurd result.” Busby v. State Farm Mut. Auto. Ins. Co., 280 S.C. 330, 333, 312 S.E.2d 716, 718 (S.C.App. 1984). By distinctly and separately setting forth each item, the legislature distinguished between “legal residence” on one hand, and “this property” and the other homes, residences and businesses located on the 5 acres contiguous to the “legal residence” on the other.

Consistency with the overarching purpose of the Statute supports that plain reading. Hinton v. S.C. Dept. of Probation, Parole and Pardon Services, 357 S.C. 327, 332, 592 S.E.2d 335, 337 (Ct. App. 2004) (“A law must be interpreted reasonably and practically, consistent with the purpose and policy of the General Assembly.”). The obvious purpose of Subsection (c)(1) is to ensure that the four percent assessment ratio uniformly applies to the legal residence and up to five contiguous acres, but not if those contiguous acres contain *structures* plainly ineligible but for their proximity to the legal residence. Similarly, the specific reference to mobile homes coupled with the previous reference to land leases demonstrates that the contingency surrounding “this property” is designed to deal with a particular set of circumstances presented by mobile home parks or other land lease communities. Neither of these scenarios apply to Appellants. Whether taking the Statute as a whole or focusing on discrete words and clauses, the construction adopted by the ALC is

not consistent with the plain language, context, or purpose thereof.

The ALC's analysis of this provision included the following (Order at p. 5) (R. p. 5):

Petitioner [Appellant] maintains that ultimately the decisive phrase in terms of resolving this case is the meaning of "this property." That argument ignores the other important term "any residences" for which the statute does not provide a limitation to only other residences upon the property.

Appellants "ignored" the term "any residences," because that term is only triggered if "this property" is implicated. In other words, if the Statute does not consider the "legal residence" to be located on "this property," (and it does not), then the legal residence cannot be "a rented mobile home or residence" under the plain language of the Statute. Moreover, the term "legal residence" has been specifically defined by the General Assembly S.C. CODE ANN. Regs § 117-1800. As a result, the ALC's construction of the Statute ignores the plain language found elsewhere in the Statute and this Regulation, the Statute's purpose as expressed in that plain language, and the context in which various terms in the Statute are to be construed.

E. Treating "Property" and "Legal Residence" as Different Terms does not Render Meaningless Any Portion of Subsection (c)(1).

The ALC buttresses its determination that the "legal residence" is part of "this property" with the following (Order at p. 5) (R. p. 5):

Moreover, if property is a completely distinct concept, the phrase "this property" would presumably refer to the previous sentence. That reference however would render the sentence meaningless.

It is not clear that the reference to “this property” refers solely to the preceding sentence (the third sentence of Subsection (c)(1)), as opposed to all the preceding sentences of Subsection (c)(1). Assuming that it does, however, it does not make that sentence or any sentence in the Statute meaningless. The “preceding sentence” extends the 4% ratio to leased property (upon which a legal residence is located) only if the taxpayer is responsible for the taxes on the leased land. The sentence referencing “this property” excludes from the 4% assessment ratio those *structures* (showing that structures are taxed) on the five acres contiguous to the legal residence (“this property”) that are rented—but not the legal residence itself, or the leased land. Clearly the exclusion has meaning when applied according to its plain language.

II. THE STATUTE’S USE OF THE TERMS “LEGAL RESIDENCE” AND “DOMICILE” THROUGHOUT FURTHER DEMONSTRATE THE APPELLANTS’ ENTITLEMENT TO THE ASSESSMENT, AND THE ALC’S FAILURE TO CONSIDER THIS LANGUAGE IGNORES NOT ONLY THE PLAIN LANGUAGE OF THE STATUTE, BUT ALSO ITS PURPOSE, ITS CONTEXT, AND HOW APPLICABLE TERMS ARE USED THROUGHOUT IT.

The ALC’s orders fail to recognize that [REDACTED] is the Appellants’ domicile, and the importance of that fact in the context of the Statute and entitlement of the 4% assessment. Subsection (c)(1) provides in part:

The *legal residence* ... when owned ... and occupied by the owner of the interest ... [is] taxed on an assessment equal to four percent of the fair market value of the property. . . [f]or purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the *domicile* of the owner-applicant. (Emphasis added).

[REDACTED] Road is clearly the legal residence and domicile of Appellants per the Statute. The law of domicile is well established: one may only have a single domicile at any

given time, but one cannot be without a domicile. 28 CJS, DOMICILE, § 3 (2009). “The important facts in determining the domicile of a person who has two residences are the physical character of each residence, time spent and things done in each place, and whether or not there is an intention to return to the original domicile.” 28 CJS, DOMICILE, § 13 (2009). A change in domicile requires “clear proof of an intent to abandon the old domicile and acquire a new one.” Gasque v. Gasque, 246 S.C. 423, 427, 143 S.E.2d 811, 812 (1965). No such intent exists here, and there has been no allegation, much less proof, that Appellants have any domicile other than [REDACTED].

With respect to domicile, a recent S.C. Attorney General opinion reasoned,

“just because an individual is absent from his or her home and temporarily resides in another location he or she does not automatically establish a new residence. To the contrary, an individual may be absent, but so long as that individual has the intent to return and to remain there permanently, he or she does not effectuate a change in residency.”

Op. S.C. Atty. Gen., August 13, 2008. 2009 WL 2844864 (S.C.A.G.). A subsequent attorney general opinion concluded, “whether or not the taxpayer ... may receive the special assessment ratio depends on whether the taxpayer has the intent to treat the property as his legal residence or domicile.” Op. S.C. Atty. Gen, August 27, 2009. 2009 WL 2844864 (S.C.A.G.).

The statute is replete with provisions that emphasize the status of the home, without mechanically focusing on one day’s rental or arbitrary time periods. In fact, Subsection (c)(2)(i) of the Statute plainly states that the owner occupant need only be domiciled “for some period” or qualified “for any part of the year”:

(2)(i) 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.

S.C. CODE ANN. § 12-43-220(c)(2)(i) (emphasis added).

Without question Appellants were domiciled at [REDACTED] “for some period” in 2008, and in fact for well more than a majority of the year. In addition, a homeowner applying for the four percent ratio is required to certify to the following: “[u]nder penalty of perjury I certify that: (A) the residence which is the subject of this application is my legal residence and where I am domiciled *at the time of this application*.” S.C. CODE ANN. § 12-43-220(c)(2)(ii) (emphasis added).

Thus, in ruling that an isolated portion of the Statute would prevent the Appellants from obtaining the 4% assessment based upon the rental of their home for even one day, the ALC ignores the plain language and context of numerous instances *within that very statutory provision* that mandate the contrary. The ALC failed to explain how the provision it relied upon to deny the 4% assessment to Appellants can be read together with the provisions cited by Appellants. See Eagle Container Co., LLC v. County of Newberry, 379 S.C. 564, 570, 666 S.E.2d 892, 896 (2008) (“The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.”).

Moreover, the ALC's conclusion ignores the context of the terms used in Subsection (c)(1), and indeed destroys the meaning of "legal residence" so clearly expressed therein. See Southern Mutual Church Ins. Co. v. S.C. Windstorm and Hail Underwriting Ass'n, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991) ("Southern Mutual") ("Clearly, words in a statute must be construed in context. According to the doctrine of *noscitur a sociis*, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute."); and Creech v. S.C. Public Service Commission, 200 S.C. 127, 138, 20 S.E.2d 645, 649 (1942) ("Creech") ("The Court may not, in order to give effect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent."). This misapplication of the Statute deprives the domicile and legal residence provisions of meaning, and contravenes the plain meaning of the Statute. The overarching purpose of the Statute is to ensure the four percent assessment ratio accrues to the benefit of a taxpayer's legal residence or domicile. Reading Subsection (c)(1) as a general bar to the four percent ratio for any rental grossly ignores the domicile inquiry and places all the emphasis on a rental exclusion that does not apply to the "legal residence" at all – in effect, allowing an imaginary tail to wag the dog.

III. THE ALC ERRED IN ITS ANALYSIS OF § 12-43-220(c)(7).

As set out above, the Statute contains no general rule that rental of a home disqualifies it from the four percent assessment. Despite a plain reading to the contrary, the ALC reads an absolute bar for rented property into the Statute and tortures the language to characterize S.C. Code Ann. § 12-43-220(c)(7) ("Subsection (c)(7)") as an "exception" to

that "general rule." The ALC concludes that because Appellants do not meet the narrow circumscription of Subsection (c)(7) dealing with *de minimis* rental they are not eligible for the four percent assessment ratio. Subsection (c)(7), however, also makes its effect plain:

"the owner-occupant of a legal residence is not disqualified from receiving the four percent assessment ratio allowed by this item if the taxpayer's residence meets the requirements of Internal Revenue Code § 280A(g) as defined in Section 12-6-40(A) and the taxpayer otherwise is eligible to receive the four percent assessment ratio."

The statute is silent as to homeowners who rent for more than 15 days.

Considering the Statute and Internal Revenue Code together, Subsection (c)(7) states that a taxpayer is *not disqualified* from receiving the four percent assessment ratio if her residence is rented for less than fifteen days and she otherwise qualifies. Homeowners who rent for more than fifteen days are simply not addressed.

As noted above, the ALC incorrectly concludes that the general rule is any rental of property renders it ineligible for the four percent assessment ratio. The ALC also erroneously characterizes Subsection (c)(7) as a mere exception to the general rule. Obviously there is no general rule upon which the ALC can rely. However, assuming purely *arguendo* that there were, the ALC in effect decides that by declaring some homeowners are not disqualified from receiving the four percent ratio, all others are necessarily disqualified. The ALC's construction flies in the face of the Statute and its provisions cited above. By the ALC's reading, the exception overtakes the rule. If the legislature had intended to achieve this result – effectively exclude by inclusion – they could have simply replaced the general rule with the fifteen day threshold of Subsection (c)(7).

In Metts v. Charleston County Assessor, the ALC² concluded “[t]he Assessor’s argument that subsection (7) operates as an exclusion is logically flawed because it infers the validity of the inverse of the actual statutory language.” The Court reasoned:

[i]t is a fundamental principle of logic that the inverse of a statement does not necessarily have the same truth value of the original statement but must be independently proven. In other words, the inverse does not necessarily follow from the original statement. Accordingly, the “*expressio unius est exclusio alterius*” principle of statutory construction upon which the Assessor relies has no application here.

Metts v. Charleston County Assessor, 06-ALJ-0865-CC (internal citations omitted). The Court of Appeals affirmed *Metts* in an unpublished opinion based in part on the plain language of the Statute. Charleston County Assessor v. Metts, Unpublished Opinion No. 2008-UP-640 (S.C. Ct. App. filed November 17, 2008) (No precedential value).

The ALC continued in Metts: “[f]undamental logic requires that if the General Assembly wants to preclude taxpayers who rent their dwelling units for more than fifteen days from receiving the four percent assessment ratio, it must independently say so.” *Id.* The General Assembly did not say so, and so this provision cannot be used to deny Appellants the four percent assessment. The ALC’s efforts to distinguish Metts rely on the faulty premise that the Statute announces a general rule prohibiting the rental of the “legal residence.”

Contrary to the ALC’s characterization (Order at p. 5) (R. p. 5), Appellants do not “contend that even if Section 12-43-220(c)(1) precludes them from receiving a four percent assessment upon their residence because it is rented for profit during the year, that S.C.

² Judge Gossett.

CODE ANN. § 12-43-220(c)(7) allows them to receive the assessment as long as they provide proof of their domicile and residency in the home.” First, Appellants demonstrated that no absolute exclusion for rental exists under Subsection (c)(1), and therefore, Subsection (c)(7) is not an exception at all. Subsection (c)(7) cannot provide an exception to the “general rule” contained in Subsection (c)(1) when the plain language of Subsection (c)(1) announces no such “general rule.” Second, Subsection (c)(7) is a safe-harbor, a view shared by the Court of Appeals in Metts. Third, Appellants never sought protection under Subsection (c)(7), but merely responded to the arguments of the Respondent that Subsection (c)(7) served as a bar to Appellants’ entitlement to the 4% assessment.

The ALC also concluded that “if a ‘primary residence’ is not restricted from being rented for profit, then Subsection (c)(7) would be ‘superfluous’.” (Order at p. 5) (R. p. 5) Reading Subsection (c)(7) as a safe harbor, as urged by the Appellants, does not make that provision “superfluous,” but instead considers together the plain language of the Statute, its purpose, the regulation promulgated pursuant to the Statute, and the context in which terms in the Statute are employed. Crescent Mfg Co. v. Tax Comm’n, 129 S.C. 480, 124 S.E. 761 (1924) (“[A] statute must receive such construction as will make all of its parts harmonize with each other and render them consistent with its general scope and object.”). A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct. App. 2003). See Beaufort County v. Jasper County, 68 S.E.2d 421 (S.C. 1951) (“As between two possible constructions of a statute, that one should be adopted which effectuates rather than defeats the legislative purpose.”) The

ALC's determination that Subsection (c)(7) is an exception to a general rule prohibiting rentals of a legal residence conflicts directly with the plain language of numerous portions of the Statute, including but not limited to S.C. CODE ANN. § 12-43-220(c)(1), S.C. CODE ANN. § 12-43-220(c)(2)(i), and S.C. CODE ANN. § 12-43-220(c)(2)(ii). Appellants' arguments resolve those conflicts, the Order does not.

IV. THE ALC ERRED IN TREATING THE 4% RATIO AS AN EXEMPTION OR DEDUCTION, AND THEREBY CONSTRUING THE STATUTE AGAINST APPELLANTS.

As described above, the Statute contains no ambiguity requiring construction of its terms. However, in the event it does, Appellants must receive the benefit of the doubt. The prevailing law of statutory construction favors the taxpayer: "[i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt." S.C. Nat'l Bank v. S.C. Tax Comm'n, 297 S.C. 279, 376 S.E.2d 512 (1989) (citing Cooper River Bridge v. S.C. Tax Comm'n, 182 S.C. 72, 188 S.E. 508 (1936)); see Columbia Ry., Gas & Elec. Co. v. Carter, 127 S.C. 473, 121 S.E. 377 (1924) (same); and State v. Charron, 351 S.C. 319, 569 S.E.2d 388 (Ct.App.2002) (same) (quoting Columbia Ry., Gas & Elec. Co.)). Accordingly, the Statute should be construed in favor of the Fords.

The ALC, however, erroneously characterized this case as a "tax exemption matter," and construed the language of the Statute against Appellants. (Order at p. 5) (R. p. 5). In doing so, the ALC did not cite any authority for the proposition that property tax assessment ratios are characterized as exemptions or deductions, or more specifically that any ambiguities in this Statute or of any tax classification statute should be construed against

Appellants. Moreover, none of the cases cited by the ALC involve classifications for assessment. (Order at p. 3) (R. p. 3).

“Exemption” is not defined in the Statute or used to describe any of the tax assessment ratio classifications enumerated therein. Neither the General Assembly, the ALC, nor any South Carolina appellate court have deemed any particular assessment ratio as an “exemption” or “deduction.” The General Assembly freely uses the word “exemption” elsewhere; yet it is conspicuously absent in the Statute.

The record contains no evidence that Appellants ever claimed a deduction or sought to be brought within an exemption. The Statute merely provides the assessment ratio for a *classification*. The Statute begins with an opening clause punctuated by a colon. A colon, as used here, indicates that everything that follows is an elaboration of what precedes the colon. Therefore, everything in Subsection (c) must be read in the context of the opening clause: “[e]xcept as otherwise provided, the ratio of assessment to value of property in each *class* shall be equal and uniform throughout the State. All property presently subject to ad valorem taxation shall be *classified* and assessed as follows:” (emphasis added). The “class” of taxpayers entitled to the four percent assessment is defined as those “owners” who “occupy” their “legal residence,” and that four percent assessment is applied uniformly to those particular owners.

Importantly, property tax exemptions are addressed in an entirely different chapter of Title 12; S.C. CODE ANN. § 12-37-220 *et seq.* enumerates a litany of exemptions from property tax. Given that the Statute at issue in this case (found in Chapter 43 of Title 12), by its very words deals with classifications, while exemptions are addressed in a separate

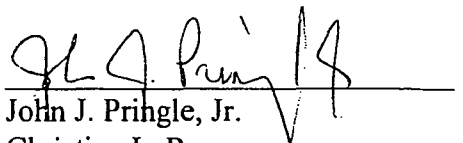
chapter, it necessarily follows that any construction of the Statute (if necessary) should be under the general rule of construction for tax statutes and construed in favor of the Appellants. In fact, a recent case construing various provisions of S.C. CODE ANN. § 12-43-220 in a dispute between a tax payer and the taxing authority makes no reference to any construction of any ambiguities in that statute against the taxpayer. SCDOR v. Sonoco Products Co. As noted herein, Sonoco explored the ambiguity of a statutory term – “contiguous” – but neither used the word “exemption” nor construed ambiguity against the taxpayer in deciding whether to apply the 10.5% ratio for manufacturing or the 6% ratio for other property. Id. Based upon the lack of authority for the proposition that the Statute’s assessment ratios constitute either an “exemption” or a “deduction,” as well as the Sonoco case, the Appellants must receive the benefit of the doubt (to the extent ambiguities arise) in this case.

CONCLUSION

The ALC erred as set forth in the foregoing paragraphs. Therefore, Appellants respectfully request that the Court reverse the Administrative Law ALC's Order ruling against the Appellants.

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November 16, 2010
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THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No. 2009-ALJ-17-0179-CC

Gregory Ford and Leslie Ford, ...Appellants,

vs.

Beaufort County Assessor, ...Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Was the Administrative Law Court correct in its determination that a taxpayer's residence, when rented for a period of ninety-one (91) days during the relevant tax year, fails to qualify for the preferential 4% residential assessment ratio available under S.C. Code Ann., Section 12-43-220?

STATEMENT OF THE CASE

This is an appeal from an Order of the Administrative Law Court ("ALC"), relating to the denial of the preferential 4% tax assessment ratio on the legal residence owned by Petitioners Gregory and Leslie Ford (hereinafter collectively referred to as "Ford"). The Beaufort County Assessor ("Assessor") and the Beaufort County Tax Equalization Board ("Board") denied the 4% assessment ratio for tax year 2008 to Ford, who then sought a contested case hearing before the ALC (R. pp. 124 & 126). Following oral arguments on November 17, 2010, and the submission of post-hearing briefs by both parties, the Honorable Ralph K. Anderson III, presiding judge, determined that Ford was not entitled to the 4% assessment ratio, upholding the earlier decisions of the tax equalization board and the assessor (R. p. 1). The ALC Order was executed and filed on April 12, 2010, and following a denial of Ford's motion for reconsideration on May 24, 2010 (R. p. 9), the notice of intent to appeal was filed on or about June 23, 2010. Ford now seeks review of Judge Anderson's opinion.

STATEMENT OF THE FACTS

Ford owns a residence on Hilton Head Island, South Carolina (R. p. 66, lines 6-13; R. p. 127). In October 2008, an anonymous person wrote to the

Assessor, advising him that Ford rented the home during the summer of 2008 (R. pp. 81-82, lines 20-25, 1-8; R. p. 133). Based upon this information, the Assessor sought and obtained from Ford additional information relating to the use of the home, including rental information (R. pp. 83-84, lines 20-25, 1-2; R. pp. 136-37). Ultimately, the Assessor determined that Ford rented the property for approximately 13 weeks (91 days) during the summer of 2008 (R. p. 91, lines 15-16). Ford rented another home on Hilton Head Island while their own home was occupied by renters (R. p. 72, lines 6-7). As a result of these facts, the Assessor denied Ford's application for the 4% residential assessment ratio for the 2008 tax year, upon the grounds that S.C. Code Ann. §12-43-220(c) disqualifies those taxpayers who rent their residence for more than 14 days (R. p. 87, lines 15-20; R. p. 144). Ford sought review from the Tax Equalization Board, which also denied Ford's request for the 4% assessment ratio (R. p. 126). The ALC also denied Ford's request (R. pp. 1, 9). Ford contends that the statutory provisions do not disqualify them from receiving the 4% assessment ratio, and further contends that the assessor, the tax equalization board, and the ALC have all misconstrued the governing statutory provisions.

STANDARD OF REVIEW

In an appeal from an Administrative Law Court decision, the Administrative Procedures Act provides the appropriate review. S.C. Code Ann. §1-23-610(B) (Supp. 2008). Accordingly, the decision of the Administrative Law Court may only be overturned if it is determined that the decision: a) violates constitutional or statutory provision; b) exceeds the statutory authority of the

agency; c) made upon unlawful procedure; d) affected by other error of law; e) clearly erroneous in view of the reliable; probative and substantial evidence on the whole record; or f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Id.

ARGUMENT

- I. THE ADMINISTRATIVE LAW COURT CORRECTLY DETERMINED THAT THE STATUTE CREATING THE 4% ASSESSMENT RATIO IS AN INSTANCE OF LEGISLATIVE GRACE, AND THEREFORE ALL AMBIGUITIES ARISING FROM THE STATUTE MUST BE RESOLVED IN FAVOR OF THE ASSESSOR.

The availability of the 4% residential assessment ratio is determined by S.C. Code Ann., §12-43-220. The statute provides, in relevant part:

Except as otherwise provided, the ratio of assessment to value of property in each class shall be equal and uniform throughout the State. All property presently subject to ad valorem taxation shall be classified as follows...

(c)(1) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property. If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a residence by the income beneficiary of the trust. When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. **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. For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

S.C. Code Ann. §12-43-220 (Supp. 2007) (emphasis added).

S.C. Code Ann. §12-43-220(c) continues:

(7) 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 if **the taxpayer's residence** meets the requirements of Internal Revenue Code Section 280A(g) as defined in Section 12-6-40(A) and the taxpayer otherwise is eligible to receive the four percent assessment ratio.

S.C. Code Ann. §12-43-220 (c)(7) (Supp. 2007) (emphasis added).

Internal Revenue Code Section 280 A(g) provides, in pertinent part:

(g) Special rule for certain rental use. Notwithstanding any other provision of this section...if a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling is actually rented for less than 15 days during the taxable year, then (1) no deduction otherwise allowable under this chapter because of the rental use of such dwelling unit shall be allowed, and (2) the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer under section 61.

I.R.C. § 280 A(g).

The statute would appear to set forth the following criteria which, in the absence of any relevant exception, must be satisfied in order for a residence to qualify for the 4% residential assessment ratio:

- a. that the property be the legal residence of the taxpayer;
- b. that the property be owned and occupied by the taxpayer; and
- c. that the residence for which the 4% assessment ratio is sought be neither rented nor used as a business for profit.

Under the circumstances, absent a relevant exception, rental property, even if utilized as the owner-occupied residence of the taxpayer, fails to qualify for the 4% assessment.

The Administrative Law Court, however, determined that the provisions of the statute were ambiguous, and ultimately resolved the ambiguity against the taxpayer, denying the 4% residential assessment ratio. It is the contention of the Respondent that the Court's resolution of the ambiguity, against the taxpayer and in favor of the Assessor, was in accordance with governing law, and should be upheld by this Court upon appeal.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. Chem-Nuclear Systems, LLC v. S.C. Board of Health and Environmental 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, and that language must be construed in light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 567 S.E.2d 240 (2002). "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 at 205, 648 S.E.2d at 603.

When construing statutory language, the statute must be read as a whole and sections that are part of the same general statutory law must be construed together and each one given effect. Duvall v. S.C. Budget and Control Board, 377 S.C. 36, 659 S.E.2d 125 (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 v. Nationwide Mutual Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2006). Statutes in apparent conflict should, if possible, be construed to allow both to stand and to give effect to each. National Advertising Co., Inc. v. Mount Pleasant Board of Adjustment, 312 S.C. 397, 440 S.E.2d 875 (1994). However, courts will reject a statutory interpretation that would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

Importantly, the South Carolina Supreme Court has consistently held that ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer. In State v. Life Ins. Co. of Ga., 254 S.C. 286, 175 S.E.2d 203 (1970), the Court 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 the exemption, he must clearly bring himself within the constitutional or statutory language upon which he relies.'" (Quoting York County Fair Assoc. v. S.C. Tax Comm'n, 249 S.C. 337, 154 S.E.2d 361 (1967)). This recitation followed a 1964 opinion, in which the Court stated that language in a statute giving rise to an exemption must be given "... its plain, ordinary meaning and construed strictly against the claimed exemption." Chronicle Publishers, Inc. v. S.C. Tax Comm'n, 244 S.C. 192, 136 S.E.2d 261 (1964).

The Supreme Court has set forth an identical standard for construction of statutory provisions granting deductions from taxation. The standard is evidenced by the Supreme Court's declaration that language of "... a deduction statute ... is not to be liberally construed. The plaintiff must place himself squarely within the terms of the statute." Lowenstein & Sons, Inc. v. S.C. Tax Comm'n, 277 S.C. 561, 290 S.E.2d 812 (1982). Similarly, the Court, in Davis Mechanical Contractors v. Wasson, 268 S.C. 26, 231 S.E.2d 300 (1977), noted that statutory language purportedly granting deductions must be strictly construed against the claimed deduction.

The South Carolina Supreme Court has clearly recognized that "... tax deductions are a matter of legislative grace and the taxpayer must establish compliance with the statutory conditions imposed." Id. Moreover, the exemption effected by the 4% residential assessment is clearly analogous to a tax deduction, inasmuch as both are matters of legislative grace. SCANA Corp. vs. S.C. Department of Revenue, 384 S.C. 388, 683 S.E.2d 468 (2009)(Beatty, J., dissenting, comparing tax credits to tax deductions). Furthermore, statutory provisions creating deductions and exemptions are subject to identical rules of construction.

As noted hereinabove, the 4% assessment ratio is available **only** to those residential properties which satisfy the legislatively imposed requirements. Absent satisfaction of those requirements, the property is assessed at 6%, in accordance with the general rule.

The preferential assessment sought by the taxpayer here is, therefore, clearly a matter of legislative grace, and the taxpayer seeking the relief afforded by the preferential assessment must clearly bring himself within the terms of the authorizing statute. Guaranty Bank & Trust Co. v. S. C. Tax Comm'n, 254 S.C. 82, 90, 173 S.E.2d 367, 370 (1970).

Inasmuch as the Supreme Court has clearly required that ambiguities within statutes purportedly affording benefits as a matter of legislative grace be strictly construed against the taxpayer, any ambiguity found within the provisions of §12-43-220 **must** be resolved against the taxpayers, Ford, and in favor of the Assessor. The Administrative Law Court was thus correct in its determination that the subject property fails to satisfy the statutory criteria for the availability of the 4% residential assessment ratio.

II. THE ADMINISTRATIVE LAW COURT CORRECTLY DETERMINED THAT SECTION 12-43-220(c)(7) PROVIDES ONLY A LIMITED EXCEPTION TO THE GENERAL RULE, AS SET FORTH IN SECTION 12-43-220(c)(1), THAT RENTAL PROPERTY WILL NOT QUALIFY FOR THE 4% RESIDENTIAL ASSESSMENT.

The ALC determined that S.C. Code Ann. §12-43-220(c)(7) provides a limited exception to the general rule set forth within §12-43-220(c)(1)), that rental property will not qualify for the 4% assessment ratio. Section (c)(7) provides that the owner-occupant of a legal residence is not disqualified from receiving the 4% assessment ratio if the taxpayer's residence meets the requirements of Internal Revenue Code §280A(g), and the taxpayer otherwise is eligible to receive the residential assessment ratio. Per its specific provisions, Internal Revenue Code §280A(g), in turn, applies only to "... a dwelling unit [which] is used during the

taxable year by the taxpayer as a residence and [where] such dwelling unit is actually rented for less than fifteen (15) days during the tax year..." Thus the available exception under §12-43-220(c)(7) is limited to those owner-occupied legal residences which are rented for fewer than fifteen (15) days during the relevant tax year. As clearly established by the specific testimony of the taxpayer, the property at issue in the instant proceedings was available for rental throughout the summer of 2008, and was actually rented for a period of no fewer than ninety-one (91) days during that period. Such a rental period is clearly outside the limited exception authorized by Subsection (c)(7), and renders the property ineligible for the preferential assessment sought by the taxpayers.

Importantly, subsection (c)(7) was enacted in 2005, while subsection (c)(1) was enacted in 2002. The clear intent of this amendment was to remove the strict disqualification contained in (c)(1). This disqualification, without (c)(7), would eliminate the 4% assessment rate for taxpayers who wanted to take advantage of I.R.C. § 280 A(g) and earn tax-free income from the rental of their homes for up to 14 days. Subsection (c)(7) was clearly created to accompany this federal tax code provision and provide relief to taxpayers seeking a benefit under I.R.C. § 280 A(g), but who would have then been subjected to the 6% assessment rate. Therefore, subsection (c)(7) is another instance of legislative grace, and should be treated as an exception to the rule disallowing rental property from receiving the lower assessment rate. Correspondingly, any ambiguity arising from this subsection must be resolved in favor of the Assessor.

Additionally, Ford's contention that subsection (c)(7) provides a "safe harbor" is not supported by the statute's plain language. There is no indication that the legislature intended the statute to expand beyond the 14 day maximum imposed therein. Rather, subsection (c)(7) quite plainly serves as a limited exception to the stated rule in subsection (c)(1), banning any property rented from being eligible for the 4% assessment ratio.

Finally, Ford's reliance upon Metts v. Charleston County Assessor, Unpublished Opinion No. 2008-UP-640 (November 17, 2008) is entirely misplaced. The Charleston County Assessor stipulated that the taxpayer was otherwise entitled to the 4% assessment ratio, while this Respondent here has specifically denied (in the absence of any relevant exception), the availability of the assessment ratio to the subject property. As Judge Anderson explained, that concession by the Charleston County Assessor necessarily leads to a different result:

That concession certainly changed the court's analysis because Section (c)(7) was examined from the perspective of a taxpayer who was otherwise eligible to receive the four percent assessment rather than a taxpayer who was **not** otherwise eligible to receive the four percent assessment. In other words, when examining the implication of Section (c)(7) the [Metts] ALC was reviewing the inverse both from a logical and statutory construction perspective of the case.

This case is more closely analogous to Tolpa v. Beaufort County Assessor, Docket No. 08-ALJ-17-0088-CC (Order dated August 11, 2008), in which the ALC, Judge John D. McLeod presiding, determined that a taxpayer who rented his residence for 134 days during the tax year was not entitled to the 4% assessment ratio. Judge McLeod rejected the taxpayer's arguments for similar

reasons as Judge Anderson in the case at bar; it is urged that this Court recognize the well-reasoned and logically-based rulings contained within both Orders and affirm the Order of the ALC.

III. THE ADMINISTRATIVE LAW COURT CORRECTLY DETERMINED THAT FORD IS NOT ENTITLED TO THE 4% ASSESSMENT RATIO BECAUSE THE PLAIN LANGUAGE OF S.C. CODE ANN. §12-43-220 DISQUALIFIES TAXPAYERS WHO RENT THEIR RESIDENCES IN EXCESS OF 14 DAYS FROM RECEIVING THE 4% ASSESSMENT RATE.

As an additional sustaining ground, and in accordance with the standard of review established by S.C. Code Ann. §1-23-610(B), this Court may also affirm the ALC's ruling by finding that §12-43-220 unambiguously places a 14-day limit on the amount of time a taxpayer's owner-occupied legal residence may be rented and still qualify for the preferential 4% assessment ratio. Any owner-occupied residence rented in excess of 14 days should be taxed at 6%, in accordance with the plain language of §12-43-220.

As previously stated, subsection (c)(1) requires any taxpayer seeking the 4% assessment rate demonstrate that the property to be assessed is the legal residence of the taxpayer, is owner-occupied property, and is not used as rental property or business for profit.

While Ford contends that the legal residence, five acres contiguous thereto, and other residences located on that five acres are separate and distinct from one another, and that the "this property" reference in the next-to-last sentence of (c)(1) applies to those other entities, the plain language of the statute reveals otherwise. By the stated goal within the preliminary language of the

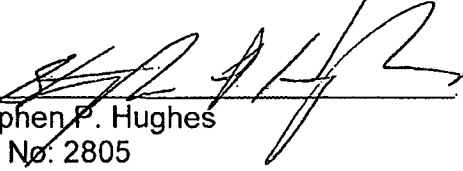
statute, the legislature intended there to be equality in the assessment of **all property**. S.C. Code Ann. §12-43-220. Additionally, the reference to "this property" is not isolated to the next-to-last sentence of the subsection, as the very first sentence of the subsection, in identifying the areas of land and improvements eligible for the 4% assessment, refers to the fair market value of "the property." Therefore, there is a consistency within the statute itself in identifying all applicable land as "this property."

Moreover, the plain language of subsection (c)(7) recognizes the disqualifying terms of the 4% assessment to the legal residence, as it states the owner-occupier is "not disqualified" from the preferential assessment if he meets the provisions of I.R.C. 280A(g). There is only one disqualification contained within (c)(1): the rental of the property. Moreover, the reference to the "legal residence" in (c)(7) is perhaps the clearest indication that the disqualification language in (c)(1) applies to the entirety of the property, and not just to other buildings referenced in subsection (c)(1). To read otherwise would render the enactment of subsection (c)(7) unnecessary, in violation of the well-settled principle that courts must presume the legislature intended to accomplish something when enacting a statute. Denene, Inc. v. City of Charleston, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002). Consequently, this Court must interpret (c)(1) and (c)(7) together and find that the rental disqualification contained in (c)(1) applies to all lands and buildings for which the 4% assessment is sought, including the taxpayer's primary residence.

CONCLUSION

For the reasons stated herein, the ALC's Order should be affirmed and Ford should be denied the preferential 4% assessment rate. Section §12-43-220 is an instance of legislative grace, allowing taxpayers the opportunity to receive a lower assessment rate for certain property, provided the specific requirements contained within the statute are met. As a result of the legislation being an instance of legislative grace, any ambiguities therein must be resolved against the taxpayer and in favor of the government. Therefore, to the extent any ambiguities are found within the statute, those ambiguities must be resolved in favor of the Assessor. Finally, this Court may affirm the ALC's Order on the additional sustaining ground that the relevant statutes clearly prohibit a taxpayer from receiving the 4% assessment for a residence rented in excess of 14 days during the tax year.

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THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No. 2009-ALJ-17-0179-CC

Gregory Ford and Leslie Ford, ...Appellant(s),

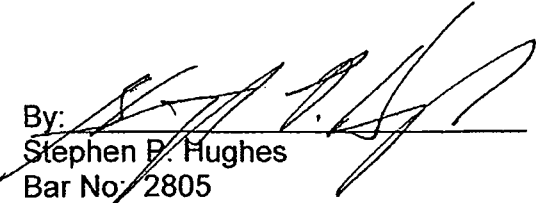
vs.

Beaufort County Assessor, ...Respondent(s).

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief of Respondent
complies with rule 211(b), SCACR and is in compliance with the Supreme
Court's Order dated August 13, 2007.

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Beaufort, South Carolina
November 18, 2010

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Administrative Law Judge

Case No. 2009-ALJ-17-0179-CC

Gregory Ford and Leslie Ford, ...Appellant(s),

vs.

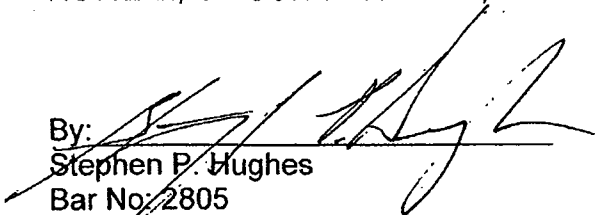
Beaufort County Assessor, ...Respondent(s).

PROOF OF SERVICE OF FINAL BRIEF OF RESPONDENT

The undersigned counsel hereby certifies that he has served the foregoing Final Brief of the Respondent by affixing same with proper postage and placing same with the United States Postal Service on 19th day of November, 2010 addressed to the following:

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Beaufort, South Carolina
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Gregory Ford and Leslie Ford.....Appellants,

v.

Beaufort County Assessor Respondent.

FINAL REPLY BRIEF OF APPELLANTS

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ARGUMENTS

I. ALL OF RESPONDENT'S ARGUMENTS FLOW FROM A FLAWED PREMISE FOUND NOWHERE IN THE STATUTE.

The Respondent contends, contrary to the plain language found throughout the Statute and in an applicable Regulation defining "legal residence" and the application of the 4% assessment to the legal residence, that one sentence in Subsection (c)(1) of the Statute disqualifies any taxpayer from receiving the 4% assessment if that residence is rented for even one day in a particular year. The first sentence of Subsection (c)(1) provides:

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property.

S.C. CODE ANN. Regs § 117-1800, further specifies: "For property tax purposes the term 'Legal Residence' shall mean the permanent home or dwelling place owned by a person and occupied by the owner thereof and where he or she is domiciled."

Thus, even though [REDACTED] Road is unquestionably the Appellants' "legal residence" eligible for the 4% assessment, Respondent claims that even one day of rental transforms their "legal residence" into a "rented residence." As the Appellants have argued, Respondent's claim conflicts with the plain language, purpose, and context of the Statute.

II. THE RESPONDENT CITES NO AUTHORITY FOR THE PROPOSITION THAT ANY AMBIGUITIES IN THE STATUTE MUST BE RESOLVED AGAINST THE APPELLANT.

The Respondent fails to cite any authority holding that an assessment (as opposed to

an exemption or a deduction) is a matter of “legislative grace” requiring that any ambiguity in the Statute be construed against the Appellants. The cases cited by the Respondent do not address assessments at all. The Respondent’s reliance on the SCANA decision (p. 7) is misplaced, as the quoted language is from the *dissent*. The South Carolina Supreme Court majority opinion found “no reasonable ambiguity” and applied the statute in question *in favor of the taxpayer*. See S.C. Dep’t of Revenue v. SCANA Corp., 384 S.C. 388, 683 S.E.2d 468 (2009).

Notably, Respondent’s reliance on Tolpa v. Beaufort County Assessor, 08-ALJ-17-0088-CC (August 11, 2008) is also undercut by the outcome in the SCANA case. The Tolpa opinion relied on SCANA Corp. v. S. C. Dep’t of Revenue, 2008 WL 2572595 (2008) for the proposition that “statutory ambiguities will be resolved against a taxpayer claiming an exemption.” (emphasis added). That 2008 opinion was subsequently withdrawn after a shift in the court and a new opinion was substituted reaching a different result. See S.C. Dep’t of Revenue v. SCANA Corp., 384 S.C. 388, 683 S.E.2d 468 (2009).

As a result, there is no authority whatsoever for the proposition that there is “legislative grace” involved in the construction of the Statute. The ALC cited no such case. The Respondent has cited no such case. Therefore, the prevailing law of statutory construction favors the Appellants.

III. THE RESPONDENT IDENTIFIES NO AMBIGUITY IN THE STATUTE, AND THE ALC’S ANALYSIS DID NOT RELY ON AN AMBIGUITY.

Moreover, the Respondent fails to explain what term in the Statute is ambiguous and subject to being construed against the Appellants. The ALC (Order at p. 5) (R. p. 5) ruled

that the phrase “any residence” was ambiguous and must be construed to include “the taxpayer’s residence.” However, the issue (as conceded in Respondent’s Brief) (R. pp. 41-46) is the definition of “this property” (not “any residence”) in the Statute. If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing *any* rules of statutory interpretation and the Court has no right to look for or impose another meaning. Paschal v. State of South Carolina Election Comm’n, 317 S.C. 434, 454 S.E.2d 890 (1995). Because the Statute is plain and unambiguous with respect to “this property,” there is no ambiguity to be construed against the Appellants.

As argued in Appellants’ Initial Brief (p. 13), the term “any residences” only applies in the Statute if the term “this property” is implicated. In other words, if the Statute does not consider the “legal residence” to be located on “this property,” (and it does not—and neither the ALC nor the Respondent has addressed Appellants’ analysis of the Statute found on pp. 5-14 of their Brief), then the legal residence cannot be “a rented mobile home or residence” under the plain language of the Statute. The Respondent, like the ALC, ignored the plain language found elsewhere in the Statute and this Regulation, the Statute’s purpose as expressed in that plain language, and the context in which various terms in the Statute are to be construed.

In sum, the ALC and the Respondent apply a “rule” regarding ambiguity that doesn’t exist to an “ambiguity” that doesn’t exist.

IV. THE ASSESSOR’S ANALYSIS OF SUBSECTION (C)(7) IS FLAWED.

- A. The Posture in Metts does not affect the proper analysis of Subsection (c)(7).**

The Respondent's attempt to distinguish Metts and apply Tolpa fails. Generally, and as set forth above, the reasoning in Tolpa relied on a proposition that does not currently exist under South Carolina law. Moreover, Metts was affirmed by this Court; Tolpa was not. Metts also recognizes the "general rule" that the legal residence that is the "domicile" of the taxpayer is entitled to the 4% assessment.

More specifically, whether or not a taxpayer is entitled to the 4% assessment under Subsection (c)(1) or (c)(2) does not change the proper analysis of the plain language of Subsection (c)(7). "Fundamental logic requires that if the General Assembly wants to preclude taxpayers who rent their dwelling units for more than fifteen days from receiving the four percent assessment ratio, it must independently say so." Metts. The language clearly states that a taxpayer is "not disqualified" if the requirements are met. It does not say that the taxpayer is disqualified if the requirements are not met.

B. Subsection (c)(7) does not "recognize" any disqualification of the legal residence elsewhere in the Statute and is not otherwise unnecessary.

Respondent argues (p. 12) that the rental of the legal residence is the only disqualification in Subsection(c)(1), and that "the reference to the 'legal residence' in Subsection (c)(7) is perhaps the clearest indication that the disqualification language in (c)(1) applies to the entirety of the property, and not just to other buildings referenced in subsection (c)(1)." Both assertions are incorrect. Again, the Respondent rests on the fallacy that one day of rental disqualifies a residence from being a "legal residence." That language is not found in the Statute, nor is it consistent with any other part of the Statute. Subsection (c)(7), on the other hand, makes clear (consistent with the Statute) that a taxpayer complying

with its safe harbor provisions owns and occupies a “legal residence” and is entitled to the 4% assessment.

Further, rental of the “legal residence” is not a disqualification under Subsection (c)(1). More importantly, Subsection (c)(1) contains the “disqualification” mandated by the Statute, argued by the Appellants, and ignored by the Respondent and the ALC:

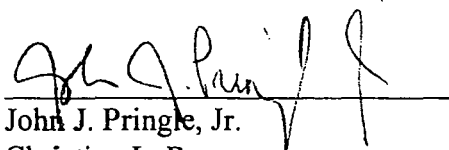
For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

Subsection (c)(7) clearly provides that a residence subject to its provisions has been determined legislatively to be the “legal residence” and “domicile” of the taxpayer under its “safe harbor” provision.

Respondent goes on to argue that any other reading renders Subsection (c)(7) superfluous. However, as Appellants argued in their Initial Brief (p. 20), reading Subsection (c)(7) as a “safe harbor” is consistent with numerous other provisions of the Statute, while reading that provision as an “exception” conflicts with those same statutory provisions. Any argument Respondent offers about the “intent” involved with the enactment of Subsection (c)(7) follows from the flawed proposition that rental of a residence prohibits that structure from being a “legal residence.”

CONCLUSION

For reasons set forth in Appellants' Initial Brief and above, Appellants respectfully request that the Court reverse the ALC's Order.



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