NEXSEN|PRUET

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Member
Admitted in SC

September 25, 2014

BY HAND DELIVERY

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

Re: William J. Montgomery v. Spartanburg County Assessor
Docket No. 13-ALJ-17-0104-CC

Dear Ms. Kitchings:

Enclosed for filing with the Court please find the following:

- Original and six copies of the Motion for Leave to File Amicus Curiae Brief of the South Carolina Farm Bureau Federation, with Proof of Service;
- The South Carolina Farm Bureau Federation Certificate of Counsel;
- Original and 14 copies of the Amicus Curiae Brief of the South Carolina Farm Bureau, with Proof of Service; and
- $25 check for the filing fee.

Please also find an extra copy of each of the above items to be clocked and returned with our courier.

Very truly yours,

Burnet R. Maybank, III

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden
Administrative Law Judge

Docket No. 13-ALJ-17-0104-CC

William J. Montgomery,.....Respondent,

v.

Spartanburg County Assessor,.....Appellant.

AMICUS CURIAE BRIEF ON BEHALF OF THE SOUTH CAROLINA FARM BUREAU FEDERATION

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I. INTEREST OF THE AMICUS

The South Carolina Farm Bureau Federation (the "Federation") is a tax-exempt organization under Section 501(c)(5) of the Internal Revenue Code of 1986 organized to further the common interests of farmers and the farming industry in South Carolina. The Federation is a leading advocacy organization for farmers in the state, while advocating for a predictable property tax regime administered fairly and equitably across all 46 South Carolina counties. Virtually all farmers involved with the Federation take advantage of the agricultural use exemption. A shift in the interpretation of "agricultural real property" for purposes of S.C. Code Ann. § 12-43-220 would cause irreparable harm to members of the Federation, and could significantly affect the viability of members' business models in light of the added tax burden. The Federation has a vital interest in ensuring, on behalf of its members, that, consistent with statutory construction and prior practice, buildings and improvements on agricultural use property are not separately valued for property tax assessment purposes.

II. STATEMENT OF ISSUES UNDER APPEAL

Whether counties have the power to segregate from the stipulated agricultural real property tax assessment and separately value certain agricultural real property.

III. ARGUMENT

A. General

To depersonalize the issue consider the following. Many farms require irrigation. A famer will build wells and may construct miles of concrete irrigation piping. The wells and the piping (which is typically covered by dirt) are considered real property. Are the

wells and the piping included in the agricultural real property tax assessment? Or can the county separately value the cost of the well and the piping (which would be based on a cost approach) and send the farmer a separate tax bill for it?

Agricultural real property is taxed in South Carolina for property tax purposes pursuant to a Constitutional provision, several statutes and a Department of Revenue (the "DOR") Regulation.

S.C. Const. art X, Section I(4) provides that the "Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to (A) four percent of its value for such purposes." This Constitutional provision clearly includes buildings such as barns and the like. (Subsection (1) refers to "All real . . . property owned by or leased to manufacturers," and Subsection (2) includes "All real . . . property owned by or leased to companies primarily engaged in transportation." Obviously "real property" includes their buildings.)

S.C. Code Ann. § 12-43-220(d)(1) provides the assessment ratio and valuation of "Agricultural real property." Subsection (d)(1) accordingly states: "*Agricultural real property* which is actually used for such agricultural purposes shall be taxed on an assessment equal to: (1) Four percent of its fair market value for such agricultural purposes...." (Emphasis added.)

Subsection (d)(2) provides the statutory fair market value for agricultural real property. The statute provides a complex formulae. For tax years 1988-91, the formulae consisted of valuations for the base year 1981 and multiplying it by a percentage factor. The percentage factor was derived from the USDA "publication 'AGRICULTURAL LAND VALUES AND MARKETS', specifically from Table 1 – Farm Real Estate Values: Indexes of the average value per acre of *land and buildings* . . .' as listed for this

state [South Carolina]." Section 12-43-220(B)(ii). (Emphasis added.) Note that the USDA publishes numerous Tables. Table 1 included "Average per acre value of *farmland and buildings*, by State." On January 1, 1991, the average in South Carolina was $948. Table 5 included "average per acre value of *farmland* by State" (i.e., not "farmland and buildings"). On January 1, 1991, the average in South Carolina was $728. The General Assembly explicitly picked Table 1, farmland and buildings, with the higher value.

This fair market value was frozen for 1991 and subsequent years. In essence the General Assembly took 1981 agricultural real property values, increased them by the USDA values for South Carolina farm lands and buildings, and froze them for 1991 through the current tax year.

It is clear that section 12-43-220 provides the statutory method for determining FMV of agricultural real property, see *e.g.*, subsection (B)(4) dealing with rollback taxes, "When real property which is in agricultural use and is being *valued, assessed,* and *taxed* under the provisions of this article . . .." (Emphasis added.)

The next relevant section is section 12-43-230(a), which states:

> (a) For the purposes of this article, unless otherwise required by the context, the words "agricultural real property" shall mean any tract of real property which is used to raise, harvest or *store* crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture. In the event at least fifty percent of a real property tract shall qualify as "agricultural real property", the entire tract shall be so classified, provided no other business for profit is being operated thereon.

> The department shall provide by regulation for a more detailed definition of "agricultural real property" consistent with the general definition set forth in this section, to be used by county assessors in determining entitlement to special assessment under this article.

"Agricultural real property" clearly includes buildings and structures including barns and the like to "harvest or store crops," and to prepare "the products raised thereon."

In addition "real property" is defined in section 12-37-10(1):

> (1) "Real property" shall mean not only land, city, town and village lots but also *all structures* and other things therein contained or annexed or attached thereto. (Emphasis added.)

See also DOR Reg. 117-1700.1. Section 12-43-230(a) provides that "[t]he department shall provide by regulation for a more detailed definition of 'agricultural real property' ... to be used by county assessors in determining entitlement to special assessment under this article." The DOR did so in Regulation 117-1780.1. This Regulation defines "agricultural real property." It states:

> Agricultural Real Property, as that term is used in 12-43-220(d), 12-43-230, and 12-43-232 of the South Carolina Code of Laws means a tract of real property which is used for agricultural purposes. Real property must meet the requirements for agricultural real property of Code Section 12-43-220-(d), 12-43-230 and 12-43-232 in order to be classified as agricultural real property. *Additionally, the term Agricultural Real Property shall not include any property used as the residence of the owner or others.* (Emphasis added.)

The Regulation obviously includes barns and other structures as the only building which it excludes from the definition of "agricultural real property" is any property used as a residence.

B. May a County Exclude Certain Agricultural Real Property from the Agricultural Real Property Tax Assessment?

The county and the property owner are in agreement that the structures at issue in this appeal are properly classified as agricultural real property. The sole issue, therefore, is whether the county has the right to exclude structures and specially value them, as not being part of agricultural real property.

What code section authorizes a county to value portions of agricultural real property outside of (or disregarding) the agricultural real property valuation statute, code section 12-43-220? And if the county has such right, what code section authorizes them to select buildings for the special FMV? Can a county also segregate, *e.g.*, wells and irrigation piping and separately assess?

Section 12-43-220 provides no support. The DOR Regulation provides such authority but only for residences (and not barns, bins, dams, agricultural piping and the like.) No DOR publication so states. In fact, the only DOR publication on point, South Carolina Property Tax (2014) states to the contrary. Section 222 plainly states:

> § 222. **Valuation of Agricultural Real Property.** "Fair market value for agricultural purposes" is a "*special valuation that applies to real property that qualifies as "agricultural real property.*" (Emphasis in original and added.)

Indeed, even the DOR's Amicus brief (pg. 9) in this Appeal plainly states:

> As noted above, agricultural real property is composed of different components, namely, the dirt and then any structures located on the dirt as defined in § 12-43-230(a) and Regulation 117-1780.1 which classify the property. *Once the property is classified as agricultural real property, it then must be valued as the same.* (Emphasis added.)

If the Assessor has the right to exclude structures from the agricultural real property assessment, why would the DOR have excluded residences in the Regulation? According to the County, the County already had the authority to separately value the residence (and any other structures) and add it to the agricultural real property assessment. So why would the DOR regulation give counties the power they already had?

The County's argument heavily relies on the affidavit of DOR employee Sandy Houck. Houck's affidavit states in part:

> 8. [sic] the Department has interpreted the constitutional provisions and statutes governing agricultural real property valuation as requiring county assessors to determine the fair market value of any structures located on the agricultural real property, utilizing valuation methods applicable to structures located on all real property, including but [sic] limited to § 12-37-930. The fair market value of any structures comprises the second component of the total taxable value.
>
> 9. Thus, under the Department's interpretation, the taxable value of agricultural real property is to be determined by valuing both the agricultural land, pursuant to the methods outline in § 12-43-220(d)(2)(A), and any structures located on the agricultural land. Under the Department's interpretation, the value of any structures located on the agricultural land is added to the value of the agricultural land in order to determine the total taxable value of the agricultural real property.
>
> 10. Further, this position has been the Department's consistent interpretation since the statutory enactment of agricultural use values by Act 208 in 1975, as expanded by Act 618 in 1976.

The affidavit concludes that "this position has been the Department's consistent interpretation since ... 1975...." And where is this interpretation found? Houck's affidavit attached no DOR documents in support of this position. Not one!

This interpretation is not stated in the DOR's expansive Regulation except for residences. It is nowhere found in the DOR's South Carolina Property Tax (2014) which devotes 2.5 pages to agricultural real property, *see* pp. 13-16, attached as **Exhibit A**. It is not found in any DOR Policy Document, and the DOR has issued some 95 Property Tax Revenue Procedures, Information Letters and the like, *see* **Exhibit B**. Neither Appellant nor the DOR's Amicus Brief cites a single DOR pronouncement to support Houck's affidavit. Not one!

Is it a classic agency "secret rule?"

C. The Department's Purported "Long-Standing Administrative Policy" Directly Contravenes South Carolina Law.

Houck's "naked" affidavit (with no DOR official pronouncements in support) asserts that it has been the DOR's long-standing position that the County must separately value barns and the like. The County then summarily insists that this policy is entitled to deference by this Court. While, as a general matter, the construction of a statute by an agency will be accorded deference, "where the terms of the statute are clear, the court must apply those terms according to their literal meaning ... [and] *the court will reject the agency's interpretation where it is specifically contrary to the statute or regulation.*" *Comm'rs of Pub. Works v. S.C. Dep't of Health & Envtl. Control*, 372 S.C. 351, 359, 641 S.E.2d 763, 767 (Ct. App. 2007) (emphasis added); *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) ("[W]here, as here, the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation.").

That is because "the final responsibility for the interpretation of the law rests with the courts":

> At most, administrative practice is a weight in the scale, to be considered, but not to be inevitably followed. While we

> are of course bound to weigh seriously such rulings, they are never conclusive.

Stone Mfg. Co. v. S.C. Empl't Sec. Comm'n, 219 S.C. 239, 249, 64 S.E.2d 644, 648 (1951) (internal quotations omitted).

In any event, the level of deference afforded to an agency varies:

> The level of deference that should be accorded an agency's interpretation of a statute often depends on its form – for example, whether the interpretation is a binding norm or a general statement of policy. When the agency's interpretation is validly promulgated as a regulation, it has the force and effect of law . . . [W]hether an agency's action or statement amounts to a rule which must be formally enacted as a regulation – or a general policy statement – which does not have to be enacted as a regulation – depends on whether the action or statement establishes a – "binding norm."
>
> ****
>
> When an agency's interpretation is not a binding norm, but simply a general policy statement, it is less clear what deference if any it should be given.

S.C. Dep't of Motor Vehicles v. Serge Lajueness, No. 06-ALJ-21-0270-AP, (S.C. Admin. L.J. Div. Mar. 4, 2008) (internal citations and quotations omitted); see also *S.C. Administrative Practice & Procedure*, Ch. I, pp. 15-16 (Randolph R. Lowell ed., 2d ed. 2008).

In fact, the South Carolina Supreme Court has in the past refused to afford any deference to the Department of Revenue's administrative policy when such policy was contrary to state law. In *Bass v. State*, the Department had issued on multiple occasions pro-taxpayer administrative interpretations of a statute, *Bass v. State*, 307 S.C. 113, 414 S.E.2d 110 (1992), *cert. granted, judgment vacated on other grounds by Bass v. South Carolina*, 509 U.S. 916 (1993) *and abrogated by Harper v. Va. Dep't of Taxation*, 509

U.S. 86 (1993). Refusing to follow the Department's longstanding policy, the court reasoned:

> While we agree...that it is very unfortunate the Tax Commission has instilled false hopes by advising persons that there is a three year statute of limitations ..., we are not bound by the Tax Commission's misinterpretation of [the statute]. Indeed, in light of our prior case law, we are obligated to correct this erroneous interpretation of [the statute].

Bass, 307 S.C. at 118, 414 S.E.2d at 113.

Here, the Department's purported unwritten, "long-standing administrative policy" is contrary to the plain language of the various agricultural statutes and the DOR's own publication. South Carolina courts have long held that "in construing a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *State v. Leopard*, 349 S.C. 467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002).

While a Court generally gives deference to an Agency's interpretation of a statute or regulation, *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 581 S.E. 2d 836 (2003), neither the county nor DOR in their Amicus brief cites any statute or regulation in support of the rule. "Secret" rules asserted by agency staff which have not been promulgated in regulations or binding policy documents are entitled to little, if any, deference. *See* S.C. Tax Comm'n Dec. 93-78 (rejecting taxpayer's use of longstanding agency interpretation stating that, "we do not believe there are any generally accepted consolidation rules which exist if they are not codified" (emphasis added); S.C. Tax Comm'n Dec. 94-90 (likewise rejecting the taxpayer's "longstanding administrative policy" argument, stating "it is important to note that there are no Commission decisions or Department approved policy documents which support that [Department] decision"); *Seigfried v. S.C. Dep't of*

Rev., 2003 WL 24004736 (S.C. Admin. L.J. Div. May 30, 2003); *S.C. Dep't of Motor Vehicles v. Lajuenesse*, 2008 WL 1740063 (S.C. Admin. L.J. Div. 2008); *Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 363 S.C. 67, 610 S.E.2d 482 (2005); and *Clarendon Cnty. Mem. Hosp. v. S.C. Dep't of Health & Envtl. Control*, 2006 WL 1430090 (S.C. Admin. L.J. Div. May 3, 2006).

And if this was the DOR's "consistent interpretation," wouldn't the DOR have felt compelled to issue a Regulation or Policy Document after the issuance of *three* prior ALC opinions to the contrary?!

The matter was apparently first before the ALC – in 1998! The ALC ruled in 1998 that the Assessor had no legal authority to separately value a farm office, *Rabbit Point Farm Limited v. Charleston County Assessor*, 1998 WL 85460 (S.C. Admin. L.J. Div. Feb. 10, 1998). The ALC ruled to the same effect in 2011 in *Smith v. Clarendon County Assessor*, 2011 WL 7119293 (S.C. Admin. L.J. Div. Sept. 15, 2011), holding that "the structures on Petitioner's real estate should be classified as 'agricultural real property.'" And Judge Carolyn Matthews similarly found in *Dotsy, LLC v. Greenwood County Assessor*, 13-ALJ-17-0061-CC (S.C. Admin. L.J. Div. Mar. 24, 2014) that the value of structures on agricultural real property were included in the property's agricultural use valuation.

Given that ALC Judges Chief Judge Marvin Kittrell (*Rabbit Point*), Shirley Robinson (*Smith*), and Carolyn Matthews (*Dotsy, LLC*) all found contrary to the DOR's purported 30 year "consistent position" wouldn't it have made sense for the DOR to have issued a Regulation, Policy Document (*e.g.*, Revenue Ruling), or Publication on the subject? The DOR updates its South Carolina Property Tax publication each year. The

2014 pages are attached as Exhibit A. Wouldn't the DOR have felt the need to address the issue in light of three ALC decisions if they took a contrary position?

D. Ambiguities in Tax Statutes are Resolved against the Government

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

The general rule is that tax credits and exemptions are a matter of legislative grace and are strictly construed against the taxpayer (and it is important to note this case does not involve a tax credit or exemption). *M. Lowenstein & Sons, Inc. v. S.C. Tax Comm'n*, 277 S.C. 561, 290 S.E.2d 812 (1982). However, as the Supreme Court recently stated in *CFRE v. Greenville County Assessor*:

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

395 S.C. 67, 74-5, 716 S.E.2d 877, 881 (2011) (*citing State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008)).

Indeed, in its Technical Advice Memorandum (TAM) 89-14, the DOR stated this rule of statutory construction with regards to the Infrastructure Tax Credit:

> It is ambiguous whether the language "any one infrastructure project" means that only one project may qualify for the credit per year or whether the credit is merely limited to 50% or $10,000 of expenses paid. Many South Carolina cases have held that tax statutes are not to be extended beyond the clear import of their language, *and any substantial doubt as to its meaning is to be resolved in favor of the taxpayer.* (*Southeastern Fire Ins. Co. v. South Carolina Tax Commission,* 253 S.C. 407, 171 S.E.2d 355 (1969); *Deering Milliken, Inc. v. South Carolina Tax Commission,* 257 S.C. 185, 184 S.E.2d 711 (1971)).
>
> *It therefore appears that the appropriate interpretation of this statute should be the one most favorable to the taxpayer.* Section 12-7-1250(A) should thus be construed to mean that a taxpayer is not limited to the number of projects which will qualify for the credit. (Emphasis added.)

IV. CONCLUSION

The Constitutional provision, the statutes, the DOR Regulation, and the DOR publication, South Carolina Property Tax (2014) are all to the same effect: "agricultural real property" is valued according to S.C. Code § 12-43-220(a).

The County has repeatedly conceded that the structures involved in this appeal are "agricultural real property."

The FMV of the subject "agricultural real property" is not at issue.

The only issue is whether the county has the right to exclude certain agricultural real property from the stipulated agricultural real property assessment and separately value it. No statute or Regulation give the county this right. And if the County had this right, why would the DOR have excluded residences in their regulation?

Respectfully submitted,

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Date: September 25, 2014

THE STATE OF SOUTH CAROLINA

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William J. Montgomery,.....Respondent,

v.

Spartanburg County Assessor,.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Amicus Curiae Brief filed by the South Carolina Farm Bureau Federation complies with Rule 211(b), SCACR.

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Columbia, South Carolina
September 25 2014

EXHIBIT A

South Carolina Property Tax

2014 Edition

The Honorable Nikki R. Haley, Governor
William M. Blume Jr., Director

§ 221.9. Valuation of Golf Courses. The valuation of golf course real property for property tax purposes does not include the value of tangible and intangible personal property, or any income or expense derived from such property, whether directly or indirectly. The term "intangible personal property" is as defined in Article X, Section 3(j) of the South Carolina Constitution. Further, if a capitalized income approach is used to determine the value of the golf course, the taxpayer is required to provide income and expense data for the entire golf operation, golf cart rentals, food and beverage service and pro shop. SC Code §12-43-365.

§ 221.10. Valuation of Time Share Units. For purposes of property taxation, a time share unit operating under a vacation time sharing ownership plan, as defined in SC Code §27-32-10(7) (purchaser receives an ownership interest as well as right of use), must be valued as if the unit were owned by a single owner. However, a time share unit operating under a vacation time sharing lease plan, as defined in SC Code §27-32-10(8) (purchaser receives right of use but not ownership interest), may be valued as other income producing investment property is valued.

§ 221.11. Valuation of Low Income Housing Property. SC Code §12-37-225 provides that federal or state income tax credits for low income housing may not be taken into consideration with respect to the valuation of real property or in determining the fair market value of real property for property tax purposes. Further, the income approach must be the method of valuation used for properties that have deed restrictions in effect that promote or provide for low income housing. "Low income housing" means housing intended for occupancy by households with incomes not exceeding 80% of area median income, adjusted for household size, as determined by the United States Department of Housing and Urban Development. *See also* SC Code §31-23-40(F) (valuation of real property held by a community land trust).

§ 222. Valuation of Agricultural Real Property. "Fair market value for agricultural purposes" is a special valuation that applies to real property that qualifies as "agricultural real property." The special valuation is governed by statute and by Department regulations.

§ 222.1. Method of Valuation. SC Code §12-43-220(d)(2)(A) defines "fair market value for agricultural purposes" as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or typical net income from timber and non-timber crops.

The fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years. SC Code §12-43-220(d)(2)(B)(i). Values derived before 1992 and based on the soil capacity of the various regions of the state are provided in Department regulations for current use. See 10 SC Regs. 117-1780.1 and 117-1840.2(c).

When the use of agricultural real property changes, the property is subject to "roll back taxes" that cause a recapture of the difference in tax on the property as agricultural real property and the tax that would have been assessed if the property had not qualified as agricultural real property. The value of standing timber is not included in calculating the roll back recapture. SC Code §12-43-220(d)(4). The South Carolina Real Property Valuation Reform Act has limited application. SC Code §12-37-3170. See §212.3 above.

§ 222.2. Definition of Agricultural Real Property. To qualify as agricultural real property, real property must be *"actually used* for agricultural purposes." SC Code §12-43-220(d). See also SC Commission Decision 92-77. This means that the property must be currently used for bona fide agricultural purposes. Intended or future use is not determinative. 10 SC Regs. 117-1780.1; SC Commission Decision 92-77.

Agricultural real property is defined as "any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means." SC Code §12-43-230(a). Agricultural real property also includes a dockside facility whose primary use is the landing and processing of seafood. SC Code §12-43-220(d)(5).

10 SC Regs. 117-1780.1 further defines agricultural real property. It provides 6 non-exclusive factors to be considered by county assessors in determining whether the tract in question is bona fide agricultural real property: (1) the nature of the terrain; (2) the density of the marketable product (timber, etc.) on the land; (3) the past usage of the land; (4) the economic merchantability of the agricultural product; (5) the use or not of recognized care, cultivation, harvesting and like practices applicable to the product involved, and any implemented plans thereof; and (6) the business or occupation of the landowner or lessee, provided that purchase for investment purposes does not disqualify a tract if it is actually used for agricultural purposes.

The following uses of real property do not qualify as agricultural: (1) recreation; (2) hunting clubs; (3) fishing clubs; (4) vacant land lying dormant; or (5) any other similar use. *Id.*

It is often difficult to ascertain whether a particular parcel of land is being used for a bona fide agricultural purpose. In such instances, no single factor is determinative of the issue. Rather, all the factors listed in Regulation 117-1780.1 and all relevant facts must be viewed together to determine the classification. *Id.*

Except as provided in SC Code §12-43-232 (discussed in §222.3 below), the size of a parcel can be considered in conjunction with other factors in reaching an overall determination. The location of property in a residential subdivision or an area zoned for residential use is also a factor. SC Tax Commission Decision 93-37.

In cases in which the real property is committed to more than one use, one use being agricultural and the other use or uses being unrelated to agriculture, the agricultural activity must comprise the most significant use of the property for the property to be classified as agricultural real property. 10 SC Regs. 117-1780.1.

Agricultural real property may be used for agritourism, provided agritourism is supplemental and incidental to a primary use for agricultural purposes. SC Code §12-43-233. A lengthy, non-exclusive list of agritourism uses set forth in the statute includes such diverse uses as wineries, educational tours, on-farm food sales, farm vacations, birdwatching, and crop art.

The term "agricultural real property" includes real property used to provide free housing for farm laborers provided such housing is located on a tract of land that qualifies as agricultural real property. SC Code §12-43-230(a).

§ 222.3. Additional Requirements for Agricultural Real Property. SC Code §12-43-232 provides additional requirements that must be met in order for real property to qualify as agricultural real property. The requirements are as follows:

A. *Timberland:* If the tract is used to grow timber, the tract must be 5 acres or more. Tracts of timberland of fewer than 5 acres qualify if they are contiguous to, or are under the same management system as, a tract of timberland that meets the minimum acreage requirement. Tracts of timberland of fewer than 5 acres are eligible to be agricultural real property if they are owned in combination with other tracts of agricultural real property that are not timberlands but qualify as agricultural real property. Tracts of timberland must be devoted actively to growing trees for commercial use.

B. *Christmas Trees:* A tract devoted to growing Christmas trees must be 5 acres or more. If the tract is fewer than 5 acres, it will qualify as agricultural real property if at least $1,000 of gross farm income was reported for at least 3 of the last 5 tax years.

C. *Other Acreage:* All other tracts must be at least 10 acres or more. Tracts of fewer than 10 acres qualify as agricultural real property if they are contiguous to other tracts that total at least 10 acres when combined. Tracts that do not meet this requirement will qualify if at least $1,000 of gross farm income was reported for at least 3 of the last 5 tax years.

D. *New Ownership:* A new owner may qualify a nontimberland tract of fewer than 10 acres if he earns at least $1,000 of gross farm income in at least 3 of the first 5 years of ownership. If the new owner fails this requirement, the tract is not considered agricultural real property and is subject to the rollback tax.

E. *Grandfather Clause.* If neither the acreage nor the income requirements are met, the property will qualify as agricultural real property if the current owner or an immediate family member owned the property for at least the 10 years ending January 1, 1994, and the property was classified as agricultural real property for property tax year 1994. Such property must continue to be classified as agricultural real property until the property is applied to some other use or until the property is transferred to someone other than an immediate family member, whichever occurs first. "Immediate family" is defined in SC Code §12-43-232(3)(e).

F. *Idle Land.* Real property idle under a federal or state land retirement program or property idle pursuant to accepted agricultural practices will be classified as agricultural real property if the property otherwise would have qualified, subject to satisfactory proof to the assessor.

G. *Leased Agricultural Real Property.* In the case of rented or leased agricultural real property, the property will qualify if either the lessor or the lessee meets the above requirements.

H. *Conservation Easement.* Unimproved real property subject to a perpetual conservation easement as provided in SC Code Title 27, Chapter 8 will be classified as agricultural real property if the property otherwise would have qualified, subject to satisfactory proof to the assessor.

§ 223. Valuation of "Rehabilitated Historic Property" and "Low and Moderate Income Rental Property." The governing body of any municipality or county may, by ordinance, grant special property tax assessments based on preferential valuations to real property qualifying as "rehabilitated historic property" or as "low and moderate income rental property" as described below. SC Code §§4-9-195 and 5-21-140.

§ 223.1. Rehabilitated Historic Property. Upon preliminary certification by the taxing entity, qualified rehabilitated historic property is assessed for 2 years based on a special valuation equal to the fair market value of the property at the time of preliminary certification. If the project is not completed after 2 years, but the minimum expenditures for rehabilitation as described below have been incurred, the special valuation continues until the project is completed.

Rehabilitated historic property is eligible for preliminary certification if:

A. The owner of the property applies for and is granted historic designation; and

B. The *proposed* rehabilitation receives approval of the proposed rehabilitation work from the reviewing authority as described below.

In order to be granted a historic designation, the property must either be:

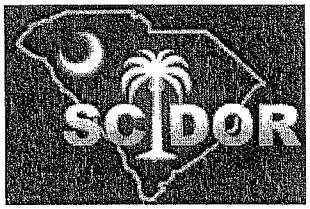
1. listed in the National Register of Historic Places;

2. at least 50 years old and designated as a historic property based on criteria established by the taxing entity; or

3. at least 50 years old and located in a historic district designated by the taxing entity within the geographic area of the taxing entity.

The appropriate "Reviewing Authority" is either: (a) the County Board of Architectural Review for those counties having such boards pursuant to SC Code §6-29-870; (b) another qualified entity with historic preservation expertise designated by the county, if the county does not have a Board of Architectural Review; or, (c) the Department of Archives and History for those counties having neither a Board of Architectural Review nor a designated entity.

EXHIBIT B



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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

The Honorable Deborah Brooks Durden
Administrative Law Judge

Docket No. 13-ALJ-17-0104-CC

William J. Montgomery,.....Respondent,

v.

Spartanburg County Assessor,.....Appellant.

PROOF OF SERVICE

I certify that I served the **Amicus Curiae Brief on Behalf of the South Carolina Farm Bureau Federation** on the Appellant and Respondent by depositing copies of it in the United States Mail, postage prepaid, on Sept 25, 2014 addressed to their attorneys of record as follows:

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE SOUTH CAROLINA FARM BUREAU FEDERATION

Pursuant to South Carolina Appellate Court Rule (SCACR) 213, the South Carolina Farm Bureau Federation (the "Federation") moves for leave of the Court to file an amicus brief as amicus curiae. As permitted by Rule 213, SCACR, the Federation files its amicus brief conditionally herein.

The Federation is a tax-exempt organization under Section 501(c)(5) of the Internal Revenue Code organized to further the common interests of farmers in South Carolina. The Federation consists of 110,000 members and furthers its interests within the State through legislative advocacy, education, and community outreach. Since 1963, Farm Bureau has served as an advocate on the state and federal level both for agriculture generally and for those involved in the business of agriculture.

South Carolina is home to more than 26,900 farmers who keep 4.8 million acres of farmland. According to the United States Department of Agriculture, over 80% of farms in South

Carolina consist of small operations with less than $20,000 in annual sales. Any significant change in policy, practice, or interpretation of the agricultural use exemption would have a substantial impact on these small businessmen. Thus, the Federation has a vital interest in ensuring that the exemption at issue in this case is administered fairly by the Department of Revenue and analyzed appropriately by the courts of this State. A reversal of the Administrative Law Court's decision in this case could both jeopardize exemptions thought to have been properly granted by counties to Federation members in the past and deter further investment in the State.

Accordingly, the Federation requests leave to file this amicus brief to assist the Court with understanding and considering the interests of the Federation members in this matter.

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THE STATE OF SOUTH CAROLINA

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The Honorable Deborah Brooks Durden
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I certify that I served the **Motion for Leave to File Amicus Curiae Brief on Behalf of the South Carolina Farm Bureau Federation** on the Appellant and Respondent by depositing copies of it in the United States Mail, postage prepaid, on Sept 25, 2014 addressed to their attorneys of record as follows:

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