

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM THE ADMINISTRATIVE LAW COURT
In a Contested Case Hearing before the South Carolina Department of Revenue

MAR 30 2016

SC Court of Appeals

Deborah Brooks Durden, Administrative Law Judge

Docket No. 15-ALJ-17-0105-CC

Hock RH, LLC and York Preparatory Academy,

Appellants,

v.

South Carolina Department of Revenue,

Respondent.

RECORD ON APPEAL

Stephen M. Cox
S.C. Bar No. 12263

ROBINSON BRADSHAW & HINSON, P.A.
140 East Main Street, Suite 420
Rock Hill, South Carolina 29730
(803) 325-2900

Attorneys for Appellants

G. David Crocker
Sean G. Ryan
Milton Kimpson
South Carolina Department of Revenue
Post Office Box 12265
Columbia, South Carolina 29211
(803) 898-5000

Attorneys for Respondent

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hock RH, LLC, and York Preparatory
Academy,

Petitioners,

vs.

South Carolina Department of Revenue,

Respondent.

Docket No.15-ALJ-17-0105-CC

**ORDER GRANTING
RESPONDENT'S MOTION
FOR SUMMARY JUDGMENT**

APPEARANCES: For Petitioner: Stephen M. Cox, Esquire
For Respondent: Sean G. Ryan, Esquire

This matter is before the Administrative Law Court (ALC or Court) pursuant to cross motions for summary judgment filed on July 8, 2015 by the South Carolina Department of Revenue (Department or Respondent) and on July 10, 2015 by Hock RH, LLC and York Preparatory Academy (Petitioners). After careful consideration of the motions and legal memoranda, the Court grants Respondent's Motion for Summary Judgment.

BACKGROUND

York Preparatory Academy (YPA) is a public charter school organized under S.C. Code Ann. § 59-40-10, et. seq. YPA leased the property for its campus on Golden Gate Court in Rock Hill from Petitioner Hock RH, LLC (Hock) on or about November 12, 2012. The parcel consists of 45.01 acres and a building (the Premises). Hock owned the Premises for the entirety of Tax Year 2013. In February 2014, Hock conveyed the property to YPA and YPA became the fee simple owner of the property.

On November 4, 2013, YPA sought a property tax exemption for the Premises for Tax Year 2013 pursuant to S.C. Code Ann. §12-37-220(A)(2). On January 31, 2014, the Department denied the exemption on the grounds that the statute makes no allowances for leased properties to be exempted from the property tax. On February 20, 2014, Hock paid the 2013 tax for the Premises in the amount of \$271,801.51.

In May 2014, the South Carolina General Assembly passed Act. No. 208, codified as S.C. Code Ann. § 59-40-140(k) (Supp. 2014) [hereinafter referred to as § 140(k) or Act 208], which amended the preexisting section to create tax exemptions for charter schools, including property

FILED

September 2, 2015

SC ADMIN. LAW COURT

tax exemptions on school property, "whether owned or leased." On October 6, 2014 Petitioners submitted a protest demanding a refund of the 2013 property taxes Hock had paid. The Department issued its Department Determination on February 3, 2015 finding Petitioners are not entitled to a property tax exemption. Petitioners appealed that decision to this Court.

Subsequently, Petitioners and the Department filed cross-motions for summary judgment. In their motions, the parties asked the Court to grant summary judgment on the sole issue of whether § 140(k) applies retroactively and entitles Petitioners to a property tax exemption for the 2013 Tax Year and a tax refund.

MATERIAL FACTS NOT IN DISPUTE

The parties agree that the following material facts are not in dispute:

1. The property at issue is a parcel consisting of 45.01 acres located at 1047 Golden Gate Road, Rock Hill, South Carolina.
2. Hock owned the Premises throughout 2013. YPA leased the Premises from Hock throughout 2013 until February 2014. At that time, Hock conveyed the property to YPA.
3. YPA is a South Carolina nonprofit corporation, granted 501(c)(3) status by the Internal Revenue Service on February 14, 2011.
4. YPA used the Premises as a charter school throughout 2013.
5. On November 4, 2013, the Department received an Application for Exemption, requesting the Premises be exempt from property tax for Tax Year 2013. The application sought the exemption pursuant to § 12-37-220(A)(2).
6. On January 31, 2014, the Department denied YPA's Application for Exemption under § 12-37-220(A)(2) because the statute makes no allowances for leased properties to be exempted from property tax.
7. On February 20 2014, Hock paid the 2013 property tax for the Premises in the amount of \$271,801.51.
8. In May 2014, the South Carolina General Assembly passed Act 208, which amended § 140(k) and created a property tax exemption for charter schools, including those operated on leased property.

ISSUE

The sole issue before the Court is whether § 140(k), enacted in Act 208 of 2014, entitles Petitioners to a refund of their 2013 property taxes.

SUMMARY JUDGMENT

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.” David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Summary judgment should be granted when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. R.J. Hendricks, II v. Clemson Univ., 353 S.C. 449, 455, 578 S.E.2d 711, 714 (2003); Rule 56(c), SCRPC; see ALC Rule 68. In this case, the parties have stipulated to the facts. Since the Court agrees with the parties that there is no genuine issue of material fact, it finds that the disposition of this case by way of summary judgment is appropriate.

DISCUSSION

The South Carolina Supreme Court has held that the “usual roles of statutory construction apply to the interpretation of tax statutes.” Multi-Cinema, Ltd. v. S. C. Tax Comm'n, 292 S.C. 411, 413, 357 S.E.2d 6, 7 (1987). In Palmetto Net, Inc. v. S.C. Tax Comm'n, 318 S.C. 102, 109, 456 S.E.2d 328 389 (1995), the court held that the plain meaning rule must be applied when interpreting tax statutes. In South Carolina the cardinal rule of statutory interpretation requires the trier of fact to ascertain the intent of the legislature. State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002). In doing so, the court must give a reasonable and practical construction to the statute that is consistent with the purpose and policy expressed in the statute. Davis v. NationsCredit Fin. Servs. Corp., 326 S.C. 83, 484 S.E.2d 471 (1997). 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 the light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 567 S.E.2d 240 (2002). The determination of legislative intent is a matter of law. Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995).

Where “the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578, 581 (2000). “What a

legislature says in the text of the statute is considered the best evidence of the legislative intent or will. Kirven v. Central States Health and Life Co. of Omaha, 409 S.C. 30, 409 S.E.2d 794 (2014).

Exemptions from taxing statutes exist through legislative grace, and a taxpayer asserting an exemption must bring itself squarely within the statute authorizing the exemption. Southern Weaving Co. v. Query, 206 S.C. 307, 313, 34 S.E.2d 51, 54 (1945). Thus, statutory language creating exceptions will not be strained or liberally construed in the taxpayer's favor. Charleston County Aviation Authority v. Wasson, 277 S.C. 480, 289 S.E.2d 416 (1982).

In 2014, the South Carolina General Assembly passed Act 208, which amended § 140(k) to address tax exemptions for charter schools. The section now states:

Charter schools are exempt from state and local taxation, except the sales tax, on their earnings and property whether owned or leased. Instruments of conveyance to or from a charter school are exempt from all types of taxation of local or state taxes and transfer fees.

Petitioners argue that Act 208 was enacted as a clarification of existing law and is therefore applicable to prior tax years. Petitioners cite language in the title of the Act, "an act . . . to clarify that property of charter schools exempt from taxation includes owned or leased property," in support of that argument. The Department argues that the amended statute allows an exemption for property leased by a charter school which did not exist prior to the amendment. Adopting Petitioners' view would require this Court to accept their assertion that S.C. Code Ann. § 12-37-220(A)(2) previously exempted property leased by schools from property taxation and that the Department's longstanding contrary interpretation and application of the statute was erroneous. In 1983 the South Carolina Court of Appeals approved the Department's position that property owned by another entity but utilized for the benefit of a school was not entitled to the exemption from ad valorem taxation under § 12-37-220(A)(2). Citadel Dev. Found. v. Greenville Cnty., 279 S.C. 443, 448, 308 S.E.2d 797, 800 (Ct. App. 1983). Thus, it is apparent that the Department has maintained the position that § 12-37-220(A)(2) exempts only property actually owned by a school for over 30 years if not much longer. That interpretation has been affirmed by the Court of Appeals and acquiesced in by the legislature through numerous amendments to the section of the statute.¹ Repeated re-enactment of a statute without substantial change amounts to

¹ For a history of the amendments to the relevant statute see the history and editor's notes to § 12-37-220 in the Code of Laws of South Carolina.

an implied legislative recognition and approval of an established executive construction of the statute. U.S. Rubber Products v. S. Carolina Tax Comm'n, 189 S.C. 386, 1 S.E.2d 153, 156 (1939). "The construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons." City of Spartanburg v. Leonard, 180 S.C. 491, 186 S.E. 395, 397 (1936). Therefore, I must defer to the Department's longstanding interpretation and reject Petitioners' argument that Act 208 clarified existing law rather than creating a new exemption for property leased to a charter school.

We next turn to the question of whether Act 208 should be applied retroactively. The language of Act 208 contains no provision allowing for retroactive application of the exemption. Petitioners argue that language in the title of the Act, "an act . . . to clarify that property of charter schools exempt from taxation includes owned or leased property," provides evidence of legislative intent that the provision was meant to be applied retroactively.

In South Carolina, "In the construction of statutes there is a presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision or clear legislative intent to the contrary." Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973). "No statute will be applied retroactively unless that result is so clearly compelled as to leave no room for reasonable doubt." Hyder v. Jones, 271 S.C. 85, 88, 245 S.E.2d 123, 125 (1978). In the Hyder case, the Supreme Court quoted then Associate Judge Benjamin N. Cardozo:

The general rule is that statutes are to be construed as prospective only. It takes a clear expression of the legislative purpose to justify a retroactive application. Changes of procedure—i.e., of the form of remedies—are said to constitute an exception, but that exception does not reach a case where before the statute there was no remedy whatever. To supply a remedy where previously there was none of any kind is to create a right of action.

Jacobus v. Colgate, 217 N.Y. 235, 111 N.E. 837 (1916) at 838-839 (citations omitted). I do not find the title language to be a clear expression of legislative intent that the tax exemption should apply retroactively.

Our Supreme Court has held that where "the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Hodges, 341 S.C. 79. "What a legislature says in the text of the statute is considered the best evidence of the legislative intent or will. Kirven,

409 S.C. 30. Here, there is no ambiguity in the text of the statute and no need to resort to searching the title of the act for clues as to how to interpret the plain and unambiguous language. The plain language of Act 208 states, "Time effective. SECTION 2. This act takes effect upon approval by the Governor." I find the language of the Act to be plain and unambiguous. The Act was approved by the Governor on June 2, 2014. Therefore, the exemption from ad valorem taxation for real property leased by a charter school does not apply to the 2013 tax year.

ORDER

Accordingly, it is hereby

ORDERED that the Petitioners' Motion for Summary Judgment is **DENIED**; and it is further

ORDERED that the Department's Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.




Deborah Brooks Durden
Administrative Law Judge

September 2, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

September 2, 2015
Columbia, South Carolina

FILED

September 2, 2015

SC ADMIN. LAW COURT

DEPARTMENT DETERMINATION

Taxpayer:

Hock RH, LLC
And Tork Preparatory Academy
140 East Main Street
Rock Hill, SC 29732

Period Involved:

2013 Property Tax

Matter in Dispute:

Is the Taxpayer's property exempt from property taxes for the 2013 Tax Year?

Determination:

The Taxpayer's property is not exempt from property taxes for the 2013 Tax Year.

Relevant Facts:

1. The property in dispute is a parcel consisting of 45.01 acres and a building located at 1047 Golden Gate Rock Hill, South Carolina (Leased Premises). The Leased Premises is owned by Hock RH, LLC.
2. York Preparatory Academy, Inc. (Tenant) and Hock RH, LLC, (Taxpayer) executed a Memorandum of Lease for the Leased Premises on September 27, 2013.
3. The Tenant is a South Carolina nonprofit corporation, granted 501(c)(3) status by the Internal Revenue Service on February 14, 2011.
4. The Tenant uses the Leased Premises for York Preparatory Academy, a charter school.
5. The Memorandum of Lease for the Leased Premises was recorded with York County on October 8, 2013.
6. On November 4, 2013, the Department of Revenue (Department) received an Application for Exemption, requesting the Leased Premises be exempt from property tax for Tax Year 2013. The Application sought the exemption pursuant to S.C. Code Ann. § 12-37-220(A)(2) (Supp. 2012).

7. On January 31, 2014, the Department denied Tenant's Application for Exemption under § 12-37-220(A)(2) because the statute makes no allowances for leased properties to be exempted from property tax.
8. On February 20, 2014, the Taxpayer paid the 2013 property tax for the Leased Premises.
9. On March 26, 2014, the Department notified the Tenant that a property tax exemption had been granted for the Leased Premises for the 2014 tax year.
10. On October 6, 2014, the Department received a protest from the Tenant, demanding a refund of their 2013 property tax.
11. On November 7, 2014, this case was forwarded to the Department's Office of General Counsel for Litigation.

Analysis:

The Taxpayer's property is not exempt from property taxes for the 2013 Tax Year.

At issue is whether the Taxpayer's property is exempt from property taxes for Tax Year 2013. It is well established in South Carolina that an exemption of private property is strictly construed because in such case taxation is the rule and exemption is the exception. State v. City of Columbia, 115 S.C. 108, 114 S.E. 337 (1920). The Taxpayer and Tenant executed a lease for the Leased Premises on September 27, 2013. The lease was recorded on October 8, 2013. On November 4, 2013, the Tenant applied for a property tax exemption for the Leased Premises for Tax Year 2013. In the application, Tenant cited § 12-37-220. Among other things, § 12-37-220, entitled "General exemption from taxes", enumerates institutions that are exempt from ad valorem taxation.

Section 12-37-220 states:

- (A) Pursuant to the provisions of Section 3, Article X of the State Constitution and subject to the provisions of Section 12-4-720, there is exempt from ad valorem taxation:

- (2) all property of all schools, colleges, and other institutions of learning . . .

The Taxpayer itself is not a school, college, or institution of higher learning. Instead, it appears the Taxpayer sought the exemption because it leased its property to a charter school.

On January 31, 2014, the Department denied the Tenant's application because § 12-37-220(A)(2) makes no provision for leased property. Because Tenant does not own the Leased Premises, an exemption through § 12-37-220(A)(2) does not exist. On February 20, 2014, Taxpayer paid the property tax for the Leased Premises.

A. **The Taxpayer does not qualify for a refund for Tax Year 2013 because there was no exemption for Tax Year 2013.**

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

As previously stated, the Tenant's November 4, 2014, application for a property tax exemption cited § 12-37-220(A) as the basis for the exemption. The Department denied the application for an exemption because provisions of § 12-37-220(A) were not met. The Tenant cannot receive an exemption under § 12-37-220(A) from property tax on property it does not own. Moreover, the Taxpayer's lease of the property to a charter school does not make that property tax exempt under § 12-37-220(A). Hence, the Department denied the application. The Department denied the application for a property tax exemption for the 2013 Tax Year because there was no exemption available whereby the Taxpayer could receive a refund for property tax paid for that period. The Taxpayer, who owns the property, is not a school, college or other institution of higher learning. Therefore the Taxpayer does not satisfy the requirements of § 12-37-220(A).

Taxpayer's Argument:

Because no exemption is available to the Taxpayer for the 2013 Tax Year, the Taxpayer now seeks a refund by attempting to retroactively apply a statute amended in 2014. The Taxpayer's argument fails because, as a general rule, statutes are never applied retroactively without clear legislative intent.

The Taxpayer bases its argument for a refund solely upon its interpretation of how S.C. Code Ann. § 59-40-140(K) (2014) should be applied. In 2014 The South Carolina General Assembly passed Act 208, which amended § 59-40-140. To specifically address property tax exemptions for charter schools, § 59-40-140(K) now states:

(K) Charter schools are exempt from state and local taxation, except the sales tax, on their earnings and

property whether owned or leased. Instruments of conveyance to or from a charter school are exempt from all types of local or state taxes and transfer fees.

Pursuant to this statute, charter schools are exempt from property tax. Moreover, this statute allows an exemption for leased property and not just property owned by the school. The Taxpayer argues that the statute is meant to be retroactive and as such, it should be exempt from its 2013 property tax liability. However, there is no evidence to support the Taxpayer's assertion of retroactivity for § 59-40-140(K).

In terms of statutory construction, the South Carolina Supreme Court held that "In the construction of statutes there is a presumption that the statutory enactments are to be prospective rather than retroactive in their operation unless there is a specific provision or clear legislative intent to the contrary." Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973). The Court also held: "No statute will be applied retroactively unless there is so clearly compelled as to leave no room for reasonable doubt . . . Hyder v. Jones 271 S.C. 85 (1978)

In the Hyder Case, the Court quoted then Associate Judge Benjamin N. Cardozo in Jacobus v. Colgate, 217 N.Y. 235, 111 N.E. 837 (1916):

The general rule is that statutes are to be construed as prospective only. It takes a clear expression of the legislative purpose to justify a retroactive application. Changes of procedure i.e., of the form of remedies are said to constitute an exception, but that exception does not reach a case where before the statute there was no remedy whatever. To supply a remedy where previously there was none of any kind is to create a right of action.

Thus, statutes are, with a narrow exception, to be applied prospectively unless there is clear legislative intent to the contrary. However, while the prospective application of statutes is the rule, an exception does exist. The Court has stated:

"However, statutes that are remedial or procedural in nature are generally held to operate retrospectively." Merchants Mut. Ins. Co. v. South Carolina Second Injury Fund, 277 S.C. 604, 291 S.E. 2d 667 (1982).

In Merchants, the Court applied a two-part test to determine if a statute should be applied retroactively:

The presumption is that statutory enactments are prospective absent clear legislative intent or specific provision to the contrary, however, a remedial or

procedural statute is generally held to be retroactive. Thus, two questions are raised. First, we must determine whether the amendment is remedial or procedural...The next question is whether there is clear legislative intent or specific provision indicating the statute shall be retroactive.

Pursuant to Merchants, a two-part test must be applied to determine whether § 59-40-140(K) applies retroactively. The first step requires determination of whether that statute is remedial or procedural. There is no evidence that § 59-40-140(K) was intended to be remedial or procedural. Merchants makes a distinction concerning whether a remedial aspect exists. Per Merchants, an extension of a right or a legislative grace, even with additional conditions that must be met before the right attaches, is not considered remedial. Here, the statute only extends an exemption to an additional educational institution. This broadening of exempt institutions cannot be considered a remedy for a newly enumerated exempt institution. Likewise, § 59-40-140(K) cannot be considered a procedural change because exemptions are material, substantive issues. Creating an exemption for charter schools where no such exemption existed previously is a substantive, material change in the law. Because § 59-40-140(K) is not remedial or procedural, the Taxpayer's argument does not satisfy the first part of the Merchants test.

Further, there is no clear legislative intent or specific provision indicating the statute shall be retroactive. There is no indication from the General Assembly that the exemption extended to charter schools in the § 59-40-140(K) amendment was meant to be retroactive. Therefore, the Taxpayer's argument fails the second part of the Merchants test.

Because § 59-40-140(K) fails the Merchants test, the statute cannot be applied retroactively. Because § 59-40-140(K) cannot be applied retroactively, it does not create a basis for the Taxpayer to receive an exemption from the 2013 property tax.

Conclusion:

For all of the foregoing reasons, the Taxpayer's property is not exempt from property taxes for Tax Year 2013.

February 3, 2015

October 6, 2014

Ms. Adriane Shealy
South Carolina Department of Revenue
300A Outlet Pointe Blvd
Post Office Box 125
Columbia, South Carolina 29202-0125

In Re: Hock RH, LLC and D&T High School, LLC
York Preparatory Academy, Inc.
Application for Refund of 2013 Property Taxes

Dear Ms. Shealy:

My law firm and I represent Hock RH, LLC and York Preparatory Academy, Inc. ("YPA"). YPA is a nonprofit corporation and public charter school that occupies a campus of approximately 45 acres in York County, South Carolina. During the 2013 tax year, the campus was owned by Hock RH, LLC, which leased it to YPA pursuant to the terms of the enclosed memorandum of leases. In February 2014, YPA purchased its campus from Hock RH, LLC.

Last year, YPA applied to your office for an exemption from 2013 property taxes from its campus, on the grounds that YPA was an educational institution that had leased and used the property in question solely for educational purposes during the 2013 tax year. After considering the application, the Department denied the exemption, reasoning that South Carolina law did not permit an exemption from property tax for educational institutions that leased (instead of owned) their campuses.

Following this decision, the South Carolina General Assembly passed Act 208, which clarified the relevant portion of S.C. Code Ann. Section 59-40-140 to provide that charter schools are exempt from state and local taxation on their property, "whether owned or leased." I have enclosed a copy of this legislation for your convenient reference. Notably, the General Assembly characterized the Act as a "clarification" of, not a change to, existing law.

In accordance with the clarification of Act 208, and pursuant to the tax refund procedure of S.C. Code Ann. Section 12-60-470, Hock RH, LLC and York Preparatory Academy, Inc. hereby request a refund of the \$271,801.51 in property tax and associated penalties that were paid by these taxpayers on February 20, 2014. I enclose a copy of the tax receipt showing the tax paid. In addition, set forth below is the information required by S.C. Code Sec. Ann. Section 12-60-450:

5294953v1 22984.00010

- (1) *The name, address and telephone number of taxpayers:*

York Preparatory Academy, Inc.
Hock RH, LLC
c/o Stephen M. Cox
Robinson Bradshaw & Hinson, P.A.
140 East Main Street
Rock Hill, South Carolina 29732
(803) 325-2910

- (2) *The appropriate taxpayer identification number or numbers:*

York Preparatory Academy, Inc.: 36-4641998
Hock RH, LLC: 46-1263753

- (3) *The tax period or date for which the tax was proposed:*

2013

- (4) *The nature and kind of tax in dispute:*

Ad valorem property tax

- (5) *The amount which the taxpayer claims was erroneously paid:*

\$271,801.50

- (6) *A statement of facts supporting the taxpayers' position:*

See above. YPA is a public charter school that leased its campus in 2013 from Hock RH, LLC.

- (7) *A statement outlining the reasons for the appeal, including law or other authority upon which the taxpayer relies:*

See above. A clarification of existing law (S.C. Code Ann. Section 59-40-140) provides that charter schools are not required to pay property tax on property that they lease.

- (8) *Other relevant information that the department may reasonably require.*

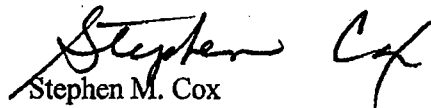
Not Applicable.

Ms. Adriane Shealy
October 6, 2014
Page 3

If you need any additional information as you consider our request for a refund, or if you have any questions concerning the information that we have submitted, please do not hesitate to contact me.

Sincerely,

ROBINSON BRADSHAW & HINSON, P.A.


Stephen M. Cox

SMC

201300235555
Filed for Record in
YORK COUNTY, SC
DAVID HAMILTON, CLERK OF COURTS
10-08-2013 At 12:27 pm.
LEASE 11.00
State Tax .00
County Tax .00
GR Vol 13757 Page 233 - 237

Prepared by and Return to:

pl MORTON & GETTYS, LLC
Attn: Joshua B. Vann
Post Office Box 707
Rock Hill, South Carolina 29731

MEMORANDUM OF LEASE

27 THIS MEMORANDUM OF LEASE (this "Memorandum") is executed as of this day of September, 2013 by and between YORK PREPARATORY ACADEMY, INC., a South Carolina non-profit corporation ("Tenant"), and HOCK RH, LLC, a North Carolina limited liability company ("Landlord"), for the uses and purposes stated below.

BACKGROUND STATEMENT

A. Landlord and Tenant are parties to that certain Lease and Option to Purchase (as amended, the "Lease") dated as of April 7, 2011 and providing by the demise by Landlord to Tenant of the real property described upon Exhibit A, attached hereto and incorporated herein by this reference (the "Land"). The Lease is incorporated herein by this reference to the extent not inconsistent herewith. Landlord and Tenant wish to place third parties on notice of the essential terms of the Lease, and execute this Memorandum for that purpose.

NOW, THEREFORE, for and in consideration of the terms hereof, the parties agree as follows:

- 1.0 Incorporation of Background Statement. The above preamble and Background Statement are incorporated herein by this reference.
- 2.0 Identity of Leased Premises. The leased premises subject to the Lease is the Land, as described upon Exhibit A, together with all improvements thereupon and appurtenances thereto (collectively, the "Property").
- 3.0 Term of Lease. The term of the Lease is twenty-five (25) years, commencing on November 1, 2012.
- 4.0 Option to Purchase. The Lease grants Tenant an option to purchase the Property (the "Option"). Pursuant to the Option, Tenant must provide Landlord with notice of its intent to purchase the Property by October 16, 2015, and must close upon the Property by the date which is one hundred twenty (120) days from providing such notice to Landlord.
- 5.0 Recordation. This Memorandum shall be recorded in the York County, South Carolina, real estate records at Tenant's expense.

SIGNATURE PAGES TO FOLLOW

BK 13757PG0233

[Signature]
Witness 1

[Signature]
Witness 2

TENANT:
YORK PREPARATORY ACADEMY, INC.

BY: [Signature]

Print Name: Christopher Abram Crumer

ITS: Board Chairman

ACKNOWLEDGEMENT

PERSONALLY appeared before me Christopher Abram Crumer as Board Chairman of the Tenant within named, who, after being duly sworn, acknowledged his/her execution of the within instrument in such capacity and for the uses and purposes mentioned therein.

This 27 day of September, 2013

[Signature]
Notary Public for South Carolina
My Commission Expires: 11-9-2015
[NOTARY SEAL]

WHEREFORE, this Memorandum is executed as of the date above appearing.

LANDLORD:
HOCK RE, LLC

[Signature]
Witness 1

BY: [Signature]
Gary M. Hock, its Manager

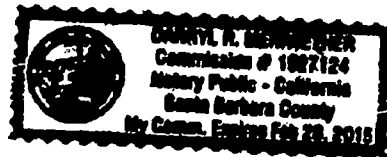
[Signature]
Witness 2

ACKNOWLEDGEMENT

PERSONALLY appeared before me Gary M. Hock, as Manager of the Landlord within named, who, after being duly sworn, acknowledged his execution of the within instrument in such capacity and for the uses and purposes mentioned therein.

This 27th day of September, 2013

[Signature]
Notary Public for Carolina California
My Commission Expires: Feb 28, 2015
[NOTARY SEAL]



TENANT SIGNATURE PAGE TO FOLLOW

BK13757PG0235

EXHIBIT A

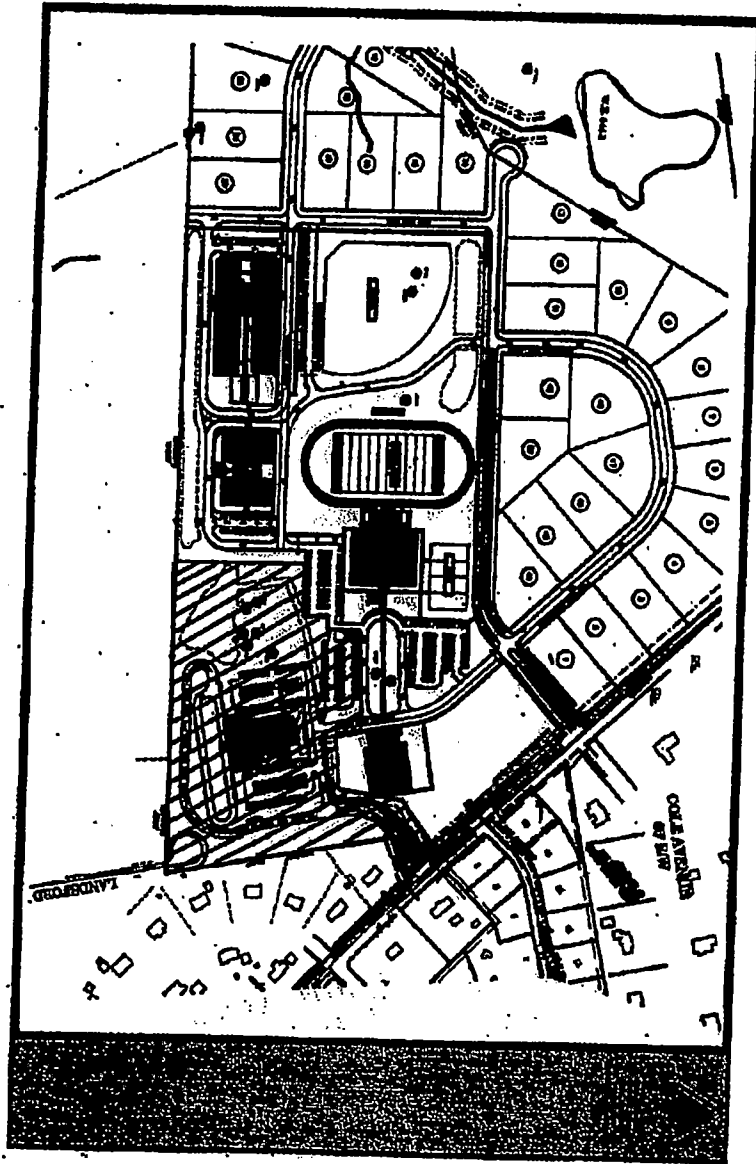
ALL that certain piece, parcel or tract of land lying and being situate in the City of Rock Hill, York County, South Carolina, on the southern side of Eastview Road, containing 45.01 acres, more or less, the perimeter boundaries of which are shown and described on that certain plat of survey entitled "RECOMBINATION PLAT OF A PORTION OF THE GATES AT EASTVIEW," dated October 7, 2011, prepared for Hock RH, LLC, by Summit Land Services, PC, Jeffrey Mark Fisher, PLS No. 23206, recorded in Plat Book E-148, at Page 5, in the York County, South Carolina, real estate records, reference to which plat is hereby made for a more complete and accurate description of the within described property.

LESS AND EXCEPTING THEREFROM, HOWEVER, that certain piece, parcel or tract of land containing approximately 7 acres, more or less, together with a non-exclusive easement for ingress and egress, being the hatched area shown upon Exhibit A-1, attached hereto and incorporated herein by this reference.

BEING a portion of the real property conveyed to Hock RH, LLC, by deed of Big Vision, LLC, recorded in the aforesaid records in Book 11726, at Page 141, on November 19, 2010.

BK 13757P0236

EXHIBIT A-1



REF ID: A60237

2014 South Carolina Laws Act 208 (H.B. 4871)

SOUTH CAROLINA 2014 SESSION LAWS

REGULAR SESSION

Additions and deletions are not identified in this document.

Vetoed are indicated by ~~Text~~ ;

stricken material by ~~Text~~ .

Act 208

H.B. No. 4871

AN ACT TO AMEND SECTION 59-40-140, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO VARIOUS PROVISIONS PERTAINING TO CHARTER SCHOOLS INCLUDING A PROVISION EXEMPTING ALL EARNINGS OR PROPERTY OF CHARTER SCHOOLS FROM STATE OR LOCAL TAXATION, EXCEPT FOR THE SALES TAX, SO AS TO CLARIFY THAT PROPERTY OF CHARTER SCHOOLS EXEMPT FROM SUCH TAXATION INCLUDES OWNED OR LEASED PROPERTY.

Be it enacted by the General Assembly of the State of South Carolina:

Earnings on property exempt from state and local tax, sales tax exempted

SECTION 1. Section 59-40-140(K) of the 1976 Code, as last amended by Act 164 of 2012, is further amended to read:

<< SC ST § 59-40-140 >>

(K) Charter schools are exempt from state and local taxation, except the sales tax, on their earnings and property whether owned or leased. Instruments of conveyance to or from a charter school are exempt from all types of taxation of local or state taxes and transfer fees.

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified the 29th day of May, 2014.

Approved the 2nd day of June, 2014.

End of Document

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WestlawNext © 2014 Thomson Reuters. No claim to original U.S. Government Works.

1

State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

01/31/2014

PREXE 4794375008



YORK PREPARATORY ACADEMY INC
984 MEADOW LAKES ROAD
ROCK HILL SC 29732

NOTICE DATE: 01/31/2014
TAX-YEAR: 2012
SID-SFX: 2451912-000-001
COUNTY: YORK

Dear Applicant:

Your application for property tax exemption has been denied for the following properties:

PROPERTY:
BUILDING 1 100.0%
LAND 45.01 ACRES 100.0%

TAX MAP NUMBER:
5020301112

APPLICABLE SC CODE SECTION:
12-37-220(A2)

REASON FOR DENIAL

PROVISION OF SC CODE SECTION 12-37-220 A(2) NOT MET. NO EVIDENCE THAT
YORK PREPARATORY ACADEMY IS NOT THE SOLE OWNER OF THE
PROPERTY.

UNDER THE SC CODE SECTION 12-37-220 A(2) THERE IS NOT A
PROVISION FOR LEASED PROPERTY.

You or your agent may protest the denial of a property tax exemption. The protest must be made in writing to the South Carolina Department of Revenue within 90 days from the date of this notice. The protest must contain the information outlined on the enclosed form PT-437. You will be notified by the Property Division if any additional information is required.

If you have any questions, please call the Property Division at (803) 898-5482, (803) 898-5492, or (803) 898-4995.

Enclosure
(Form PT-437)

70811013 PT-456 (Rev. 10/31/12)

77

Taxpayers' Bill Of Rights

C-367 (Rev. 12/17/13) 6318

- You have the right to apply for assistance from the Taxpayer Rights' Advocate within the Department of Revenue. The advocate or his designee is responsible for facilitating resolution of taxpayer complaints and problems.
- You have the right to request and receive forms, instructions and other written materials in plain, easy-to-understand language.
- You have the right to prompt, courteous service from us in all your dealings with the Department of Revenue.
- You have the right to request and receive written information guides, which explain in simple and nontechnical language, appeal procedures and your remedies as a taxpayer.
- You have the right to receive notices which contain descriptions of the basis for and identification of amounts of any tax, interest and penalties due.

Under the provisions of Section 12-4-340 of the 1976 code of laws, any outstanding liabilities due and owing to South Carolina Department of Revenue for more than 6 months may be assigned to a private collection agency for collecting actions.

Forms Request Line: 1-800-768-3676 Internet: www.sctax.org Automated Refund Info: (803) 898-5300

Taxpayer Service Centers

The South Carolina Department of Revenue is ready to assist you at 6 locations around the state. You will find the address, telephone numbers and counties served for each location listed below.

Columbia Main Office:	300A Outlet Pointe Blvd. P.O. Box 125 Columbia, SC 29214 Phone: 803-898-5000 Fax: 803-896-0132	Greenville Service Center:	545 N. Pleasantburg Dr. Suite 300 Greenville, SC 29607 Phone: 864-241-1200 Fax: 864-232-5008
Columbia Field Collections:	300A Outlet Pointe Blvd. P.O. Box 21587 Columbia, SC 29221 Phone: 803-898-5200 Fax: 803-896-0020	Myrtle Beach Office:	1330 Howard Parkway Myrtle Beach, SC 29577 Phone: 843-839-2960 Fax: 843-839-2964
Charleston Service Center:	2 South Park Circle Suite 100 Charleston, SC 29407 Phone: 843-852-3600 Fax: 843-556-1780	Rock Hill Service Center:	Business and Technology Center 454 South Anderson Road Suite 202 P.O. Box 12099 Rock Hill, SC 29731 Phone: 803-324-7641 Fax: 803-324-8289
Florence Service Center:	1452 West Evans Street P.O. Box 5418 Florence, SC 29502 Phone: 843-661-4850 Fax: 843-662-4876		

COLUMBIA	CHARLESTON	GREENVILLE	FLORENCE	MYRTLE BEACH	ROCK HILL
Aiken Allendale Bamberg Barnwell Calhoun Edgefield Greenwood Kershaw Lexington McCormick Newberry Orangeburg Richland Saluda	Beaufort Berkeley Charleston Colleton Dorchester Hampton Jasper	Abbeville Anderson Greenville Laurens Oconee Pickens Spartanburg Union	Chesterfield Clarendon Darlington Dillon Florence Lee Marion Marlboro Sumter Williamsburg	Georgetown Horry	Cherokee Chester Fairfield Lancaster York

63181010

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
**INFORMATION GUIDE FOR
PROTESTING PROPERTY TAX DENIALS**

PT-437
(Rev. 7/13/05)
7064

This information guide explains the South Carolina Tax Appeals Procedure for proposed property tax denials by the Department of Revenue (Department).

I. Initial Process

- A.** If a Division of the Department denies a property tax exemption, a protest must be filed within 90 days after the date the notice of denial is mailed to the taxpayer.
- B.** The protest must be in writing and must contain:
1. Your name, address, and telephone number;
 2. The appropriate taxpayer identification number or numbers;
 3. The tax period or date for which the exemption was proposed;
 4. The nature and kind of tax in dispute;
 5. A statement of facts supporting your position;
 6. A statement outlining the reasons for the appeal, including any law or other authority upon which you rely; and
 7. Any other relevant information the Department may reasonably prescribe. You do not need to provide legal or other authority, as provided in item (6), if the total amount of the proposed assessment is less than two thousand five hundred dollars, unless you are a partnership, an "S" corporation, an exempt organization, or an employee plan and the proposed tax is imposed by Chapters 7, 11, or 13 of Title 12.

70641014

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Home Business Residents Online Services Departments Forms & Docs I Want To...

TAX SEARCH

Overview & Pay		Address Change									
Owner Information HOCK RH LLC 4321 MEDICAL PARK DR STE 100 DURHAM NC 277040000		Bill Information Record Type: Parcel Receipt No: 049385-13-3 Tax Year: 2013 Due Date: 01/15/2014									
Parcel Information Map No <u>502-03-01-112</u> District 3X Assessed Value \$647,856 Appraised Value \$10,797,600		Taxes Base Amount \$247,092.28 Net Taxes \$247,092.28 Penalties \$24,709.23 Balance Due \$0.00									
Description 45.01 AC / GOLDEN GATE CT		Penalty Dates <table border="1"> <thead> <tr> <th>Penalty Date</th> <th>Amount Due</th> </tr> </thead> <tbody> <tr> <td>January 16</td> <td>3%</td> </tr> <tr> <td>February 2</td> <td>10%</td> </tr> <tr> <td>March 17</td> <td>15%</td> </tr> </tbody> </table>		Penalty Date	Amount Due	January 16	3%	February 2	10%	March 17	15%
Penalty Date	Amount Due										
January 16	3%										
February 2	10%										
March 17	15%										
		Payment Status Status Paid Paid Amount \$271,801.51 Date Paid 2/20/2014 Total Balance Due \$0.00									
<input type="button" value="Search For Other Properties"/>											

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[Privacy Statement](#) | [Terms of Use](#)

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hock RH, LLC, and York Preparatory
Academy,

Petitioners,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 15-ALJ-17-0105-CC

PETITIONERS' MOTION FOR
SUMMARY JUDGMENT

Hock RH, LLC and York Preparatory Academy (collectively "Petitioners"), by and through their undersigned counsel, move that this Court (i) grant them summary judgment on their appeal of the Determination of the Department of Revenue dated February 3, 2015 and (ii) order a refund of the 2013 property tax of \$271,801.51 paid by Petitioners.

In support of this motion, Petitioners will rely upon the papers and pleadings of record in this action, including, but not limited to, the Memorandum that they are filing in support hereof.


Stephen M. Cox

ROBINSON, BRADSAW & HINSON
140 East Main Street, Suite 420
Rock Hill, South Carolina 29731
Telephone: 803-325-2910
Facsimile: 803-325-2929
scox@rbh.com

*Counsel for Petitioners Hock RH, LLC and
York Preparatory Academy, Inc.*

Rock Hill, South Carolina

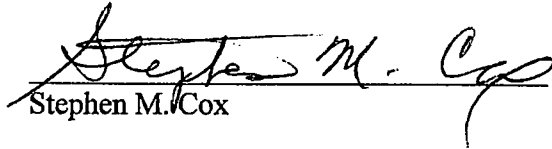
July 10, 2015

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITIONERS' MOTION FOR SUMMARY JUDGMENT** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

G. David Crocker
Sean G. Ryan
Milton G. Kimpson
South Carolina Department of Revenue
P.O. Box 12265
Columbia, South Carolina 29211

This ___ day of July, 2015.


Stephen M. Cox

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

**Hock RH, LLC, and York Preparatory
Academy,**

Petitioners,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 15-ALJ-17-0105-CC

**PETITIONERS' MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Hock RH, LLC and York Preparatory Academy (collectively "Petitioners"), by and through their undersigned counsel, submit this Memorandum in support of their Motion for Summary Judgment filed contemporaneously with the Court.

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

York Preparatory Academy ("YPA") is a public charter school organized and existing under S.C. Code Ann. § 59-40-10, *et seq.* The school operates under a charter issued by the South Carolina Public Charter School District and serves grades K-12. YPA is a South Carolina nonprofit corporation that was granted 501(c)(3) status by the Internal Revenue Service on February 14, 2011.

In late 2012, YPA moved its campus to Golden Gate Court in Rock Hill, entering into a lease for the property with Petitioner Hock RH, LLC (the "Hock Lease"). The Hock Lease had a 25 year term and required YPA to be responsible for all maintenance and upkeep of the campus and its facilities, including, but not limited to, payment of property taxes.

YPA has continually used its Golden Gate campus as a charter school, and for no other purpose. On November 4, 2013, YPA sought a property tax exemption for its campus from the South Carolina Department of Revenue. The Department denied the application by

determination letter dated January 31, 2014, concluding that South Carolina law did not permit a property tax exemption for property leased by schools.

On February 20, 2014, Hock paid the 2013 property tax for YPA's Golden Gate campus in the amount of \$271,801.51, using funds that YPA had tendered to Hock pursuant to its obligations under the Hock Lease.¹

Just three months later, on May 29, 2014, the South Carolina General Assembly passed Act 208, which was entitled "an act . . . to *clarify* that property of charter schools exempt from . . . taxation includes owned or leased property." (emphasis added) Prior to this amendment, the first sentence of S.C. Code Ann. § 59-40-140(K) had provided that "Charter schools are exempt from all state and local taxation, except the sales tax, on their earnings and property." After the amendment, the first sentence provides that "Charter schools are exempt from state and local taxation, except the sales tax, on their earnings and property, *whether owned or leased.*" (emphasis added).

On October 6, 2014, Hock and YPA submitted a protest to the Department, demanding a refund of the 2013 property taxes that they had paid. The Department issued its Department Determination on February 3, 2015, finding the Petitioners not entitled to a property tax exemption. Petitioners timely appealed the Department Determination to this Court.

¹ Also in February 2014, YPA purchased its Golden Gate Court campus from Hock. YPA has received a property tax exemption for the 2014 tax year, and it expects to receive the same exemption in succeeding years.

II. DISCUSSION

The sole question presented by this appeal is whether Petitioners are entitled to a refund of their 2013 property taxes paid to the State, notwithstanding the fact that YPA leased, and did not own, the subject premises that tax year.

A. The General Assembly Has Acted To Correct the Department of Revenue's Misimpression that Property Leased by Charter Schools Is Not Exempt from Property Tax.

South Carolina's general property tax exemption statute has long provided that "all property of all schools, colleges, and other institutions of learning" is exempt from taxation. S.C. Code Ann. § 12-37-220(A)(2). When the General Assembly passed the South Carolina Charter School Act of 1996, it adopted this exemption, initially providing in S.C. Code Ann. § 54-40-140(K) that "Charter schools are exempt from all state and local taxation, except the sales tax, on their earnings and property." The purpose of these exemptions is clear: to ensure that neither charter schools nor other schools have to divert their limited resources to satisfying tax obligations of State and local governments.

Neither § 12-37-220(A)(2) nor § 54-40-140(K) (in its original enactment) makes a distinction between property that is "owned" or "leased" by a school. Such a distinction would be meaningless in this case, because even though YPA leased its property from Hock in 2013, it was obligated to make all tax payments on it. Thus, whether YPA was the owner or the lessee of its campus in 2013, its tax burden was identical.

Even though the relevant South Carolina statutes make no distinction between a school that owns and leases its property, however, the Department of Revenue does. In its January 2014 notice denying YPA's application for a 2013 property tax exemption, the Department concluded that "UNDER THE SC CODE SECTION 12-37-220 A(2) THERE IS NOT A PROVISION FOR

LEASED PROPERTY.” (capitalization in original). The Department offered no reasoning or analysis to accompany this conclusion, and the conclusion does not find support in either the text or the purpose of the relevant exemption statutes. Indeed, if the purpose of the statutes is to shelter limited educational resources from tax burdens, then it makes no difference whether a school owns its campus or enjoys the property under a lease that, as here, requires it to make all tax payments. Property that YPA leases to use exclusively for the operation of a charter school campus, and for which it has all financial responsibility, is just as much “property of YPA” as property that the school owns in fee simple. In either case, the tax burden on YPA is identical, and the statute’s purpose applies with equal force.

Fortunately, the General Assembly stepped in to correct the Department’s misimpression. In Act 208 of May 2014—indeed, in the very title of that Act—the General Assembly has announced that it is acting to “clarify” existing law by specifying that both the owned *and* leased property of charter schools is exempt from property taxation. It should be emphasized here—as the General Assembly did—that Act 208 does not represent new law, but merely a clarification of existing law. Applying that existing, clarified law entitles YPA to a refund of its \$271,801.51 property tax payment for the 2013 tax year.

B. The Department of Revenue Has Improperly Focused on Whether Act 208 Is Retroactive—an Issue that Is Inapplicable to a Clarifying Statute.

In its February 3, 2015 Determination, the Department of Revenue claimed that YPA sought a refund of its 2013 property tax “by attempting to retroactively apply a statute amended in 2014.” *See* Department Determination, at p. 3. The Department went on to conclude that YPA could not avail itself of Act 208 because the Act could not be applied retroactively. *See id.*, at pp. 3-5.

The Department is mistaken. YPA is not seeking retroactive application of Act 208. It does not need to do so. Indeed, because the Act was expressly designated by the General Assembly as a *clarification* of existing law, and not a *change* to that law, a retroactivity analysis is simply inapplicable here. This is the conclusion of the better-reasoned line of cases to have considered this question, although admittedly, the authorities are split on whether the retroactivity issue is relevant to a clarifying amendment. See *McClung v. Employment Development Dept.*, 99 P. 3d 1015, 1019 (Cal. 2004) (“If [an] amendment merely clarifie[s] existing law, no question of retroactivity is presented.”); *In re Marriage of Fellows*, 138 P.3d 200, 202 (Cal. 2006) (noting that a statute that merely clarifies existing law “may be applied to transactions predating its enactment without being considered retroactive because it is merely a statement of what the law has always been.”); *Fiore v. White*, 531 U.S. 225, 228 (2001) (noting that a Pennsylvania judicial decision that “merely clarified the statute present[ed] no issue of retroactivity.”).

The foregoing principle is not just the law of places like California and Pennsylvania; it is a principle of hornbook law that has been recognized by at least two Justices of the South Carolina Supreme Court. See 16B Am.Jur. 2d *Constitutional Law* § 735 (2009) (“[A] statute that merely clarifies rather than changes existing law does not apply retrospectively even if it is applied to transactions predating its enactment.”), cited in *Harleysville Mutual Ins. Co. v. State*, 401 S.C. 15, 34 (2012) (Beatty, J., dissenting) (“Because Act No. 26 merely clarifies rather than changes existing law, it does not operate retrospectively even though it is applied to transactions predating its enactment.”).

The better question here, then, is not whether Act 208 should be applied retroactively. That question misses the point. The question that matters is whether Act 208 was intended

merely to clarify *existing* law. If so, issues of retroactivity simply are not implicated, and the Act should be applied to YPA's 2013 tax year as a faithful exercise of the law as it has always been.

C. Even If this Court Consider the Retroactivity Question To Be Relevant Here, Courts Uniformly Hold that a Clarifying or Curative Statute Like Act 208 Should Be Applied Retroactively.

To be sure, not all state appellate courts follow the approach of the authorities discussed above. Some courts *do* invoke a retroactivity analysis when examining a statute intended solely to clarify existing law, invariably concluding that such statutes are to be applied retroactively. *See, e.g., Swink v. Fingado*, 115 N.M. 275, 284 (1993) (“[A] statute which clarifies existing law may properly be regarded as having retroactive effect.”); *Dabrowski v. Dabrowski*, 477 N.W. 2d 761, 765 (Minn. App. 1991) (“[W]here the legislature clarifies a statute, the statute may be read retroactively In addition, where the legislature’s prompt reaction to a court’s statutory construction shows disagreement with the court’s construction rather than a change in legislative policy, it is not a question of retroactivity, but more merely akin to a clarification.”).

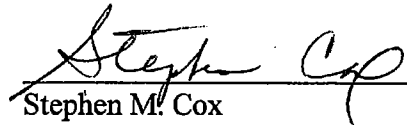
Indeed, a “clarifying statute” may properly be described as falling within a larger class of “curative statutes” that, by their very nature, retroactive. *See Segars v. Gomez*, 360 F.Supp. 50, 53 (D.S.C. 1972) (describing South Carolina statute as a “curative statute” that was “by nature . . . retrospective”), citing *Green v. City of Rock Hill*, 149 S.C. 234 (1972) (“It is a well-settled general rule that the Legislature, by a curative or validating statute which is necessarily retrospective in character and retroactive in effect, can validate any act which it might have originally authorized.”) (internal citations omitted); *Matter of D.C.*, 146 N.J. 31, 51 (1996) (describing New Jersey statutory amendments as clarifying and curative in nature and requiring retroactive application); *Washington Waste Systems, Inc. v. Clark County*, 794 P.2d 508, 511 (Wash. 1990) (noting that “curative statutes, i.e., statutes which clarify ambiguities in older

legislation without changing prior case law, presumably act retroactively” and finding Washington legislation to be a curative statute entitled to retroactive effect”); *Black’s Law Dictionary* 381 (6th ed. 1990) (defining a “curative statute” as “a law, retrospective in effect, which is designed to remedy some legal defect in previous transactions.”) Such a clarifying or curative statute, the courts observe, merely follows the law as it has always been and does not represent a change in legislative policy.

Remarkably, the five-page Determination that the Department offered when denying Petitioners’ 2013 refund request did not *once* acknowledge that Act 208 was expressly intended by the General Assembly to “clarify” existing law. That critical fact makes all other analysis unnecessary. As explained above, once a statute has been properly identified as “clarifying,” regardless of whether one also chooses to brand it as “retroactive,” the statute should be applied to transactions preceding its enactment. Here, then, this Court should follow the General Assembly’s text and intent in using the “clarified” Act 208 to set aside the Department of Revenue’s misbegotten distinction between “owned” and “leased” property of schools like YPA. Act 208 makes it clear that the General Assembly has always intended schools to be free of a tax burden on their property—whether owned or leased—and YPA should be free of that burden here.

III. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant their motion for summary judgment and order a refund of their 2013 property tax in the amount of \$271,801.51


Stephen M. Cox

ROBINSON, BRADSAW & HINSON
140 East Main Street, Suite 420
Rock Hill, South Carolina 29731
Telephone: 803-325-2910
Facsimile: 803-325-2929
scox@rbh.com

*Counsel for Petitioners Hock RH, LLC and
York Preparatory Academy, Inc.*

Rock Hill, South Carolina

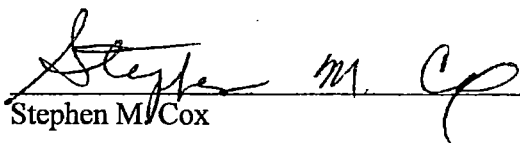
July 10, 2015

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITIONERS' MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

G. David Crocker
Sean G. Ryan
Milton G. Kimpson
South Carolina Department of Revenue
P.O. Box 12265
Columbia, South Carolina 29211

This 10 day of July, 2015.


Stephen M. Cox

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

**Hock RH, LLC, and York Preparatory
Academy,**

Petitioners,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 15-ALJ-17-0105-CC

**PETITIONERS' REPLY MEMORANDUM
IN FURTHER SUPPORT OF
MOTION FOR
SUMMARY JUDGMENT**

Hock RH, LLC and York Preparatory Academy (collectively "Petitioners"), by and through their undersigned counsel, submit this Reply Memorandum in further support of their Motion for Summary Judgment filed contemporaneously with the Court.

I. DISCUSSION

In its 15 page brief supporting its motion for summary judgment, the Department of Revenue unequivocally declares that:

- "There is no evidence of any legislative intent that [Act 208, codified at § 59-40-140(k)] be applied retroactively." (DOR Brief, at p. 10).
- "There is no evidence that § 59-40-140(k) is meant to be remedial." (DOR Brief, at p. 12); and
- "[T]here is no evidence or language that any of the[] amendments [to § 59-40-140(k)] remediate prior versions of § 59-40-140(k)."

In making these sweeping statements, the Department blithely ignores the very title of Act 208, which expressly declares the General Assembly's intention to "clarify" by ensuring that charter schools that both owned and leased property will be exempt from tax. One needs nothing more than this title to see that Act 208 represented the General Assembly's express intention to "clarify" and correct existing law, not to create new law.

As YPA explained in its initial brief, legal authorities around the country (including the South Carolina Supreme Court) uniformly recognize that curative or clarifying statutes, are, by their very nature, to be applied to transactions predating their enactment. In *Green v. City of Rock Hill*, 149 S.C. 234, 147 S.E. 346, 352 (1929), for example, the South Carolina Supreme Court recognized that a “curative or validating statute . . . is necessarily retrospective in character and retroactive in effect[.]” The other authorities cited in YPA’s initial summary judgment brief reach the same conclusion. See, e.g., *Matter of D.C.*, 146 N.J. 31, 51 (1996) (describing clarifying statutory amendment as requiring retroactive application); *Washington Waste Systems, Inc. v. Clark County*, 794 P.2d 508, 511 (Wash. 1990) (noting that a clarifying statute “presumably act[s] retroactively”). Indeed, a statute that is curative is *presumed* retroactive by the courts and is applied retroactively whether the legislature expresses characterizes the statute as retroactive or not. *Id.*

The question here, then, as YPA noted in its initial brief, is not whether the General Assembly declared Act 208 to be retroactive. The question is whether the Act is a curative statute. If so, *Green* and the other authorities cited by YPA make clear that it is to be presumed retroactive and applied to give YPA a refund on its 2013 property taxes.

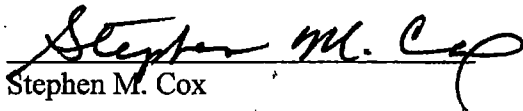
To conclude that Act 208 is curative, one need look no further than its title. As the authorities cited by YPA make clear, a “clarifying statute” and a “curative statute” are the same thing. Both are intended—not to create new law—but to correct existing law. Here, then, the Act’s express designation as a “clarify[ing]” statute leads inexorably to the conclusion that it is curative.

None of the authorities cited by the DOR in its brief contradicts this conclusion. Neither the constitutional amendment at issue in *Neel v. Sheal*, 261 S.C. 266 (1973), nor the statute at

issue in *Hyder v. Jones*, 271 S.C. 85 (1978), was a curative or clarifying authority that was presumed to be retroactive. Act 208, however, clearly is.

III. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant their motion for summary judgment and order a refund of their 2013 property tax in the amount of \$271,801.51


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Rock Hill, South Carolina

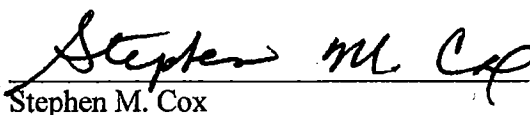
July 30, 2015

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITIONERS' REPLY MEMORANDUM IN FURTHER SUPPORT OF SUMMARY JUDGMENT** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

G. David Crocker
Sean G. Ryan
Milton G. Kimpson
South Carolina Department of Revenue
P.O. Box 12265
Columbia, South Carolina 29211

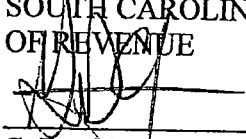
This 30th ^{July} day of June, 2015.


Stephen M. Cox

WHEREFORE, the Department moves that the Court enter summary judgment in favor of the Department and for such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

SOUTH CAROLINA DEPARTMENT
OF REVENUE



G. David Crocker (Bar No. 101023)
Counsel for Litigation
Sean G. Ryan (Bar No. 76585)
Managing Counsel for Litigation
Milton Kimpson (Bar No. 7917)
General Counsel for Litigation
300-A Outlet Pointe Blvd
PO Box 12265
Columbia, SC 29211-9979
803-898-5213 (Telephone)
803-896-0171 (Fax)
Attorneys for
South Carolina Department of Revenue

Columbia, South Carolina
July 8, 2015

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Hock RH, LLC and York Preparatory Academy,
Petitioners,
v.
South Carolina Department of Revenue,
Respondent.

Docket No: 15-ALJ-17-0105-CC

**RESPONDENT'S MEMORANDUM
IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

TO: THE PETITIONERS:

The Respondent, South Carolina Department of Revenue, (Department) by and through the undersigned counsel, respectfully submits this Memorandum in Support of the Department's Motion for Summary Judgment. For the reasons set forth below, this Court should grant summary judgment in the Department's favor thereby denying the Petitioners' request for a refund of taxes paid for Tax Year 2013, as there is no genuine issue of material fact, and that the Department is entitled to judgment as a matter of law.

STATEMENT OF THE CASE

York Preparatory Academy ("YPA"), a South Carolina nonprofit corporation, leased a parcel from Hock RH, LLC ("Hock") (collectively, "Petitioners") on or about November 12, 2012. In November 2012, YPA leased the Premises from Hock and thereafter YPA utilized the Premises to operate a charter school. The parcel, located in Rock Hill, South Carolina, consists of 45.01 acres, and a building. (the "Premises").

Hock owned the Premises for the entirety of Tax Year 2013. In February 2014, Hock conveyed the property to YPA and YPA became the fee simple owner of the property.

On November 4, 2013, the Department received an Application for Exemption, requesting the Premises be exempt from property tax for Tax Year 2013. The Application sought an exemption pursuant to S.C. Code Ann. § 12-37-220(A)(2) (2012). On January 31, 2014, the Department denied YPA's Application for Exemption under § 12-37-220(A)(2), because the statute makes no allowances for leased properties to be exempted from property tax. On February 20, 2014, Hock paid the 2013 tax for the Premises in the amount of \$271,801.51.

In May 2014, the South Carolina General Assembly passed Act No. 208, codified as S.C. Code Ann. § 59-40-140(k) (2014) which amended § 59-40-140(k) and creates tax exemptions, including property tax, for charter schools. On October 6, 2014, the Department received a protest from the Petitioners. The Petitioners assert that § 59-40-140(k), signed into law in 2014, applies retroactively and entitles them to a property tax exemption for the 2013 Tax Year and thus a refund. Therefore, the issue before the ALC is whether the Taxpayer's property is exempt from property taxes for the 2013 Tax Year.

MATERIAL FACTS NOT IN DISPUTE

For the purposes of this Motion, the following material facts are not in dispute:

1. The property in dispute is a parcel consisting of 45.01 acres located at 1047 Golden Gate Road, Rock Hill, South Carolina ("the Premises").
2. Hock owned the Premises throughout 2013. YPA leased the Premises from Hock throughout 2013 until February 2014. At that time, Hock conveyed the property to YPA.

3. YPA is a South Carolina nonprofit corporation, granted 501(c)(3) status by the Internal Revenue Service on February 14, 2011.
4. YPA used the Premises as a charter school throughout 2013.
5. On November 4, 2013, the Department received an Application for Exemption, requesting the Premises be exempt from property tax for Tax Year 2013. The Application sought the exemption pursuant to § 12-37-220(A)(2).
6. On January 31, 2014, the Department denied YPA's Application for Exemption under § 12-37-220(A)(2) because the statute makes no allowances for leased properties to be exempted from property tax.
7. On February 20, 2014, Hock paid the 2013 property tax for the Premises in the amount of \$271,801.51.
8. In May 2014, the South Carolina General Assembly passed Act 208, which amended § 59-40-140(k) and created a property tax exemption for charter schools.
9. On October 6, 2014, the Department received a tax protest from Hock and YPA, demanding a refund of the 2013 property taxes.
10. The Department issued its Department Determination on February 3, 2015, finding no entitlement to a property tax exemption.

ARGUMENTS

I. Standard Applicable To Summary Judgement

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005); Young v. South Carolina Dep't of Disabilities & Special Needs, 374 S.C. 360, 649 S.E.2d 488 (2007);

Henderson v. Allied Signal, Inc., 373 S.C. 179, 644 S.E.2d 724 (2007); Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 622 S.E.2d 733 (Ct.App.2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct.App.2004).

In determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Catawba Indian Tribe of South Carolina v. State, 372 S.C. 519, 642 S.E.2d 751 (2007); Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004); Moore v. Weinberg, 373 S.C. 209, 216, 644 S.E.2d 740, 743 (Ct.App.2007); Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct.App.2005). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Summary judgment should be granted when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. R.J. Hendricks, II v. Clemson Univ., 353 S.C. 449, 455, 578 S.E.2d 711, 714 (2003). There are no genuine issues of material fact and the Department is entitled to judgment as a matter of law. Thus, summary judgment in the Department's favor is appropriate in this matter.

II. Analysis

A. The Premises is not exempt from property taxes for the 2013 Tax Year

At issue is whether the Premises is exempt from property taxes for Tax Year 2013. It is well established in South Carolina that an exemption of private property is strictly construed because in such case taxation is the rule and exemption is the exception. State v. City of Columbia, 115 S.C. 108, 114 S.E. 337 (1920). S.C. Code Ann. § 12-37-210 (2000) provides “[a]ll real and personal property in this State . . . shall be subject to taxation” unless explicitly exempted. General exemptions to property tax are delineated in § 12-37-220(A)(2). It is well settled that exemptions from taxing statutes exist through legislative grace, and a taxpayer asserting an exemption must bring itself squarely within the statute authorizing the exemption. Southern Weaving Co. v. Query, 206 S.C. 307, 313, 34 S.E.2d 51, 54 (1945). This construction means that the statutory language creating such exemptions will not be strained or liberally construed in the taxpayer’s favor. Charleston County Aviation Authority v. Wasson, 277 S.C. 480, 289 S.E.2d 416 (1982).

Hock and YPA executed a lease for the Premises on September 27, 2013. On November 4, 2013, YPA applied for a property tax exemption for the Premises for Tax Year 2013. In the application, YPA cited § 12-37-220(A)(2) (Supp. 2012).

Among other things, § 12-37-220(A)(2) (Supp.2012), entitled “General exemption from taxes”, enumerates institutions that are exempt from ad valorem taxation.

Section 12-37-220(A)(2) states:

(A) Pursuant to the provisions of Section 3, Article X of the State Constitution and subject to the provisions of Section 12-4-720, there is exempt from ad valorem taxation:

(2) all property of all schools, colleges, and other institutions of learning . . .

From its application, it appears YPA sought an exemption for the Premises as being the property of the school. Contrary to this assertion, the Premises was not the property of the school during 2013. While YPA may have used the property in 2013, it is undisputed that YPA did not own the property in 2013. To the contrary, YPA merely leased the property. Hock owned the property throughout 2013 and Hock is not a school or institution of learning. On January 31, 2014, the Department denied YPA's application because § 12-37-220(A)(2) makes no provision for leased property. Because YPA did not own the Premises, YPA does not qualify for an exemption through § 12-37-220(A)(2). Moreover, because Hock is not a school it does not qualify for an exemption pursuant to § 12-37-220(A)(2).

B. Neither Hock or YPA qualify for a refund for Tax Year 2013.

As previously stated, YPA's November 4, 2014, application for a property tax exemption cited § 12-37-220(A) as the basis for the exemption. The Department denied the application for an exemption because requirements of § 12-37-220(A) were not met. YPA cannot receive an exemption under § 12-37-220(A) from property tax on property it did not own. Moreover, Hock's lease of the property to a charter school does not make that property tax exempt under § 12-37-220(A). The exemption within § 12-37-220(A)

only applies to the owner of the property and the owner's qualifications for exemption. Leasing property to an entity that would be exempt if it owned the property does not create an exemption. Therefore, the Department denied the application for a property tax exemption for the 2013 Tax Year because neither Hock nor YPA qualify an exemption from property tax paid for that period.

C. Petitioners Incorrectly Assert That 2014 Amendment to § 59-40-140(k) Should Be Applied Retroactively.

Because § 12-37-220(A) does not apply to leased property, the Petitioners assert that a 2014 Amendment should be applied retroactively so they qualify for an exemption as well as a refund for the property tax paid for Tax Year 2013. The Petitioners seek to have the ALC rule that § 59-40-140(k) applies retroactively. The Petitioners argument fails because statutes are never applied retroactively without a specific provision or clear legislative intent, and in the present matter there is no specific provision or evidence of any intent by the General Assembly that § 59-40-140(k) should be applied retroactively.] *

The Petitioners base their argument for a refund solely upon applying § 59-40-140(k) retroactively. In 2014, the South Carolina General Assembly passed Act 208, which amended § 59-40-140(k) to specifically address tax exemptions for charter schools. 59-40-140(k) now states:

(k) Charter schools are exempt from state and local taxation, except the sales tax, on their earnings and property whether owned or leased. Instruments of conveyance to or from a charter school are exempt from all types of local or state taxes and transfer fees.

Pursuant to this statute, charter schools are now exempt from property tax. Moreover, this statute allows an exemption for leased property and not just property owned by the school. The Petitioners argue that § 59-40-140(k) is meant to be retroactive

and as such, it should be exempt from its 2013 property tax liability. However, there is no evidence to support the Petitioner's assertion of retroactivity for § 59-40-140(k). In the present matter the language of § 59-40-140(k) contains no specific provision allowing for retroactive application. Moreover, there is no evidence of any legislative intent that the statute be applied retroactively.

In terms of statutory construction, the South Carolina Supreme Court held that "In the construction of statutes there is a presumption that the statutory enactments are to be prospective rather than retroactive in their operation unless there is a specific provision or clear legislative intent to the contrary." Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973). The Court also held: "No statute will be applied retroactively unless there is so clearly compelled as to leave no room for reasonable doubt . . . Hyder v. Jones 271 S.C. 85 (1978). In the present matter the language of § 59-40-140(k) contains no specific provision allowing for retroactive application. Moreover, there is no evidence of any legislative intent that the statute be applied retroactively.

In the Hyder Case, the Court quoted then Associate Judge Benjamin N. Cardozo in Jacobus v. Colgate, 217 N.Y. 235, 111 N.E. 837 (1916):

The general rule is that statutes are to be construed as prospective only. It takes a clear expression of the legislative purpose to justify a retroactive application. Changes of procedure i.e., of the form of remedies are said to constitute an exception, but that exception does not reach a case where before the statute there was no remedy whatever. To supply a remedy where previously there was none of any kind is to create a right of action.

Thus, statutes are, with a narrow exception, to be applied prospectively unless there is clear legislative intent to the contrary. However, while the prospective application of statutes is the rule, an exception does exist. The Court has stated:

“However, statutes that are remedial or procedural in nature are generally held to operate retrospectively.” Merchants Mut. Ins. Co. v. South Carolina Second Injury Fund, 277 S.C. 604, 291 S.E. 2d 667 (1982).

In Merchants, the Court applied a two-part test to determine if a statute should be applied retroactively:

The presumption is that statutory enactments are prospective absent clear legislative intent or specific provision to the contrary, however, a remedial or procedural statute is generally held to be retroactive. Thus, two questions are raised. First, we must determine whether the amendment is remedial or procedural...The next question is whether there is clear legislative intent or specific provision indicating the statute shall be retroactive.

Merchants makes a distinction concerning whether a remedial aspect exists. Pursuant to Merchants, a two-part test must be applied to determine whether § 59-40-140(k) applies retroactively. The first step requires determination of whether that statute is remedial or procedural. The second step looks to whether there is clear legislative intent or a specific provision indicating a retroactive application of the statute. A procedural statute “sets out a mode of procedure for a court to follow or prescribes a method of enforcing rights.” Edwards v. State Law Enforcement Division, 395 S.C. 571, 720 S.E.2d 462 (2011). § 59-40-140(k) does not prescribe a method of enforcing a right or set out a court procedure. Therefore, § 59-40-140(k) is not procedural in nature.

Because § 59-40-140(k) is not procedural, the question becomes whether it is remedial. Per Merchants, an extension of a right or a legislative grace, even with additional conditions that must be met before the right attaches, is not considered remedial. It is well established under both state and federal laws that exemptions are a matter of legislative grace rather than entitlement. Adams v. Burts, 245 S.C. 339, 140

S.E.2d 586 (1965); Fennell v. S.C. Tax Comm'n, 233 S.C. 43, 103 S.E.2d 424 (1958). A taxpayer claiming an exemption must bring himself squarely within the terms of the statute expressly authorizing the exemption. Southern Weaving Co. v. Query, 206 S.C. 307, 34 S.E.2d 51 (1945). Moreover, the taxpayer bears the burden of establishing entitlement to an exemption. Here, the statute only extends an exemption to an additional educational institution, prospectively. Because § 59-40-140(k) extends a legislative grace to include an additional institution, pursuant to Merchants, 59-40-140(k) is not remedial. There is no evidence that § 59-40-140(k) is meant to be remedial. Section 59-40-140(k), the South Carolina Charter Schools Act of 1996, was enacted in 1996. Despite the various amendments to § 59-40-140(k), there is no evidence or language that any of these amendments remediate prior versions of § 59-40-140(k). Prospectively exempting charter schools from property tax does is not tantamount to a procedural alteration to the nature of charter schools, or their operation, in the state. Therefore, § 59-40-140(k) is not procedural and is not to be applied retroactively.

Moving to the second part of the Merchants test, there is no clear legislative intent or specific provision indicating the statute shall be retroactive. There is no indication the General Assembly intended for the exemption extended to charter schools in § 59-40-140(k) to be retroactive. Had the General Assembly intended the statute to be retroactive, it could have easily included language to that effect. Throughout the South Carolina Code of Laws when the General Assembly intends for something to be retroactive, it plainly manifests that intention through the language of the statute. For example, in § 12-43-220(c), the General Assembly stated:

(6) Notwithstanding any other provision of law, a purchaser who purchases a residential property intending that the

property shall become the purchaser's primary residence, but subject to vacation rentals as provided for in Article 2, Chapter 50, Title 27 for no longer than ninety days, may apply for the four percent assessment ratio when the purchaser actually occupies the property. If the owner actually occupies the residence within ninety days of acquiring ownership, the four percent assessment ratio, if the owner is otherwise qualified, **applies retroactively to the date ownership was acquired.** (Emphasis Added.)

Likewise, S.C. Code Ann. § 12-6-1120(9) (2014) states:

Notwithstanding Section 12 of Act 101 of 1985, Internal Revenue Code Section 7518 **applies retroactively to taxable years beginning after 1986 and applies to any taxpayer.** (Emphasis Added.)

There are many other statutes that express, with clarity, the General Assembly's intention for a statute to operate retroactively.¹ However, § 59-40-140(k) (2014) contains no such language. Therefore, the Petitioners' argument fails the second part of the Merchants test.

¹The following are a few examples of statutes specifically mentioning retroactivity:

S.C. Code Ann. § 20-1-60: Marriage of parents legitimates illegitimate children. If the parents of an illegitimate child subsequently marry, the child shall become legitimate as if born in lawful wedlock and, as to the child so legitimated, all limitations imposed by law upon the amount of property that may be given illegitimate children by deed, will, inheritance or otherwise shall be removed. The provisions of this section shall be **retroactive** to the extent that they shall apply in all cases in which prior to May 2, 1951, the parents of an illegitimate child shall have married and the father and such child shall have been living on said date.

S.C. Code Ann. § 35-1-408: South Carolina Uniform Securities Act

(e) If the Securities Commissioner determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied.

Because § 59-40-140(k) fails both parts of the Merchants test, the statute cannot be applied retroactively. Because § 59-40-140(k) cannot be applied retroactively, it does not create a basis for the Petitioners to receive an exemption from the 2013 property tax.

Conclusion

The material facts not in dispute demonstrate that the Petitioners did not qualify for any tax exemption for the 2013 Tax Year. The material facts in this case, coupled with applicable law, entitle the Department to summary judgment. Based on the foregoing, the Department urges the ALC to issue an Order granting summary judgment in the Department's favor. Further, to grant the Department such other and further relief as this Court deems just and proper.

The Securities Commissioner may reinstate a canceled or terminated registration, with or without hearing, and may make the registration **retroactive**.

S.C. Code Ann. § 62-2-806: Modification to achieve testator's tax objectives.

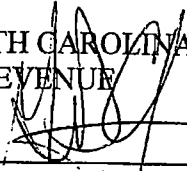
To achieve the testator's tax objectives, the personal representative or any interested person may file a summons and petition requesting the court, after notice and a hearing, to issue an order modifying the terms of a testator's will in a manner not contrary to the testator's probable intent. The court may provide that the modification has **retroactive** effect.

S.C. Code Ann. § 56-9-110: Retroactive application of chapter.

This chapter shall not apply with respect to any accident or judgment arising therefrom or violation of the motor vehicle laws of this State, occurring prior to January 1, 1953.

RESPECTFULLY SUBMITTED,

SOUTH CAROLINA DEPARTMENT
OF REVENUE

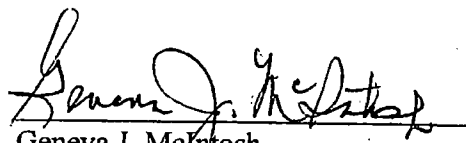


G. David Crocker (Bar No. 101023)
Counsel for Litigation
Sean G. Ryan (Bar No. 76585)
Managing Counsel for Litigation
Milton Kimpson (Bar No. 7917)
General Counsel for Litigation
300-A Outlet Pointe Blvd
PO Box 12265
Columbia, SC 29211-9979
803-898-5213 (Telephone)
803-896-0171 (Fax)
Attorneys for
South Carolina Department of Revenue

Columbia, South Carolina
July 8, 2015

PROOF OF SERVICE

I, Geneva J. McIntosh, do hereby certify that I have caused to be mailed postage pre-paid, a copy of the South Carolina Department of Revenue's Respondent's Motion for Summary Judgment re: Hock RH, LLC and York Preparatory Academy vs. South Carolina Department of Revenue, Docket No. 15-ALJ-17-0105-CC to The Honorable Deborah Brooks Durden, Administrative Law Court, Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, SC 29201 and Stephen M. Cox, Esquire, 140 East Main Street, Suite 420, Rock Hill, SC 29730, this 8th day of July 2015.


Geneva J. McIntosh

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Hock RH, LLC and York Preparatory Academy,)	Docket No: 15-ALJ-17-0105-CC
)	
)	
Petitioners,)	RESPONDENT'S RESPONSE TO
)	PETITIONERS' MOTION FOR
)	SUMMARY JUDGMENT
vs.)	
)	
South Carolina Department of Revenue,)	
)	
)	
Respondent.)	
_____)		

COMES NOW, the Respondent, South Carolina Department of Revenue (Department), and responds to Petitioners' Motion for Summary Judgment, and Memorandum in Support, filed on Friday, July 10, 2015, in the above captioned matter.

I. The General Assembly intended for S.C. Code Ann. § 59-40-140(K) (Supp. 2014) to operate prospectively.

In this case, the Petitioners argue that a 2014 Amendment to § 59-40-140 entitles them to an exemption from property tax for the 2013 tax year and therefore a refund of the property taxes paid that year. At the time the Petitioners applied for a property tax exemption the South Carolina Code did not exempt leased property. Therefore, the Department denied the Petitioners' application for a 2013 property tax exemption. In February 2014, the Petitioners paid property taxes for the 2013 tax year. In June 2014, the General Assembly amended § 59-40-140(K) to create an exemption for property leased by charter schools. The Petitioners then applied for a refund of the 2013 taxes, claiming the amended § 59-40-140(K) is curative in nature and therefore entitles them to

a refund. The Department disagrees and asserts that the Petitioners are not entitled to a refund of the property taxes paid by Petitioners in tax year 2013.

The crux of the Petitioners' argument is that the 2014 Amendment, although passed after the 2013 property tax year, should be applied to the 2013 tax year so they can receive a refund. The enactment or amendment to a statute carries the presumption that such is prospective in nature. "In the construction of statute, there is a presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision in the enactment or clear legislative intent to the contrary." Hyder v. Jones, 271 S.C. 85, 245 S.E.2d 123 (1978). Where additional tools of statutory construction are needed to determine the meaning of a statute, the plain text of the statute is to be analyzed to determine the General Assembly's intent. "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Kirven v. Central States Health and Life Co., of Omaha, 409 S.C. 30, 760 S.E.2d 794 (2014) (quoting Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 725 S.E.2d 693, 695 (2012) quoting Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). Despite the possible application of additional tools of statutory construction, there is a presumption against retroactivity. "Both federal and South Carolina courts employ a robust presumption against statutory retroactivity." Jenkins v. Meares, 302 S.C. 142, 146, 394 S.E.2d 317, 319 (1990). Further, South Carolina courts "... assume that statutes operate prospectively only, to govern future conduct and claims, and do not operate retrospectively, to reach conduct and claims arising before the statute's enactment." Id.

This presumption of prospective only application applies to the 2014 Amendment to § 59-40-140(K) and therefore the Petitioners do not qualify for a refund for 2013.

When a statute is clear and unambiguous, there is no need for a court to engage in painstaking construction to determine the General Assembly's intent. "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Miller v. Aiken, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005). The South Carolina Supreme Court's reasoning is firmly rooted in this doctrine and the Court further stated in Key Corporate Capital v. County of Beaufort, 373 S.C. 55, 644 S.E.2d 675 (2007):

If a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. *Id.* Moreover, "it is beyond this Court's power to effect a change in the statutes enacted by the Legislature." State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000)." (Emphasis added.)

Thus, when looking at the plain language of statutes, South Carolina courts can divine the statute's intention and apply it per the very words chosen by the General Assembly.

Section 59-40-140(K) states, "Charter schools are exempt from state and local taxation, except for sales tax, on their earnings and property whether owned or leased." The phrase "whether owned or leased" reflects an amendment added to the statute in June of 2014. Prior to June of 2014, § 59-40-140(J) stated "Charter schools are exempt from

all state and local taxation, except the sales tax, on their earnings and property.” The June of 2014 Amendment indicates the General Assembly’s intention to exempt charter schools from property tax, whether owned or leased. Prior to the Amendment, leased property was not included in the statute and therefore not exempt. Per the aforementioned case law, the General Assembly’s intent must be derived from the plain language of the statute. Here, The General Assembly amended the statute, because the General Assembly wished to make a change in the statute. Indeed, “it must not be presumed the Legislature did not intend a futile act, but rather intended its statutes to accomplish something.” Stuckey v. State Budget and Control Board, 339 S.C. 397, 529 S.E.2d 706 (2000). What the General Assembly intended to accomplish was exempt leased property by changing the statute to include such.

In June 2014, the General Assembly amended § 59-40-140, so that the statute now exempts property whether owned or leased. The statement “whether owned or leased”, is at issue here because the property at issue was leased by a charter school but not owned by that school in 2013 for 2013. Therefore, unless the exemption is applied retroactively, the Petitioners do not qualify for an exemption. The Petitioners paid property tax for the 2013 tax year. After the June 2014 Amendment, the Petitioners now seek a refund, claiming the amended § 59-40-140(K) retroactively applies to the 2013 tax year. Unfortunately for the Petitioners, case law runs contrary to their argument. As previously mentioned, “Both federal and South Carolina courts employ a robust presumption against statutory retroactivity.” Jenkins v. Meares, 302 S.C. 142, 146, 394 S.E.2d 317, 319 (1990).

The proactive intent of § 59-40-140(K) is supported by the presumption against retroactivity and the plain language of the statute itself. The plain language of the statute makes no indication that such statute is to be applied retroactively. Furthermore, there is ample evidence that the General Assembly could have written § 59-40-140(K) to apply retrospectively if that was truly what the General Assembly intended. For example, in § 59-40-140(L), the General Assembly requires the computation of funding to occur along a certain timeline, namely after the effective date of the statute.¹

To overcome the presumption against retroactivity, the General Assembly could have merely stated that § 59-40-140(K) applies to charter schools even before the effective date of the statute. It has not done so. The General Assembly's silence as to when charter schools' property, "whether leased or owned", is exempt from property tax can only mean what the plain language of the statute says. The plain meaning of the statute is for the property of charter schools, whether owned or leased to be exempt from property tax prospectively, from the time the Amendment was made in June of 2014.

II. The curative "general rule" analysis is superseded in relevance by the Merchants test.

The Petitioners claim the Amendment to § 59-40-140 is "curative in nature". The Petitioners assert that curative statutes exist merely to clarify existing law meaning "issues of retroactivity simply are not implicated" yet simultaneously argue "'curative statutes' [are] by their very nature, retroactive". (Petitioners' Memorandum in Support of Motion for Summary Judgment pg 6). To support their argument, the Petitioners rely

¹Section 59-40-140(L) states, in part: "Notwithstanding the above provisions of this section, this subsection applies to converted charter schools that converted into a charter school **after the effective date of this act.**" (Emphasis added.)

predominately on case law which originated outside of South Carolina, while failing to acknowledge applicable South Carolina case law. Indeed, the Petitioners identify only one South Carolina case to support their argument, Green v. City of Rock Hill, 149 S.C. 234, 147 S.E. 346 (1929).

The District Court of South Carolina gave an excellent summation of the Green case within the holding of Segars v. Gomez, 360 F. Supp. 50, 53-54 (D.S.C. 1972). The District Court stated:

[t]his was a class action brought against the city contesting the validity of a proposed contract to construct a water supply system. The petitioners based their argument on what is referred to in the decision as the "act of 1914," which established the commission form of government for Rock Hill. One section of the "act of 1914" provided that, upon the adoption of the commission form of government, the duties of the board of commissioners of public works would devolve upon the city council, and the board of commissioners of public works would thereby be abolished. However, this particular section of the "act of 1914" was omitted from the 1922 codification of the state statutes, and it was conceded that the effect of the failure of the codifiers to incorporate that part of the "act of 1914" in the Code of 1922 was to render that act inoperative after the effective date of the adoption of the Code. Upon this happenstance the petitioners based their claim that the Rock Hill city council was without authority to enter into a contract dealing with a water supply system. But during the pendency of that litigation, the General Assembly ratified several acts which "were intended to cure the inoperative status of the act of 1914, as amended, and were especially and expressly directed to the purpose of re-enacting such inoperative statutes, with retroactive effect, and of validating the acts of the city of Rock Hill taken during the period of time the statutes were so rendered inoperative." 147 S.E. at 352.

The South Carolina Supreme Court, hearing the case in its original jurisdiction, found that the validating acts passed in 1929 were "plainly curative and remedial in

character, and are clearly applicable to the pending controversy It is a well-settled general rule that the Legislature, by a curative or validating statute which is necessarily retrospective in character and retroactive in effect, can 'validate any act which it might originally have authorized.' [Citations omitted]. Obviously, the General Assembly possessed the same powers to re-enact, with retroactive effect, the Act of 1914, and the Act of 1921 amendatory thereof, that it had to enact the said statutes originally." 147 S.E. at 352. Thus the court held that, by virtue of the curative acts, the city council was vested with the authority conferred upon the board of commissioners of public works to contract for building waterworks.

Specifically, the Court in Green sought a remedy for discrepancies between acts of the General Assembly in 1914, 1921 and 1922, during which time the City of Rock Hill had entered into public works contracts. Viewing the actions of the City of Rock Hill through the lens of the February 8, 1929 Act, the Court stated:

An examination of these acts discloses that they were intended to cure the inoperative status of the act of 1914, as amended, and were especially and expressly directed to the purpose of re-enacting such inoperative statutes, with retroactive effect, and of validating the acts of the City of Rock Hill taken during the period of time the statutes were so rendered inoperative. The Acts of February 8, 1929, of which this court takes judicial notice, are plainly curative and remedial in character, and are clearly applicable to the pending controversy, in which no final judgment has been rendered. (Internal citation omitted.) It is a well-settled general rule that the Legislature, by a curative or validating statute which is necessarily retrospective in nature and remedial in effect, can "validate any act which it might originally have authorized." (Citations omitted.)

In Green, the Court's curative analysis is based upon earlier cases which date back to the 1880's². The Court sought to cure discrepancies in various acts after stipulation by the parties and judicial notice. The Court recognized that the General Assembly inadvertently failed to include parts of the 1914 Act. Therefore, it treated the later act as curing that inadvertent mistake and applied the statute as the General Assembly had always intended. This is wholly incompatible with, and inapplicable to, the case at hand. The Petitioners seek to have Green serve as the guiding light in this case. The Petitioners argue that the General Assembly intended § 59-40-140(K) to be curative in nature, thereby eliminating the need for any analysis of retroactivity. This reasoning fails for multiple reasons. First, the facts in Green are distinguishable from the present case. Also, the Petitioners give greater value to the title of Act 208 than the words of the statute itself. Lastly, because the facts of Green are inapplicable, the South Carolina Supreme Court holding in Merchants Mutual Insurance Company v. South Carolina Injury Fund, 277 S.C. 604, 291 S.E.2d 667 (1982), supersedes Green and is the applicable standard.

a. **The facts in Green are inapplicable to the present case.**

As previously noted, the facts and holding of Green are distinguishable from this case. Furthermore, the "general rule" regarding curative statutes is also inapplicable in this case. The Court in Green stated that, "It is a well settled general rule that the Legislature, by a curative or validating statute which is necessarily retrospective in nature

²Green references the following cases in support of the curative rule statement: State v Whitesides, 30 S.C. 579, 9 S.E. 661, 3 L.R.A. 777; State v. Neely, 30 S.C. 587, 9 S.E. 664, 3 L.R.A., 672; Hodge v. School District, 80 S.C. 518, 61 S.E. 1009; Dove v. Kirkland, 92 S.C. 313, 75 S.E. 503; Lucas v. Barringer, 120 S.C. 68, 112 S.E. 746.

and remedial in effect, can 'validate any act which it might originally have authorized.'" Green v. City of Rock Hill, 149 S.C. 234 (1929). Importantly, the Court states a statute is curative in nature if it is "necessarily retrospective in nature and remedial in effect". (Emphasis added). Applying this "remedial in effect" requirement to the present matter demonstrates why Green is inapplicable here. There is no language contained in the 2014 Amendment to § 59-40-140(K) that is necessarily retrospective in nature or remedial in effect. To the contrary, § 59-40-140(K) is absolutely silent as to any intention of retroactivity by the General Assembly. Therefore, the "general rule" that Petitioners assert Green created is inapplicable here, even if applied.

Further, a distinction must be made between what is curative and what is clarifying. The General Assembly can, and does, act to cure or clarify statutes. The Court in Green provides insight into the difference. Per Green, the General Assembly acts to cure when there is a defect in a statute. There is no evidence that a defect existed in § 59-40-140 that account for any of the amendments made to it since 1996. Therefore, there is no basis to hold that the amended § 59-40-140(K) is curative.

Section 59-40-140(K) was enacted in 2006. Subsequent to its enactment the General Assembly made several amendments to § 54-40-140 without making any amendment to subpart (K), the subpart at issue here. If the 2014 Amendment was truly curative as the Petitioners assert, the General Assembly certainly would have made such curative correction in one of its earlier amendments. The fact the General Assembly clearly addressed and amended § 59-40-140 on several occasions without altering subsection (K) demonstrates that the 2014 Amendment was not actually curative. Furthermore, the fact the General Assembly made amendments to § 59-40-140 without

altering subsection (K) also demonstrates that the 2014 was not simply a clarification but rather a substantive change to the law. See dissent in Goff v. Mills, 279 S.C. 382, 387, 308 S.E.2d 778, 781 (1983) recognizing that amendments to a statute after its enactment but prior to the amendment as issue means that amendment at issue was not merely a clarification but rather a change in the law. Goff v. Mills, 279 S.C. 382, 387, 308 S.E.2d 778, 781 (1983).

b. The unambiguous language of the statute must be given its plain and ordinary meaning without regard to the statute's title.

The Petitioners point to the title of Act 208 as a clear indication of the General Assembly's intent for § 59-40-140(K) to be curative in nature. The title includes the phrase, "... so as to clarify that property of charter schools exempt from such taxation includes owned or leased property." The Petitioners have not provided any precedent holding that the title of the Act outweighs the words of the statute itself. Much to the contrary, and as previously mentioned, the South Carolina Supreme Court has instead held:

If a statute's language is plain, unambiguous, and conveys a clear meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006). (internal quotes and citation omitted). Instead, the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Id. Moreover, "it is beyond this Court's power to effect a change in the statutes enacted by the Legislature." State v. Corey D., 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000)." (Emphasis added.)

A contention that the title of the Act holds more weight than the plain, unambiguous language of the statute is, at best, forced construction to expand the

statute's operation. S.C. Code Ann. § 12-37-210 (2000) provides "[a]ll real and personal property in this State . . . shall be subject to taxation" unless explicitly exempted. It is well settled that exemptions from taxing statutes exist through legislative grace, and a taxpayer asserting an exemption must bring itself squarely within the statute authorizing the exemption. Southern Weaving Co. v. Query, 206 S.C. 307, 313, 34 S.E.2d 51, 54 (1945). This construction means that the statutory language creating such exemptions will not be strained or liberally construed in the taxpayer's favor. Charleston County Aviation Authority v. Wasson, 277 S.C. 480, 289 S.E.2d 416 (1982). The present matter involves exempting privately held property from ad valorem property taxes. It is well established in South Carolina that exemptions of private property are strictly construed, because in such cases taxation is the rule and exemption is the exception. State v. Columbia, 115 S.C. 108, 104 S.E. 337 (1920). Pursuant to the foregoing the property at issue in this case is presumed to be taxable and not exempt. Moreover any statute addressing an exemption to the property at issue must be strictly construed. Section 59-40-140(K) is not to be strained or liberally construed in the Petitioners' favor. Petitioners' interpretation of § 59-40-140(K) requires a strained liberal construction that is not permissible in private property exemption cases. To hold that the title of an act including the phrase clarification means the amended statute applies retroactively when there is no indication of retroactive intent, no indication that the statute is remedial in nature, and no recognition of the dangers that retroactive application creates, is an impermissibly liberal application of the statute. Again, the General Assembly could have stated whether § 59-40-140(K) had any additional constraints. The General Assembly's ability to add such additional constraints is evidenced in § 59-40-

140(L). Because the statute's language is unambiguous, the General Assembly clearly meant for § 59-40-140(K) to be prospective in nature. This follows the Court's guidance that, "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Kirven v. Central States Health and Life Co., of Omaha, 409 S.C. 30 (2014) quoting Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). The text of the statute contains no indication that the statute applies retroactively or that the prior version of the act exempted leased property. The use of the word "clarify" in the Act's title does not make the exemption retroactive when the statute itself does not state such retroactivity.

c. **Merchants provides the applicable standard for this case.**

As noted the Department's Determination and Memorandum in Support for its Motion for Summary Judgment, the Merchants test is the applicable standard in this case. Merchants, supra. An application of the Merchants test requires no forced construction of the statute. The utilization of Merchants is the mere application of precedent, a previous holding from the South Carolina Supreme Court. The Petitioners' reliance on foreign case law and Green is misplaced. There is no need to examine the curative "general rule" of 1929, when the Court has supplied the test required to determine the retroactivity of a statute, as it has done with Merchants.

In Merchants, the Court applied a two-part test to determine if a statute should be applied retroactively:

The presumption is that statutory enactments are prospective absent clear legislative intent or specific provision to the contrary, however, a remedial or

procedural statute is generally held to be retroactive. Thus, two questions are raised. First, we must determine whether the amendment is remedial or procedural...The next question is whether there is clear legislative intent or specific provision indicating the statute shall be retroactive.

Pursuant to Merchants, a two-part test must be applied to determine whether § 59-40-140(K) applies retroactively. The first step requires determination of whether that statute is remedial or procedural. The second step looks to whether there is clear legislative intent or a specific provision indicating a retroactive application of the statute. A procedural statute "sets out a mode of procedure for a court to follow or prescribes a method of enforcing rights." Edwards v. State Law Enforcement Division, 395 S.C. 571, 720 S.E.2d 462 (2011). Section 59-40-140(K) does not prescribe a method of enforcing a right or set out a court procedure. Therefore, § 59-40-140(K) is not procedural in nature.

Because § 59-40-140(K) is not procedural, the question becomes whether it is remedial. Per Merchants, an extension of a right or a legislative grace, even with additional conditions that must be met before the right attaches, is not considered remedial. It is well established under both state and federal laws that exemptions are a matter of legislative grace rather than entitlement. Adams v. Burts, 245 S.C. 339, 140 S.E.2d 586 (1965); Fennell v. S.C. Tax Comm'n, 233 S.C. 43, 103 S.E.2d 424 (1958). Here, the statute only extends an exemption to an additional educational institution prospectively. Because § 59-40-140(K) extends a legislative grace to include an additional institution, pursuant to Merchants, § 59-40-140(K) is not remedial.

Looking to the plain language of the statute, it is clear § 59-40-140(K) is not meant to be remedial. The General Assembly enacted the South Carolina Charter School Act in 1996. Despite the various amendments to § 59-40-140(K), there is no language

contained therein that any of these amendments remediate prior versions of § 59-40-140(K). Prospectively exempting charter schools from property tax is not tantamount to a procedural alteration to the nature of charter schools, or their operation, in the state. Therefore, pursuant to part one of the two part test set forth in Merchants as applied, § 59-40-140(K) is not procedural or remedial and is not to be applied retroactively.

With regard to the second part of the Merchants test, there is no clear legislative intent or specific provision indicating the statute shall be retroactive. There is no indication the General Assembly intended for the exemption extended to charter schools in § 59-40-140(K) to be retroactive. Had the General Assembly intended the statute to be retroactive, it could have easily included language to that effect, as explained more fully in the Department's Memorandum in Support for its Motion for Summary Judgement. Throughout the South Carolina Code of Laws when the General Assembly intends for something to be retroactive, it plainly manifests that intention through the language of the statute. Therefore, pursuant to part two of the two part test set forth in Merchants as applied, § 59-40-140(K) is not to be applied retroactively.

III. The outcome Petitioners seek will cause harmful effects.

Applying the 2014 Amendment retroactively creates logistical and financial difficulties that could devastate the counties of South Carolina. Moreover as the Supreme Court recognized in TNS Mills, Inc. v. South Carolina Dep't of Revenue, the property tax scheme in South Carolina cannot properly function when retroactive exemptions are allowed. In TNS Mills the Supreme Court stated:

Furthermore, an interpretation allowing retroactive exemptions would not fit with the procedural scheme set out by the General Assembly. The Code requires the

Department to make annual determinations concerning exemptions and to notify the appropriate county officials of what property was exempted from taxation by June first. S.C.Code Ann. § 12-4-710 (Supp. 1992).

The interpretation advanced by TNS Mills would negate the purpose of notifying county officials by June first because the information given them would be worthless; the amount of exempted property, would change every time the Department granted a retroactive exemption. The plain language of these Code sections, when read together, show the Legislature intended to set clear deadlines for applying for exemptions as part of an overall plan to enable counties and school districts to plan budgets for each fiscal year. Any interpretation allowing the Department to grant exemptions after the deadline would negate the benefit of this plan. TNS Mills, Inc. v. S. Carolina Dep't of Revenue, 331 S.C. 611, 620-21, 503 S.E.2d 471, 476 (1998)

Similarly in the present matter if this Court applies the 2014 Amendment to § 59-40-140(f) retroactively it has the same impact described in TNS Mills. The counties of South Carolina completed their past budgets including property tax from properties only leased and not owned by charter schools. The counties did this because property leased to charter schools was not exempt from property taxes at the time they determined which properties would be subject to taxation. Under Petitioners' theory of the case those counties now must refund those past property taxes because of the 2014 Amendment. It is unclear how far back the Petitioners assert the 2014 Amendment should be applied. Section 59-40-140(f) dates back to 2006 therefore the Petitioners' argument potentially allows claims for refunds for property taxes for the past eight years. Forcing counties to retroactively issue refunds for the past eight years when those funds have

already been budgeted and spent could have a devastating impact on the counties. Our General Assembly could not have intended such potential devastation. In light of the devastating consequences and logistical difficulties that retroactive application of the 2014 Amendment creates, the General Assembly certainly would have been clear in stating that the Amendment applied retroactively if that was what they truly intended. On the other hand, if the 2014 Amendment is applied prospectively the property tax scheme of this State is not negated and the potentially devastating impact created by Petitioners' position is avoided.

Utilizing a hypothetical which is consistent with Petitioners' theory of the case, but reversing the impact demonstrates the inequity in the Petitioners' argument. In this hypothetical the Department and the counties had been interpreting property of the charter schools to include leased property and allowing those charter schools to receive property tax exemptions for such leased property since the § 59-40-140's inception. Then, in 2014 the General Assembly amended the statute to state that property of charter schools does not include leased property. Under Petitioners' theory, the Department and the County would be entitled to retroactively pursue those charter schools for past years' property taxes. Those charter schools now facing massive property tax bills for past years would be devastated. The inequity of the holding those taxpayers liable for taxes previously considered exempt demonstrates why the Petitioners' theory cannot prevail. The Department ventures to say the Petitioners would not be making the arguments they are now if this hypothetical were the reality before the Court.

IV. Petitioners misunderstand the difference between owned and leased property as well as the significance of this difference for property taxes.

Petitioners' Motion asserts that the term property when used in S.C. Code Ann. § 12-37-220 (2014) and § 54-140-140(K) inherently includes property that is leased and not limited to property that is owned by the taxpayer. In fact the Petitioners assert that such distinction would be "meaningless" because it is the lessee that pays the property tax expense. (Petitioners' Motion p.3). Contrary to the Petitioners' assertions the term property when used in § 12-37-220 and § 54-40-140 does not include leased property and such distinction is far from meaningless.

Analysis of § 12-37-220 clearly demonstrates the flaw in the Petitioners' argument. Sections 12-37-220(B)16, 18, 19, 21, 25, 26, 27, 28, 29, 37, 45, 46, and 49 all explicitly address property that is leased rather than owned. Section 12-37-220(18) for example exempts "real property leased on a nonprofit basis, to a state agency, county, municipality or other political subdivision so long as it is used for a general public purpose; provided, however, this exemption shall not apply to property used for office space or warehousing." All property of the state, counties, municipalities and other political subdivisions is already exempt pursuant to § 12-37-220(A)(1). Therefore, if the Petitioners' assertions the "property" includes property that is both owned or leased is correct, any property leased to the state, counties, municipalities and other political subdivisions is already exempt. There would have been no need for the General Assembly to enact § 12-37-220(18). In fact, the Petitioners' theory would render § 12-37-220 (18) superfluous and unnecessary.

Similarly § 12-37-220(19) exempts:

all property owned by volunteer fire departments and rescue squads used exclusively for the purposes of these departments and squads. Property leased to a department or squad by an entity itself exempt from property tax is exempt in the same manner that property owned by these departments and squads is exempt;

Here again if the Petitioners' assertions were correct, the General Assembly would not have needed any of the second sentence of this subsection. Property of the fire department, regardless of owned or leased would have been exempt. Under Petitioners' theory the second sentence is superfluous and unnecessary. In interpreting statutes, this Court must presume the Legislature did not intend a futile act, but rather intended its statutes to accomplish something. TNS Mills, Inc. v. South Carolina Dept. of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998); State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964). Because the Petitioners' theory would render numerous sections of § 12-37-220 superfluous and unnecessary, Petitioners' theory is clearly incorrect. On the other hand when leased property is recognized as being different from owned property the impermissible results incurred under Plaintiffs' theory are avoided.

Contrary to the Petitioners' assertions, as explained above leased property is not the same as owned property in terms of property taxes. When the General Assembly seeks to exempt leased property it clearly states such as it did in the numerous subsections of § 12-37-220 cited above. Because "property" when used in exemption statutes does not inherently include leased property, the General Assembly's 2014 Amendment to § 59-40-140 to include property leased by charter schools constituted a

substantive change to the law. Because the 2014 Amendment constitutes a substantive change to the law, such change cannot be applied retroactively unless the requirements of Merchants are satisfied. As explained more fully herein those requirements are not satisfied in this matter and the 2014 Amendment cannot be applied retroactively.

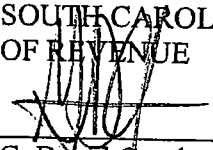
V. Conclusion

At issue in this case is the presumption against retroactivity. Retroactivity invariably causes damaging and unintended results, which is why courts have such high standards for overcoming presumptions against it. The South Carolina Supreme Court handed down a test for determining whether a statute is to be applied retroactively in Merchants. The Merchants test is the applicable standard in this case. The Petitioners seek any statutory construction that would entitle them to a refund. The Petitioners claim § 59-40-140(K) is curative in nature. The Petitioners cite Green as the basis of their claim that the presence of an amended statute is proof § 59-40-140 was defective before the June 2014 Amendment. Yet they offer nothing to substantiate a claim that the General Assembly sought to cure a defect in the statute. Likewise, the Petitioners claim § 59-40-140(K) is a clarification of law, entitling them to a refund without a determination of retroactivity. This analysis fails to establish whether the clarification triggers a substantive, material change in the law, which would require a determination of retroactivity. Instead, the Petitioners offer the title of Act 208 as proof of the General Assembly's intention for an exemption to be applied to the Petitioners alone. The Petitioners' ongoing misunderstanding of the difference in tax liabilities between owned and leased premises is the foundation of this action. Indeed, the Petitioners have offered nothing, except their desire for a refund, to show that the General Assembly meant

anything other than the prospective application of § 59-40-140(K). Application of the Petitioners' analysis of the General Assembly's intentions "would lead to an absurd result that could not have been intended by the Legislature." Kennedy v. South Carolina Retirement System. 345 S.C. 339, 549 S.E.2d 243 (2001).

For the foregoing reasons, the Respondent respectfully requests that this court grant its motion for Summary Judgment.

RESPECTFULLY SUBMITTED,
SOUTH CAROLINA DEPARTMENT
OF REVENUE


G. David Crocker (Bar No. 101023)

Counsel for Litigation

Sean G. Ryan (Bar No. 76585)

Managing Counsel for Litigation

Milton Kimpson (Bar No. 7917)

General Counsel for Litigation

300-A Outlet Pointe Blvd

PO Box 12265

Columbia, SC 29211-9979

803-898-5213 (Telephone)

803-896-0171 (Fax)

Attorneys for

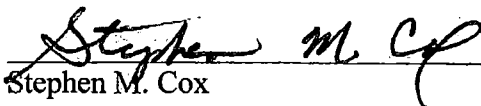
South Carolina Department of Revenue

Columbia, South Carolina
August 3, 2015

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by Appellants and Respondent and not any other material.

March 9, 2016



Stephen M. Cox
S.C. Bar No. 12263
ROBINSON, BRADSHAW & HINSON, P.A.
140 East Main Street, Suite 420
Rock Hill, South Carolina 29730
(803) 325-2900
Attorneys for Appellants

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