THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM ADMINISTRATIVE LAW COURT
Honorable John D. McLeod

Order (S.C. Ct. App. Filed December 21, 2016)
Court of Appeals Appellate Case No. 2014-002355

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

vs.

BEAUFORT COUNTY ASSESSOR ..... Petitioner.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Frank R. Mead, III, Respondent,

v.

Beaufort County Assessor, Appellant.

Appellate Case No. 2014-002355

Appeal From The Administrative Law Court
John D. McLeod, Administrative Law Judge

Opinion No. 5460
Heard April 13, 2016 – Filed December 21, 2016

AFFIRMED AS MODIFIED

Stephen P. Hughes and James Andrew Yoho, both of Howell Gibson & Hughes, PA, of Beaufort, for Appellant.

Burnet Rhett Maybank, III and James Peter Rourke, both of Nexsen Pruet, LLC, of Columbia, for Respondent.

KONDUROS, J.: In this appeal from the administrative law court (ALC), the Beaufort County Assessor appeals the ALC's reversal of the Assessor's determination Frank Mead, III was not eligible for the homestead exemption in 2011 because for over fourteen days that year he rented out the home he owned. The Assessor contends the ALC erred in finding the primary residence classification and homestead exemption are unrelated. We affirm as modified.

FACTS/PROCEDURAL HISTORY

Mead was born in 1939 and turned sixty-five years old in 2004. Mead owns one home, which is located on Hilton Head Island, South Carolina. He purchased the home in 1976. From 2005 to 2010, he received the homestead exemption on his property. In 2011, he rented his home out for at least one hundred thirty-eight days. While his home was being rented, he traveled or stayed in an apartment for which he paid rent.

The Assessor revoked Mead's homestead exemption for the 2011 tax year because she believed his property no longer qualified for it as a result of his renting out his home for more than fourteen days. Mead appealed the determination to the Beaufort County Tax Equalization Board. Following a conference with both parties' attorneys, the Board denied Mead's relief by letter.

Mead requested a contested case hearing before the ALC. Both parties filed motions for summary judgment, agreeing the sole issue was whether the homestead exemption under section 12-37-250 of the South Carolina Code is available only to property that also qualifies for the preferential residential assessment ratio in section 12-43-220(c) of the South Carolina Code.

Following a hearing, the ALC issued an order granting Mead's motion for summary judgment, finding Mead had met the requirements for the homestead exemption. The ALC determined Mead had been a resident of South Carolina for at least one year, was over the age of sixty-five, was granted the homestead exemption in 2005, and had not done anything that would amount to a change affecting eligibility. The ALC further found the homestead exemption applies to a person's dwelling place and despite Mead's practice of renting out his house and living in a rented apartment, he does not hold out any other property as his primary residence and thus, the subject property is his dwelling place. Additionally, the ALC determined the homestead exemption and the primary residence classification are "two ships in the night" because the two classifications relate to different constitutional provisions, statutes, requirements, incentives, and types of qualifying properties. The ALC further found the fourteen-day rental rule does not apply to the homestead exemption. Accordingly, the ALC granted Mead's motion for summary judgment, finding he was entitled to the homestead exemption for 2011 and subsequent years.

The Assessor filed a motion for reconsideration. The ALC did not rule on the motion, and the Assessor considered the motion to be denied after thirty days

pursuant to South Carolina Administrative Law Court Rules. This appeal followed.

STANDARD OF REVIEW

"[T]he South Carolina Rules of Civil Procedure may be applied in proceedings before the ALC to resolve questions not addressed by the ALC rules." *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 144, 694 S.E.2d 525, 527-28 (2010) (citing Rule 68, SCALCR). The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCP; 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. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).

"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). "[C]ross motions for summary judgments do authorize the court to assume that there is no evidence which needs to be considered other than that which has been filed by the parties." *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 319 n.2, 731 S.E.2d 869, 872 n.2 (2012) (alteration by court) (quoting *Harrison W. Corp. v. Gulf Oil Co.*, 662 F.2d 690, 692 (10th Cir. 1981)). "Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law." *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)). "The question of statutory interpretation is one of law for the court to decide." *Alltel Commc'ns, Inc.*, 399 S.C. at 316, 731 S.E.2d at 870. "The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008).

I. Chapter 37

The Assessor argues the ALC erred in determining Chapter 37 is the sole determinant of homestead exemption availability and failed to acknowledge section 12-43-220(c) imposes an additional requirement for qualification of the homestead exemption. She also asserts the ALC erred in its interpretation of section 12-37-252. She contends there is not a separate 4% assessment ratio for the homestead exemption; the only 4% assessment ratio is provided by section 12-43-220(c). Additionally, the Assessor maintains the ALC erred in finding the 4% assessment under section 12-37-252 is separate from the 4% assessment under 12-43-220(c) because only one 4% assessment is authorized by the South Carolina Constitution.[1] We disagree.

> (A) Pursuant to the provisions of [s]ection 3, [a]rticle X of the [s]tate [c]onstitution and subject to the provisions of [s]ection 12-4-720, there is exempt from ad valorem taxation:
>
> . . .
>
> (9) a homestead exemption for persons sixty-five years of age and older, for persons permanently and totally disabled and for blind persons in an amount to be determined by the General Assembly of the fair market value of the homestead under conditions prescribed by the General Assembly by general law . . . .

S.C. Code Ann. § 12-37-220(A) (2014); *see also* S.C. Const. art. X, §3 ("There shall be exempt from ad valorem taxation . . . (i) a homestead exemption for persons sixty-five years of age and older, for persons permanently and totally disabled and for blind persons in the amount of ten thousand dollars of the fair market value of the homestead under conditions prescribed by the General Assembly by general law; *provided*, that the amount may be increased by the General Assembly by general law, passed by a majority vote of both houses . . . .").

> The first fifty thousand dollars of the fair market value of the dwelling place of a person is exempt from county, municipal, school, and special assessment real estate property taxes when the person:

---

[1] This section incorporates several of the Assessor's arguments that are essentially the same issue.

> (i) has been a resident of this [s]tate for at least one year and has reached the age of sixty-five years on or before December thirty-first;
> . . . .

S.C. Code Ann. § 12-37-250(A)(1) (2014). "'Dwelling place' means the permanent home and legal residence of the applicant." S.C. Code Ann. § 12-37-250(A)(5) (2014).

"The homestead exemption initially granted pursuant to [s]ection 12-37-250 continues to be effective for successive years in which the ownership of the homestead or the other qualifications for the exemption remain unchanged." S.C. Code Ann. § 12-37-255(A) (2014). "Notwithstanding any other provision of law, property that qualifies for the homestead exemption pursuant to [s]ection 12-37-250 is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." S.C. Code Ann. § 12-37-252(A) (2014).

> When a person qualifies for a refund pursuant to [s]ections 12-60-2560 and 12-43-220(c) for prior years' eligibility for the four percent owner-occupied residential assessment ratio, the person also may be certified for a homestead tax exemption pursuant to [s]ection 12-37-250. This refund does not extend beyond the immediate preceding tax year. The refund is an exception to the limitations imposed by [s]ection 12-60-1750.

S.C. Code Ann. § 12-37-252(B) (2014).

The version of section 12-43-220(c) in effect for the 2011 assessment provided:

> The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, . . . are taxed on an assessment equal to four percent of the fair market value of the property. If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a residence by the income

> beneficiary of the trust. When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties. For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

S.C. Code Ann. § 12-43-220(c)(1) (Supp. 2010).

> To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to [s]ection 12-37-251 for the entire year, and for the homestead exemption under [s]ection 12-37-250, if otherwise eligible, for the entire year.

S.C. Code Ann. § 12-43-220(c)(2)(i) (Supp. 2015).

> Notwithstanding any other provision of law, the owner-occupant of a legal residence is not disqualified from receiving the four percent assessment ratio allowed by

> this *item*, if the taxpayer's residence meets the requirements of Internal Revenue Code Section 280A(g)[2] as defined in [s]ection 12-6-40(A) and the taxpayer otherwise is eligible to receive the four percent assessment ratio.

S.C. Code Ann. § 12-43-220(c)(7) (Supp. 2010) (emphasis added), *repealed by* 2014 S.C. Acts 259, §1.B.

Black's Law Dictionary defines the term "item" as "[i]n drafting, a subpart of text that is the next smaller unit than a subparagraph" and also as "[a] piece of a whole, not necessarily separated." Item, *Black's Law Dictionary* (10th ed. 2014).

"A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." *Lockwood Greene Eng'rs, Inc. v. S.C. Tax Comm'n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987). "Words in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's application." *Epstein v. Coastal Timber Co.*, 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011). "Where the language of [a] statute is plain and unambiguous . . . the court has no right to look for or impose another meaning." *Clarendon Cty. ex rel.*

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[2] Section 280A(g) of the Internal Revenue Code provides:

> Special rule for certain rental use.—Notwithstanding any other provision of this section . . . , if a dwelling unit is used during the taxable year by the taxpayer as a residence and such dwelling unit is actually rented for less than 15 days during the taxable year, then—
>
> (1) no deduction otherwise allowable under this chapter because of the rental use of such dwelling unit shall be allowed, and
>
> (2) the income derived from such use for the taxable year shall not be included in the gross income of such taxpayer under section 61.

Ford v. Beaufort Cty. Assessor, 398 S.C. 508, 514-15, 730 S.E.2d 335, 339 (Ct. App. 2012) (alteration by court) (quoting I.R.C. § 280A(g)).

Clarendon Cty. Assessor v. TYKAT, Inc., 394 S.C. 21, 25, 714 S.E.2d 305, 307 (2011) (alterations by court) (quoting *Wynn ex rel. Wynn v. Doe*, 255 S.C. 509, 512, 180 S.E.2d 95, 96 (1971)). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)).

"However, 'the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect.'" *Id.* (quoting *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006)). "We therefore should not concentrate on isolated phrases within the statute." *Id.* "Instead, we read the statute as a whole and in a manner consonant and in harmony with its purpose." *Id.* "[W]e must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'" *Id.* (second and third alterations by court) (quoting *State v. Sweat*, 379 S.C. 367, 377, 382, 665 S.E.2d 650, 651, 654 (Ct. App. 2008), *aff'd*, 386 S.C. 339, 688 S.E.2d 569 (2010)).

"[T]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (alteration by court) (quoting *Dunton v. S.C. Bd. of Exam'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987)). The Department of Revenue (the Department) is "the agency charged with administering this State's revenue laws." *CFRE, LLC*, 395 S.C. at 77, 716 S.E.2d at 882.

In 1997, the Department issued a ruling determining

> (1) because property that qualifies for the homestead exemption is classified and taxed as residential on an assessment equal to four percent of the property's fair market value – see . . . [s]ection 12-37-252(A); and (2) because a person who qualifies for a refund for prior years' eligibility for the four percent owner-occupied residential assessment ratio may also be certified for a homestead tax exemption – see . . . [s]ection 12-37-252(B), that the ownership and occupancy requirements

> for the homestead exemption and for the 4% legal residence assessment ratio are the same.

SCDOR Rev. Ruling 97-18. However, two years later, the Department withdrew that ruling. *See* SCDOR Inform. Letter 99-4 ("SC Revenue Ruling # 97-18 is hereby withdrawn.").

Nothing in the statutes providing the requirements for eligibility for the homestead exemption make reference to the primary residence classification. Section 12-37-252(A) specifically states, "Notwithstanding any other provision of law, property that qualifies for the homestead exemption pursuant to [s]ection 12-37-250 is classified and taxed as a residential assessment equal to four percent . . . ." The plain and ordinary language indicates despite what any other provision of law says, property is taxed at a rate of 4% if the owner meets the requirements of 12-37-250. Those requirements are the property must be "the dwelling place of a person" who "(i) has been a resident of this State for at least one year and has reached the age of sixty-five years on or before December thirty-first; (ii) has been classified as totally and permanently disabled by a state or federal agency . . . ; or (iii) is legally blind." Without dispute, Mead meets the requirements of subsection (A)(i). The Assessor's basis for her argument is the requirements from the primary residence classifications statutes also must be met for a person to be entitled to the homestead exemption. However, the clear language of the homestead exemption statutes states otherwise.

Section 12-43-220(c)(7)'s requirement the taxpayer's residence must comply with Internal Revenue Code Section 280A(g)—that the property cannot be rented for more than fourteen days—only applies to the four percent assessment ratio allowed by that *item*. This would not include the homestead exemption because that item, which by definition is smaller than a subparagraph, only deals with the primary residence assessment ratio. The homestead exemption is found in another chapter entirely.

Further, if we were to accept the Assessor's references to the 4% assessment ratio in the statutes providing for the homestead exemption would be superfluous, and we are to assume the Legislature would not enact such a statute. *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 ("[W]e must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'" (second and third alterations by court) (quoting *Sweat*, 379 S.C. at 377, 382, 665 S.E.2d at 651, 654)).

Additionally, the Department—the agency charged with administering our state's tax laws—once took the same view as the Assessor but withdrew that position just a few years later. *See* SCDOR Inform. Letter 99-4. Accordingly, the ALC correctly found Chapter 37 is the sole determination of homestead exemption availability. Therefore, we affirm the ALC's decision.

II. Fourteen-Day Rule

The Assessor argues the ALC erred by failing to apply the fourteen-day rule, as clarified by this court in *Ford*. We disagree.

Ford concerned homeowners who became ineligible for a 4% tax assessment on their home after renting their home out for over fourteen days in one year.[3] 398 S.C. at 510, 730 S.E.2d at 336-37. That case contained no mention of Chapter 37 or the homestead exemption. As stated by this court in that case, "The primary focus of this appeal is section 12-43-220(c) of the South Carolina Code (Supp. 2011), which governs the eligibility of a legal residence to be taxed on an assessment ratio equal to four percent of the fair market value of the property." *Id.* at 511, 730 S.E.2d at 337 (footnote omitted).

The fourteen-day rule as provided by *Ford* derives from section 12-43-220(c). As stated above, the homestead exemption requirements are found in Chapter 37, not in Chapter 43. Accordingly, the language in section 12-43-220(c) does not apply to the homestead exemption. Chapter 37 does not contain any parallel language to the specific language that creates the fourteen-day rule in Chapter 43. Because all the requirements for the homestead exemption are in Chapter 37 and it does not provide any limitations on renting the primary residence, the ALC correctly found the fourteen-day rule clarified by *Ford* does not apply.

III. Proration

The Assessor maintains the ALC erred in determining section 12-43-220(c)(2) is solely a proration statute and failed to consider the statute's broader purpose. We disagree.

Section 12-43-220(c)(2)(i) provides:

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[3] In 2014, section 12-43-220(c)(2)(iv) of the South Carolina Code was amended to increase the number of days triggering the loss of the 4% assessment from more than fourteen to more than seventy-two. *See* 2014 S.C. Act 259, §1.A, B.

> To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to [s]ection 12-37-251 for the entire year, and for the homestead exemption under [s]ection 12-37-250, if otherwise eligible, for the entire year.

Prorate is defined as "[t]o divide or distribute proportionately; to assess ratably." Prorate, *Black's Law Dictionary* (10th ed. 2014). "There is no statute in this State authorizing the apportionment of ad valorem taxes levied on personal property." *Atkinson Dredging Co. v. Thomas*, 266 S.C. 361, 365, 223 S.E.2d 592, 594 (1976). Apportionment is defined as "[t]he act of allocating or attributing moneys or expenses in a given way." Apportionment, *Black's Law Dictionary* (10th ed. 2014).

The Assessor relies on the same arguments made above to show why section 12-43-220(c)(2) is not solely a proration statute; that Chapters 37 and 43 must be read together because they are inextricably linked. As explained above, this is not the case. Therefore, the ALC's finding was not in error.

IV. Public Policy

The Assessor asserts the ALC's order violated public policy. We find this issue abandoned. "An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008). "[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). When an appellant provides no legal authority regarding a particular argument, the argument is abandoned and the court can decline to address the merits of the issue. *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011). The Assessor provided no case law on the issue, particularly no case law or other authority on

public policy and what constitutes a violation of it. Accordingly, this issue is abandoned.

V. Construction of Ambiguities

The Assessor maintains the ALC erred in failing to construe ambiguities in the relevant statutes in her favor. We disagree.

> Generally, a court must apply the rules of statutory interpretation to resolve the ambiguity and discover the intent of the legislature. *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 348, 549 S.E.2d 243, 247 (2001). However, "[i]n the enforcement of tax statutes, the taxpayer should receive the benefit in cases of doubt." *S.C. Nat'l Bank v. S.C. Tax Comm'n*, 297 S.C. 279, 281, 376 S.E.2d 512, 513 (1989) (citing *Cooper River Bridge, Inc. v. S.C. Tax Comm'n*, 182 S.C. 72, 188 S.E. 508 (1936)). "[W]here the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person, then the person will be excluded, any substantial doubt being resolved in his favor." *Cooper River Bridge, Inc.*, 182 S.C. at 76, 188 S.E. at 509-10; *see also SCANA Corp. v. S.C. Dep't of Revenue*, 384 S.C. 388, 394 n.3, 683 S.E.2d 468, 471 n.3 (2009) (Beatty, J., dissenting) (noting general rule that where substantial doubt exists as to the construction of tax statutes, the doubt must be resolved against the government).

Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue, 399 S.C. 313, 321, 731 S.E.2d 869, 873 (2012) (alterations by court).

> In conjunction with these rules of statutory construction, we must also be cognizant of our policy to strictly construe a tax credit against the taxpayer as it is a matter of legislative grace. *See CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 ("[I]nterlaced with these standard canons of statutory construction is our policy of strictly construing tax exemption statutes against the taxpayer."); *SCANA Corp. v. S.C. Dep't of Revenue*, 384 S.C. 388, 394, 683

> S.E.2d 468, 471 (2009) (recognizing that a tax credit is analogous to a tax deduction and, thus, is strictly construed against the taxpayer (Beatty, J., dissenting)). "This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor." *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 (citation omitted). "It does not mean that we will search for an interpretation in [DOR]'s favor where the plain and unambiguous language leaves no room for construction." *Id.* at 74-75, 716 S.E.2d at 881. "It is only when the literal application of the statute produces an absurd result will we consider a different meaning." *Id.* at 75, 716 S.E.2d at 881 (citation omitted).

Centex Int'l, Inc. v. S.C. Dep't of Revenue, 406 S.C. 132, 140, 750 S.E.2d 65, 69 (2013) (alterations by court).

In sum, *Alltel Communications*, 399 S.C. at 321, 731 S.E.2d at 873, provides the enforcement of tax statutes should be construed in favor of the taxpayer if the statutes are ambiguous. However, *Centex International*, 406 S.C. at 140, 750 S.E.2d at 69, clarifies statutes regarding tax *credits or exemptions* should construed against the taxpayer if the statutes are ambiguous. Because the specific issue in this case has to do with an exemption, those cases concerning exemptions would control if there were any ambiguity. However, the statutes providing the homestead exemption do not contain any ambiguity, and therefore, there is nothing to construe in any party's favor. Accordingly, the statutes at play here should be interpreted according to their plain meaning because there is no ambiguity. *See Centex Int'l, Inc.*, 406 S.C. at 140, 750 S.E.2d at 69 ("'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 Department's] favor where the plain and unambiguous language leaves no room for construction.'" (quoting *CFRE*, 395 S.C. at 74-75, 716 S.E.2d at 881)).

VI. Exemptions for Other Years

The Assessor argues the ALC erred in determining Mead's eligibility for the homestead exemption and 4% ratio beyond the 2011 tax year. We agree.

"In general, this court may only consider cases where a justiciable controversy exists. 'A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute.'" *Sloan v. Greenville Cty.*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003) (citation omitted) (quoting *Pee Dee Elec. Coop., Inc. v. Carolina Power Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983)).

The ALC should not have decided Mead's status for years after 2011 because the challenge was only to the 2011 year and no evidence was presented regarding the following years. While Mead should continue to receive the homestead exemption if nothing changes, the ALC did not put any conditions on his eligibility. Mead could buy another residence in or out of state and claim that as his primary residence, which could affect Mead's ability to qualify for the homestead exemption on this residence in the future. Although the ALC's order was issued in 2014, the contested case was filed for the 2011 tax year. The issue of the tax years following 2011 are not be ripe for review because we do not know Mead's circumstances changed in subsequent years or if the Assessor has even denied his eligibility for the homestead exemption for those years. Accordingly, we modify the ALC's order to provide Mead's eligibility to the homestead exemption in subsequent years is contingent on no change in his circumstances.

CONCLUSION

We affirm the ALC's decision that Mead is entitled to the homestead exemption for the 2011 tax year but modify the decision as to the years following 2011.

AFFIRMED AS MODIFIED.

HUFF and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

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

Frank Mead, III .....Respondent,

v.

Beaufort County Assessor.....Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent agrees with Appellant that the following be included in the Record on Appeal:

1. Decision of Beaufort County Tax Equalization Board dated November 25, 2013.

2. Respondent's Request for Contested Case Hearing Dated December 9, 2013.

3. Respondent's Prehearing Statement to the ALC dated December 17, 2013.

4. Appellant's Prehearing Statement to the ALC dated January 23, 2014.

5. Respondent's Motion for Summary Judgment and Memorandum of Law Filed June 6, 2014.

6. Appellant's Motion for Summary Judgment and Memorandum of Law filed June 6, 2014.

7. Respondent's Memorandum in Opposition to Appellant's Motion for Summary Judgment.

8. Transcript of Hearing before the Honorable Judge John McLeod on June 25, 2014.

9. Respondent's Proposed Order dated July 14, 2014.

10. Appellant's Proposed Order and Flow Chart Dated August 14, 2014.

11. Order of the Honorable John McLeod dated August 19, 2014.

12. Appellant's Motion for Reconsideration filed August 28, 2014.

13. Respondent's Objection to Appellant's Motion for Reconsideration dated October 15, 2014.

14. Appellant's Notice of Appeal dated October 30, 2014.

I certify that this designation contains no matter which is irrelevant to this appeal.

NEXSEN PRUET, LLC

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January 15, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

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

Frank Mead, III.....Respondent,

v.

Beaufort County Assessor.....Appellant.

PROOF OF SERVICE

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

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BEAUFORT COUNTY ASSESSOR ..... Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the Administrative Law Court err in its determination that the Respondent was entitled to the Homestead Exemption despite renting his residence for more than fourteen days during the 2011 tax year?

STATEMENT OF THE CASE

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

STATEMENT OF THE FACTS

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

criteria governing the availability of the homestead exemption. (R.p.199, line 24-p.200, line 7). Following the Assessor's action, Respondent appealed the Assessor's determination to the Beaufort County Tax Equalization Board, which denied Respondent relief by letter dated November 25, 2013. (R.p.15). On December 9, 2013 Respondent requested a contested case hearing before the South Carolina Administrative Law Court (ALC) and a Notice of Assignment was filed by the ALC on December 12, 2014, assigning the case to the Honorable John D. McLeod. (R.p.16).

Before the ALC, both parties filed Motions for Summary Judgment and agreed that the sole issue before the ALC was whether the homestead exemption is available only to property that also qualifies for the preferential residential assessment ratio found in S.C. Code Ann. § 12-43-220(c). (R.p.199, lines 4-19). Following oral argument on the issue, Judge McLeod adopted Respondent's proposed order reversing the determination of the Assessor and the Board. (R.p.2).

In his Order, Judge McLeod determined Respondent met the requirements of the homestead exemption because he had been a resident of South Carolina for at least one year, over the age of sixty-five, and did not do anything that would amount to a "change affecting eligibility." (R.p.5). Judge McLeod further held that the homestead exemption applies to a person's dwelling place and found that despite Respondent's practice of renting his home and living in a temporary apartment for various periods of the year, Respondent does not hold out any other property as his primary residence, thus the subject

property is his "dwelling place." (R.p.5). Judge McLeod further determined that the homestead exemption and the primary residence classification are "two ships in the night" and explained that the two classifications have different constitutional provisions, statutes, requirements, incentives, and qualifying properties. (R.pp.7-8). Judge McLeod also held that the fourteen day rental rule does not apply to the homestead exemption and granted Respondent the homestead exemption. (R.pp.8-10).

STANDARD OF REVIEW

In an appeal from an ALC decision, the Administrative Procedures Act provides the appropriate standard of review. S.C. Code Ann. § 1-23-610(B) (Supp. 2014). This Court confines its analysis of an ALC decision to whether it is:

> (a) In violation of constitutional or statutory provisions;
>
> (b) In excess of the statutory authority of the agency;
>
> (c) Made upon unlawful procedure;
>
> (d) Affected by other error of law;
>
> (e) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (f) Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

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

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

ARGUMENT

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

The ALC committed an error of law by holding the availability of the homestead exemption is governed exclusively by the provisions of South Carolina Code Ann. §12-37-220, §12-37-250, and §12-37-252. The ALC also erred in its determination that one who satisfies the limited criteria set forth within those statutes is qualified for the homestead exemption, as well as a 4% residential assessment ratio. These rulings are not supported by substantial evidence or a plain reading of the relevant statutes.

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

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

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

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

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

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

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

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

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

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

> A residence which has been **qualified** as a **legal residence** for any part of the year is entitled to the 4% assessment ratio provided in this item for the entire year, the exemption from property taxes levied for school operations pursuant to §12-37-251 for the entire year, and for the homestead exemption under §12-37-250, **if otherwise eligible**, for the entire year.

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

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

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

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

Despite the ruling of the ALC, Chapter 37 does not stand alone as the only chapter relating to the Homestead Exemption. As noted hereinabove, Chapters 37 and 43 are parts of a broader statutory scheme relating to taxation of real

property, and must, consequently, be read as a whole. In applying the rules of statutory construction-including the mandates (1) that statutes be considered as a whole, (2) that statutes in apparent conflict should be construed to allow both to stand and to give effect to each, and (3) that statutes be construed, if possible, so as to render them valid – this Court must conclude that the requirements for eligibility for the homestead exemption include not only those set forth within section 12-37-250, but also those specifically set forth within section 12-43-220(c)(2)(i).

Both the homestead exemption, addressed primarily in section 12-37-250, and the residential assessment ratio, addressed primarily in section 12-43-220(c), are available exclusively to the "legal residence" of the taxpayer. Moreover, notwithstanding the ALC's holding, Chapter 37 contains numerous references to the provisions of Chapter 43, including specific references, within section 12-37-252(B) and (C), to section 12-43-220(c). Similarly, Chapter 43 contains multiple references to the provisions of Chapter 37, including, most tellingly, section 12-43-220(c)(2)(i), which specifically references the homestead exemption statute, section 12-37-250, at issue here. Moreover, as emphasized hereinabove, section 12-43-220(c)(2)(1), by specific reference to section12-37-250, imposes additional requirements for eligibility for the homestead exemption. Inasmuch as both chapters are parts of an overall statutory scheme addressing assessment and taxation of real property, and in further view of the specific reference within section 12-43-220(c)(2)(i) to the homestead exemption under

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

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

II. THE ALC ERRED BY FAILING TO APPLY THE FOURTEEN DAY RULE, AS CLARIFIED BY THE COURT OF APPEALS IN THE FORD DECISION.

The South Carolina Court of Appeals, in Ford vs. Beaufort County Assessor, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012) (*cert. denied*) specifically stated that, in the absence of any statutory exemption, rental of an owner-occupied residence during the tax year would **disqualify** the residence for the preferential 4% residential assessment authorized by section 12-43-220(c). The Court further agreed that the sole statutory exception to the rental disqualification is the limited 14 day rental allowed by section 12-43-220(c)(7). Thus, an owner-occupied residence, rented for more than 14 days during the relevant year (as is the case with the taxpayer's property here) is not **qualified** for the "preferred assessment ratio" allowed by section 12-43-220(c).

As demonstrated hereinabove, per the specific provisions of section 12-43-220(c)(2)(i), property does not **qualify** for the homestead exemption unless and until the property is first **qualified as a legal residence** under section 12-43-220(c)(1). The taxpayer's subject property here, which was rented for more than 14 days during the relevant tax year, does not come within the limited exception (under section 12-43-220(c)(7)), which would otherwise allow the residential

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

Furthermore, section 12-37-252, by its specific provisions, authorizes the 4% residential assessment ratio **only** for a legal residence which in fact "**qualifies**" for the homestead exemption pursuant to section 12-37-250. As demonstrated hereinabove, a legal residence does **not** in fact **qualify** for the homestead exemption under section 12-37-250 unless and until that property satisfies all legislatively imposed criteria, including the requirements set forth in section 12-43-220(c)(2)(i). A residence which has, during the relevant tax year, been rented for a period in excess of 14 days (and which thus is not within the limited exception to the rental disqualification), simply does not satisfy the requirements imposed by section 12-43-220(c)(2)(i). Correspondingly, inasmuch as the requirements of section 12-43-220(c)(2)(i) are specifically applicable to eligibility under section 12-37-250, the subject property (rented for a period in excess of 138 days during the relevant tax year), **does not** "**qualify**" for the homestead exemption under section 12-37-250, and is thus not eligible for either that exemption, or for the 4% residential assessment.

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

The ALC determined that the Assessor's reading of Chapter 37 and Chapter 43 would render the provisions of section 2-37-252(A)[1] meaningless because property qualifying for the homestead exemption would, by definition, qualify for the 4% residential assessment, making unnecessary any further legislative statement. However, in making that determination, the ALC failed to consider the Assessor's arguments and upon doing so committed an error of law.

As stated, to **qualify** for the homestead exemption available under section 12-37-250, a real property owner must first satisfy the criteria for the 4% residential assessment under section 12-43-220(c)(1). However, the provisions of section 12-37-252(A), preclude any taxing authority from requiring a taxpayer to **elect** between the homestead exemption and the residential assessment ratio. These provisions guarantee that the taxpayer, who satisfies all statutory criteria for the homestead exemption (including those criteria imposed under section 12-37-250 **and** under section 12-43-220(c)(2)(1), will, in fact, receive the benefits of **both** the homestead exemption and the 4% residential assessment ratio. Section 12-37-252(A) thus serves as a definitive legislative statement that property, which in fact qualifies for both the homestead exemption and the residential assessment ratio, will be entitled to the benefit of both. Accordingly,

[1] (A) Notwithstanding any other provision of law, property that qualifies for the homestead exemption pursuant to Section 12-37-250 is classified and taxed as residential on an assessment equal to four percent of the property's fair market value. Any agriculturally classified lands that are a part of the homestead must be taxed on an assessment equal to four percent of the lands' value for agricultural purposes. The county auditor shall notify the county assessor of the property so qualifying and no further application is required for such classification and taxation.

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

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

The ALC erroneously determined that the 4% ratio purportedly granted by section 12-37-252(A) is not the residential assessment ratio authorized by section 12-43-220(c), but instead is a separate assessment ratio that applies specifically to homestead exemption residences. This determination is controlled by an error of law. The South Carolina Constitution sets forth the classifications for ad valorem taxation and specifically enumerates a legal residence classification and accompanying 4% assessment ratio. See Art. X §1(3). The Constitution also provides that all other real property, not specifically provided for, should be taxed at an assessment equal to six percent. Article X §1(5). Contrary to the ruling of the ALC, there is no separate 4% assessment ratio authorized by the Constitution or by enactment of the General Assembly. The only 4% assessment ratio available to real property originates in Article X §1 of the Constitution and is further codified by enactment of the General Assembly in section 12-43-220(c). There is no basis, either under the Constitution or under Title 12 to support the taxpayer's contention that section 12-37-252 provides a different 4% residential assessment to properties that qualify for the homestead exemption exclusively under section 12-37-250.

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

Accordingly, because there is only one 4% assessment available to legal residences, logic, coupled with the rules of statutory construction and the obvious intent of the legislature, dictates that the rules specifically created by the General Assembly for obtaining the 4% residential assessment ratio under section 12-43-220 also apply to a taxpayer seeking the homestead exemption which is accompanied by the 4% residential assessment ratio. This conclusion is further bolstered by constitutional language providing that the assessment of all property "shall be equal and uniform" to the enumerated classifications. Article X §1(1). Allowing a taxpayer the 4% residential assessment by simply meeting the requirements of section 12-37-250, without regard to the statutory and constitutional confines of the 4% assessment, is in direct contradiction to the constitutional mandate that property assessments must be equal and uniform. Therefore, as discussed above, it is abundantly clear that not only are the homestead exemption and the 4% assessment linked, but in order to **qualify** for the homestead exemption, one must first meet the requirements of both section 12-37-250 and section 12-43-220(c), which, as noted hereinabove includes an explicit prohibition against rental, subject to the fourteen day rental exception.

The ALC's ruling which grants the 4% residential assessment to property which fails to satisfy the legislatively imposed criteria for eligibility, renders section 12-37-252(A) violative of the provisions of Article X §1(5), because, under the ALC's ruling, the general assembly would have created a separate classification not provided for and thus contrary to the enumerated classifications

in the Constitution and the constitutional mandate that property assessments be equal and uniform.

In addition to promoting an unconstitutional and unauthorized residential assessment, the ALC's order also creates an absurd framework for tax payers seeking the 4% residential assessment. Under the ALC's Order, a homeowner who meets the requirements of section 12-37-250 (over the age of sixty-five, etc.) may rent his residence for 364 days each year, without regard to the fourteen day rental rule, and receive **both** the homestead exemption and the 4% residential assessment. By contrast, a taxpayer failing to meet the requirements under section 12-37-250 (as interpreted by the ALC), although the owner of an identical residence, would not be eligible for the 4% residential assessment ratio, if his residence were in fact rented for a period in excess of 14 days. Accordingly, under this rubric, a sixty-four year old South Carolina resident who rents his home for fifteen days a year will not be eligible for the 4% residential assessment; however, when that same taxpayer reaches the age of sixty-five he is then entitled to the 4% assessment and the homestead exemption and may rent his residence an unlimited amount of days during a year. Such circumstances, promoted by the ALC's decision, are contrary to the enumerations of the Constitution, inconsistent with the specific terms of the relevant statutes, incompatible with the policy goals which are inherent in the referenced statutes, and amount to an error of law that requires correction by this Court.

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

The ALC determined that section 12-43-220(c)(2)(i) operates as an exception to the general rule against pro-rating tax assessments. However, the ALC erroneously failed to recognize that section 12-43-220(c)(2)(i) also encompasses a broader purpose. When Chapters 37 and 43 are read together, the homestead exemption and the 4% assessment are clearly and inextricably linked by direct statutory references to one another. See Chem-Nuclear, 374 S.C. at 205, 648 S.E.2d at 603 (stating the language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose); Duvall, 377 S.C. at 42 659 S.E.2d at 127 (stating a statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect). As noted, section 12-43-220(c)(2)(i) expressly provides that a residence which has been "qualified as a legal residence" is entitled to the 4% assessment ratio and the homestead exemption under section 12-37-250, if otherwise eligible. This section imposes the requirement that in order to receive the homestead exemption, a property must first **qualify** as a legal residence pursuant to section 12-43-220(c)(2)(i). This conclusion is supported not only by the clear language of section12-43-220(c), but also the qualifying language for the homestead exemption in Chapter 37 and the clear language of the Constitution.

VI. THE ALC'S ORDER VIOLATES PUBLIC POLICY.

In reaching its decision, the ALC clearly failed to consider the public policy ramifications of its Order. A requirement that a taxpayer, seeking the homestead exemption for his real property, must first satisfy the criteria for eligibility for the 4% residential assessment ratio under section12-43-220(c), is not only consistent with the specific provisions of the constitution and statutes, but also encourages owner occupancy of homes. Such owner occupancy clearly contributes to a sense of community, maintenance of home values, and an overall enhancement of the general welfare.

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

VII. THE ALC FAILED TO CONSTRUE AMBIGUITIES FOUND IN THE RELEVANT STATUTES IN FAVOR OF THE ASSESSOR.

South Carolina appellate courts have provided specific rules for construction of statutes granting exemptions and/or deductions from taxation. Those rules, which require strict construction of such statutes **against** the taxpayer, are plainly applicable to the exemption provided by section 12-37-250,

and equally applicable to section 12-43-220, which the South Carolina Supreme Court has recently addressed as an exemption statute. CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E. 2nd 877, 881 (2011).

The statutory provisions at issue here clearly impose specific requirements for eligibility for the homestead exemption, including the requirement that such property must also satisfy those criteria for eligibility for the preferential residential assessment ratio under section 12-43-220(c). However, even in the absence of such legislative clarity, the provisions set forth within the legislative scheme are, at the very least, ambiguous. Under established rules of construction, ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer. The Supreme Court, in State vs. Life Ins. Co. of Georgia, 254 S.C. 286, 292, 175 S.E.2d 203, 206 (1970), recited the "...well settled rule that constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming exemption; he must clearly bring himself within the constitutional or statutory language upon which he relies." (Internal quotes omitted).

VIII. THE ALC ERRED IN DETERMINING THAT THE TAXPAYER IS ENTITLED TO THE HOMESTEAD EXEMPTION AS WELL AS THE 4% RATIO. FURTHERMORE THE COURT ERRED IN GRANTING THOSE EXEMPTIONS BEYOND THE 2011 TAX YEAR.

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

was entitled to the exemption in 2011, but in addition, Petitioner strongly urges this Court to reverse the ALC's ruling that Respondent is entitled to the exemption for the years following 2011. There has been no evidence presented or findings of fact made regarding taxpayer's eligibility for the homestead exemption beyond the year 2011, and any ruling granting that exemption without a fact finding for those subsequent years constitutes clear error on the part of the ALC and represented a decision not supported by any, much less substantial, evidence.

CONCLUSION

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

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February 4, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

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

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

v.

Beaufort County Assessor ..... Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

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

STATEMENT OF THE CASE

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

STATEMENT OF THE FACTS

Respondent is the owner of a home on Hilton Head Island in Beaufort, South Carolina (Subject Property) and is a resident of and is domiciled in Beaufort County. The home is his legal residence and has been since he purchased it in 1976. The ownership of the home has remained unchanged since 1976. Before 2011, Respondent's residence was

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

Respondent was born in 1939. He has been over 65 years of age since 2004. (R. p. 3) (*Id.* at ¶ 4).

Respondent qualified for the Homestead Exemption in 2005 and received the Homestead Exemption on his property from 2005 through 2010. (R. p. 3) (*Id.* at ¶ 5).

In 2011, Respondent rented his house for more than 14 days. The Beaufort County Auditor's revoked the Homestead Exemption for 2011 on the grounds that because Respondent had lost his primary residence 4% assessment ratio by virtue of renting his property for more than fourteen days, his property also no longer qualified for the Homestead Exemption. In other words, she stated that a property owner has to qualify for primary residence status in order to qualify for the Homestead Exemption. (R. p. 3) (*Id.* at ¶ 7).

Following the Assessor's action, Respondent appealed the Assessor's determination to the Beaufort County Tax Equalization Board, which denied Respondent relief by letter dated November 25, 2013. (R. p. 15) (Board Letter dated 11/25/13). On December 9, 2013, Respondent requested a contested case hearing before the South Carolina Administrative Law Court (ALC) and a Notice of Assignment was filed by the ALC on December 12, 2014, assigning the case to the Honorable John D. McLeod. (R. p. 16) (Request for Hearing dated 12/9/13).

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

in S.C. Code Ann. § 12-43-220(c). (R. p. 199, lines 4-19) (Transcript p.5, lines 4-19). Following oral argument on the issue, Judge McLeod largely adopted (with changes) Respondent's proposed order reversing the determination of the Assessor and the Board. (R. pp. 2-14) (Order dated 8/19/14).

In his Order, Judge McLeod determined Respondent met the requirements of the homestead exemption because he had been a resident of South Carolina for at least one year, over the age of sixty-five, and did not do anything that would amount to a "change affecting eligibility." (R. p. 5) (Order p. 4). Judge McLeod further held that the homestead exemption applies to a person's dwelling place and found that despite Respondent's practice of renting his home and living in a temporary apartment for various periods of the year, Respondent does not hold out any other property as his primary residence, thus the Subject Property is his "dwelling place." (R. p. 5) (Order p. 4). Judge McLeod further determined that the homestead exemption and the primary residence classification are "two ships in the night" and explained that the two classifications have different constitutional provisions, statutes, requirements, incentives, and qualifying properties. (R. pp. 6-8) (Order pp. 5-7). Judge McLeod also held that the fourteen day rental rule does not apply to the Homestead Exemption and granted Respondent the Homestead Exemption. (R. pp. 8-10) (Order pp. 7-9).

STANDARD OF REVIEW

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

(a) In violation of constitutional or statutory provisions;

(b) In excess of the statutory authority of the agency;

(c) Made upon unlawful procedure;

(d) Affected by other error of law;

(e) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) Arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

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

ARGUMENT

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

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

A. General

The South Carolina Constitution and statutes provide a host of property tax exemptions and special rules for farmers, manufacturers, individuals and others. The major exemptions or incentives for individuals are (1) agricultural use; (2) primary residence; and (3) Homestead Exemption. Each has its own separate requirements and each provides different incentives. For example, the agricultural use incentive requires

an individual to own at least 5 acres of timber, and the incentive is a special fair market valuation which is usually well below the true fair market value of the property.

B. Homestead Exemption

Article X, § 3(i) of the South Carolina Constitution establishes a "Homestead Exemption" for persons sixty-five years of age and older, totally and permanently disabled or blind. Article X, § 3 provides nine exemptions, only two of which are for individuals. (The other is for household goods.) There is no exemption or other tax incentive provided in this constitutional provision for primary residences.

S.C. Const. Art. X, §3(j) further provides that "[h]omestead exemptions from ad valorem taxation not specifically provided for in this section may be provided for by the General Assembly by general law." With authority granted by this Article of the Constitution, the General Assembly codified the Homestead Exemption principally in S.C. Code Ann. §§ 12-37-220(A)(9), 12-37-250, 12-37-252, and 12-37-290. Under these four code sections, a person's dwelling place qualifies for the Homestead Exemption when he or she (1) has been a resident of this State for at least one year and has reached the age of sixty-five years on or before December thirty-first; (2) has been classified as totally and permanently disabled by a state or federal agency having the function of classifying persons; or (3) is legally blind preceding the tax year in which the exemption is claimed.

Under § 12-37-250(A)(4)(a), "[t]he application for the exemption must be made to the auditor of the county and to the governing body of the municipality in which the dwelling place is located upon forms provided by the county and municipality and approved by the department." Once the initial application for the Homestead Exemption has been approved, the exemption "continues to be effective for successive years in

which *the ownership of the homestead...remain unchanged.*" S.C. Code Ann. § 12-37-252(A) (emphasis added). As stated above, Respondent was granted the Homestead exemption in 2005 on the basis of his age. Ownership of the residence has remained unchanged.

The Homestead Exemption provides two incentives. Section 12-37-250(A)(1) exempts the first $50,000 of the fair market value of the "dwelling place." "Dwelling place" is defined in subsection (5) as "the permanent home and legal residence of the applicant." The second benefit is found in § 12-37-252(A) which provides: "*Notwithstanding any other provision of law*, property that qualifies for the homestead exemption *pursuant to section 12-37-250* is classified and taxed as residential on an assessment equal to four percent on the property's fair market value." (Emphasis added).

It is clear that Respondent meets the requirements for the Homestead Exemption contained in § 12-37-250. He has been a resident of South Carolina for at least one year and is over sixty-five years of age. He applied for and was granted the Homestead Exemption in 2005, and he has done nothing since then that could be considered "a change affecting eligibility," and "the ownership of the homestead . . . [has] remain[ed] unchanged." *Id.*

C. Homestead Exemption vs. Primary Residence

Appellant's position is that Respondent is not entitled to the Homestead Exemption because he no longer qualifies for the 4% primary residence classification. Stated another way, Beaufort County contends that in order to be eligible for the Homestead Exemption, the property owner has to meet all of the qualifications for both the primary residence statute as well as the Homestead Exemption statute. Simply put, as

stated below, the Homestead Exemption and the primary residence classification are two ships in the night. The following summarizes the differences between the two.

1. Different Constitutional Provision and Statutes

The Homestead Exemption is created in S.C. Constitution Article X, § 3 and is primarily codified in §§ 12-37-220(A)(9), 12-37-250, 12-37-252(A), and 12-37-290.

The primary residence provisions are found in a different constitutional provision, Article X, § 1. It is codified in a different Chapter of Title 12. (The Homestead Exemption is in Chapter 37; primary residence is in Chapter 43.) They are codified in § 12-43-220(c). The "Fourteen Day Rental" former rule is found in § 12-43-220(c)(7).

2. Different Requirements

The requirements for the incentives are different. The Homestead Exemption requires a person who is 65 or older, permanently disabled or blind who owns the dwelling place, see §§ 12-37-220(A)(9), 12-37-250(A)(1) and 12-37-290. The primary residence statute requires a legal "primary" residence and not more than 5 contiguous acres owned by a person who does not claim legal residence in another state or the 4% assessment ratio on another residence in South Carolina and for the year at issue is this case (2011) does not rent the primary residence for more than fourteen days, see § 12-43-220(c).[1]

3. Different Incentives

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

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

fair market value and § 12-37-250(A)(1) provides a $50,000 exemption. In addition, § 12-37-252(A) provides a 4% assessment ratio for Homestead Exemptions.

Section 12-43-220(c)(1) provides a 4% assessment ratio for primary legal residences. Other statutes, e.g. Local Option Sales Taxes, provide other credits for primary residences.

In enacting the 4% assessment ratio for persons entitled to the Homestead Exemption in 1996, the General Assembly recognized that a person might meet the requirements for the Homestead Exemption but not the primary residence statute. Section 12-37-252(A) plainly states: "*Notwithstanding any other provision of law, property that qualifies for the homestead exemption pursuant to section 12-37-250* is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." (Emphasis added).

If Appellant is correct – if a person has to meet the primary residence statutory requirements found in § 12-43-220(c) in order to be entitled to the 4% assessment ratio – then why would the General Assembly have enacted § 12-37-252(A)? (Stated another way, under Appellant's argument, by definition a person would have already qualified for the 4% assessment ratio under § 12-43-220(c).) In construing statutes, courts must assume that the legislature intended to accomplish something through enactment of a statute and did not instead engage in futile or worthless action. *See Centex Int'l, Inc. v. S.C. Dep't of Rev.*, 406 S.C. 132, 145-46, 750 S.E.2d 65, 72 (2013) *and Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). *See also Home Health Servs., Inc. v. S.C. Dep't of Rev. & Taxation*, 333 S.C. 691, 511 S.E.2d 404 (Ct. App. 1999); *Purvis v. State Farm Mut. Auto. Ins. Co.*,

304 S.C. 283, 403 S.E.2d 662 (Ct. App. 1991) (*citing Charleston Television, Inc. v. S.C. Budget & Control Bd.*, 296 S.C. 444, 458, 373 S.E.2d 892, 900 (Ct. App. 1988), *rev'd on other grounds*, 301 S.C. 468, 392 S.E.2d 671 (1990)).

The Department of Revenue recognized this. In S.C. Rev. Rul. #97-18, the Department held that "the ownership and occupancy requirements for the Homestead exemption and for the 4% legal residence assessment ratio are the same." But then, in DOR Information Letter 99-4, the Department recanted and stated "SC Revenue Ruling #97-18 is hereby withdrawn."

4. **Different Qualifying Properties**

Section 12-43-220(c)(1) includes the legal residence and not more than five acres contiguous thereto. The Homestead Exemption, section 12-37-250 is limited to $50,000 but has no acreage limitation.

The primary resident subsection includes "additional dwellings located on the same property and occupied by immediate family members of the owner of the interest." The Homestead exemption contains no similar language.

Subsection 12-43-220(c)(2)(v) qualifies members of the armed services who are residents of other states but who have a permanent duty station in this state for primary residence. The Homestead Exemption contains no such qualifier.

Subsection 12-43-220(c)(6) qualifies purchasers of property subject to time share vacation rentals for no longer the 90 days the primary residence status. The Homestead Exemption contains no similar qualifier.

Subsection 12-43-220(c)(8) allows a prorated primary residence assessment for persons who own less of 50% of the legal residence. The Homestead Exemption contains no similar language.

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

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

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

The fallacy of Beaufort County's argument is found in Appellant's Brief (p. 10) which states that "[t]he South Carolina Court of Appeals, in *Ford vs. Beaufort County Assessor*, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012) (*cert. denied*) specifically stated that, in the absence of any statutory exemption, rental of an owner-occupied residence during the tax year would **disqualify** the residence for the preferential 4% residential assessment authorized by section 12-43-220(c). The Court further agreed that the sole statutory exception to the rental disqualification is the limited 14 day rental allowed by section 12-43-220(c)(7). Thus, an owner-occupied residence, rented for more than 14

days during the relevant year (as is the case with the taxpayer's property here) is not **qualified** for the 'preferred assessment ratio' allowed by section 12-43-220(c)."

Respondent has not argued that he is entitled to the 4% ratio authorized by § 12-43-220(c). The 4% assessment ratio which Respondent is qualified for is found in an entirely different Code section and in a different Chapter of Title 12. The 4% assessment ratio for Homestead Exemption residences is found in § 12-37-252(A) – not § 12-43-220(c). This section states that "*[n]otwithstanding any other provision of law*, property that qualifies for the homestead exemption pursuant to Section 12-37-250 is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." (Emp. added.)

To the extent the requirements for primary residence and Homestead Exemption are similar, the (former) fourteen-day rental rule still would not apply to the Homestead Exemption. The (former) fourteen-day rule is contained in Chapter 43 at § 12-43-220(c)(7) (the primary residence statute). This section states: "Notwithstanding any other provision of law, the owner–occupant of a legal residence is not disqualified from receiving the four percent assessment ratio *allowed by this item*" (emphasis added) if the taxpayer meets the requirements of Section § 280A(g) of the Internal Revenue Code ("IRC") and is otherwise eligible to receive the 4% assessment ratio. (To repeat, the subsection references "this item," not "this Chapter" or "Title 12." Even if it said "this chapter" it would not apply, as Homestead exemption is in a different chapter.)

In this case, the Homestead Exemption is not dependent upon legal residence, nor does its 4% assessment ratio derive from "this item," i.e. § 12-43-220(c). The Homestead 4% ratio derives from § 12-37-252(A) which states that "[n]otwithstanding any other

provision of law, property that qualifies for the homestead exemption *pursuant to section 12-37-250*" is entitled to a 4% assessment ratio (emphasis added). There is no such similar cross-reference in any of the Homestead Exemption statutes to IRC § 280A(g).

In addition, both *Tolpa v. Beaufort County Assessor*, 08-ALJ-17-0088-CC and *Ford v. Beaufort County Assessor, supra*, make clear that the purpose of the fourteen day rule contained in (c)(7) is to modify (or provide limited relief) to the no "rented . . . residences" sentence contained in § 12-43-220(c)(1). This sentence states:

> *If this property has located on it any* rented mobile homes or *residences which are rented* or any business for profit, this four percent value does not apply to those businesses or rental properties. (Emp. added).

As the Court noted in *Tolpa, supra*, "Section 12-43-220(c)(7), *supra*, was added as an amendment in 2005 after the parent subsection was enacted in 2002. The obvious intent of the amendment was to prevent the strict disqualification by rental in (c)(1) . . . the 4% assessment to taxpayers who may have occasion to rent their legal residences for 14 days or less in the tax year in question." By contrast none of the multiple Homestead Exemption statutes contain this no "rented . . . residences" language. In summary, § 12-43-220(c)(1) relates exclusively to primary residences (for persons under the age of 65). It has no application to the Homestead Exemption.

The DOR publication South Carolina Property Tax (2014 ed.) discusses legal residences in section 217. The publication discusses Homestead Exemption in section 619. Section 217 notes that "a residence rented for more than 14 days during the tax year is disqualified." (*Id.* at 8). Section 619 makes no reference to the 14 day rule or to § 12-43-220(c)(7).

In addition, the requirements for the Homestead Exemption are uniquely repeated in four separate places, S.C. Const. Art. X, § 3(i); § 12-37-220(A)(9); § 12-37-250; and § 12-37-290. (I say "uniquely" in that there is no other state tax incentive or exemption which lists or repeats the same qualifications in three separate places in Title 12.) None of these statutes or the constitutional provision contain a fourteen day rule nor do they cross-reference the rule.

S.C. Code Ann. § 12-37-252(B) does refer to § 12-43-220(c) in two places, but neither reference hinges the applicability of the Homestead Exemption on whether the taxpayer qualifies for the primary residence ratio. In fact, the section relates only to the availability of a refund claim—not to eligibility for the exemption. According to that section:

> (B) When a person qualifies for a refund pursuant to Sections 12-60-2560 and 12-43-220(c) for prior years' eligibility for the four percent owner-occupied residential assessment ratio, the person also may be certified for a homestead tax exemption pursuant to Section 12-37-250. The refund does not extend beyond the immediate preceding tax year....
>
> * * * *
>
> (C) Notwithstanding any other provision of law, if a deceased taxpayer failed to claim the assessment ratio allowed pursuant to Section 12-43-220(c) or the exemption allowed pursuant to Section 12-57-250, or both, before the date of the taxpayer's death, then the personal representative of the deceased taxpayer's estate is deemed the agent of the deceased taxpayer for purposes of the applications required pursuant to these sections and any claim for refund arising pursuant to resulting overpayments.

Moreover, if the General Assembly had sought to require that Homestead Exemptions meet the requirements contained in § 12-43-220(c), then it would have used

the mechanism it has used elsewhere. For example, in Chapter 6 of Title 12, when the General Assembly seeks to limit the use of credits to legal residences that qualify under the primary residence statute (i.e., § 12-43-220(c)), it uses the term "legal residence pursuant to Section 12-43-220(c)" or "legal residence that qualifies under Section 12-43-220(c)." *See, e.g.*, § 12-6-3660(A) (limiting a credit for retrofitting taxpayer's legal residence to owners properties that qualify under § 12-43-220(c)); § 12-6-3665(A) (limiting credit for state sales tax paid on purchases used to retrofit taxpayer's legal residence to owners of properties that qualify under § 12-43-220(c)); § 12-6-3670 (limiting credit for property insurance premium payments to owners of properties that qualify under § 12-43-220(c)).

It makes no more sense to require a person otherwise eligible for the Homestead Exemption to also qualify for the primary residence statute than it does to say a person cannot qualify for the primary residence statute unless he or she also qualifies for the Homestead Exemption.

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

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

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

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

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

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

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

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

By way of background, property taxes are generally not prorated in South Carolina. *See* South Carolina Property Tax Manual, Part IV, § 310.1 ("Numerous opinions of the South Carolina Attorney General have stated that there is no proration when more than one person owns the property during the year.") The DOR or the assessor takes a "snapshot" of the property on December 31st of the prior year and taxes are imposed on the value and usage of the property on that date for the entire following year regardless of subsequent change of usage or value, see S.C. Code § 12-37-900 and *Atkinson Dredging Co. v. Thomas*, 226 S.C. 361, 223 S.E. 2d 592 (1976).") The Supreme Court described the issue in *Atkinson Dredging*, 266 S.C. at 369-70, 223 S.E.2d at 596, as follows:

> If a Charleston taxpayer had bought an automobile on Christmas Day, 1974, and that automobile had been totally destroyed on New Year's Day, he would, none the less, be liable to pay property tax for the entire year 1975. On the other hand, if he had bought an automobile on January 2, 1975, he would owe no personal property tax on that for the year 1975. In an ideal state, it would probably be well to levy the personal property on a daily basis. However, this would be an administrative impossibility. Under our taxing system, there have always been inequalities and inequities resulting from the fact that the tax for an entire year is contingent...on the 31st day of December next preceding the tax year in question.

So, a $600,000 commercial building which is owned by a law firm on December 31, 2012 is taxed at a 6% assessment ratio on a value of $600,000 for all of 2013 notwithstanding that the YMCA or other exempt entity purchases it on July 1, 2013. In such a case, the exemption would not start until 2014.

This exact issue was very recently before the Court in *Hampton Friends of the Arts v. South Carolina Department of Revenue*, 401 S.C. 372, 737 S.E.2d 628 (2013). Hampton Friends of the Arts (Hampton) purchased taxable property in March 2008. "It is undisputed that prior to [Hampton's] purchase, the property was subject to property taxes on December 31, 2007." *Id.* at 374, 737 S.E.2d at 629. Hampton was granted an exemption for the property from the DOR for 2009 property taxes and subsequent years. The DOR denied the exemption for 2008, and Hampton appealed the 2008 determination. The Supreme Court upheld the ALC's determination that the property was not exempt in 2008, stating: "...[Hampton] avers that, because it acquired the property prior to the tax levy for the 2008 tax year, the property became exempt and no tax is owed. We disagree, for the law is clear that property tax liability is determined as of December 31st of the preceding tax year, regardless of the subsequent transfer to an exempt corporation or

when the tax is actually levied." *Id.* at 375, 737 S.E.2d at 629. The Supreme Court concluded:

> Pursuant to settled law, the 2008 tax status of the Hampton County property was determined on December 31, 2007. Because the property was subject to property taxes as of December 31, 2007, the property is subject to 2008 property taxes.

Id. at 376, 737 S.E.2d at 630.

All § 12-43-220(c)(2)(i) does is reverse this December 31st no proration rule where property is purchased by someone entitled to the primary residence or Homestead Exemption. It states:

> To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address *for some period* during the applicable tax year. A residence which has been qualified as a legal residence *for any part of the year* is entitled to the four percent assessment ratio provided in this item *for the entire year*, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 *for the entire year*, and for the homestead exemption under Section 12-37-250, if otherwise eligible, *for the entire year*. (Emp. added.)

This section merely authorizes the 4% assessment ratio for primary residences as well as the Homestead Exemption "for the entire year" in order to overrule the normal December 31st no-proration rule. Stated another way, a person over the age of 65 who buys a residence which was taxed to the seller as a second home (*i.e.*, 6%) on July 1, 2013 is entitled under the statute to the 4% for all of 2013. This subsection (c)(2)(i) was added by the General Assembly in 1999 in Act 100 (H.B. 3696). The Act's Title makes this clear: "To amend Section 12-43-220, as amended, relating to classification and the applicable assessment ratio of property for purposes of the property tax, *so as to provide*

that owner-occupied residential property receiving the four percent assessment ratio retains that assessment ratio, the residential exemption from school operating millage, *and the Homestead exemption, if applicable, for the entire year in which the ownership or use of such property changes* and to make conforming amendments." (Emp. added.)

Appellant vigorously argues that § 12-43-220(c)(2)(i) imposes the former 14 day rule contained in § 12-43-220(c)(7) on Homestead Exemptions because of the cross-reference to Homestead Exemptions contained in it. But that is not what the section states. It first states that "[a] residence which has been qualified as a legal residence for any part of the year is entitled to the 4% assessment ratio *provided in this item* for the entire year . . . ." "This item" refers to § 12-43-220(c). The 4% assessment ratio for Homestead Exemptions is found in § 12-37-252(A).

Section 12-43-220(c)(i) goes on to cross-reference the Homestead Exemption as follows: "and for the homestead exemption *under § 12-37-250*, if otherwise eligible, for the entire year." (Emp. added.) As previously stated the 4% assessment ratio is not found in § 12-37-250 – but rather in § 12-37-252(A). Section 12-37-250 provides the requirements to qualify for the Homestead Exemption.

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

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

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

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

Appellant argues (pp. 17-18) that "South Carolina appellate courts have provided specific rules for construction of statutes granting exemptions and/or deductions from taxation. Those rules, which require strict construction of such statutes **against** the taxpayer, are plainly applicable to the exemption provided by section 12-37-250, and equally applicable to section 12-43-220, which the South Carolina Supreme Court has recently addressed as an exemption statute. *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 74, 716 S.E. 2nd 877, 881 (2011)." (emphasis in original).

In fact, the ambiguity of the statutory regime should be resolved in favor of the taxpayer. As the Supreme Court recently stated in *Media General Communications, Inc. v. South Carolina Department of Revenue*, 388 S.C. 138, 694 S.E.2d 525 (2010):

> "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." "The determination of legislative intent is a matter of law." "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." The best evidence of intent is in the statute itself: "What legislature says in the text of the statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature."

388 S.C. at 147-48, 694 S.E.2d at 529-30 (citations omitted).

In the context of a tax statute, it is a settled rule that ambiguities are resolved "against the government and in favor of the taxpayer." *See Hadden v. S.C. Tax Comm'n*,

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

Admittedly, the general rule is that tax credits and exemptions are a matter of legislative grace and are strictly construed against the taxpayer. *M. Lowenstein & Sons, Inc. v. S.C. Tax Comm'n*, 277 S.C. 561, 290 S.E.2d 812 (1982). However, as the Supreme Court recently stated in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011):

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

395 S.C. at 74-5, 716 S.E.2d at 881 (*citing State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008)). There is no absurd result with respect to the literal application of the statute's plain language and use of the statutorily defined terms utilized within the Homestead Exemption.

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

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

hereinabove, Appellant asserts the ALC erred in determining the taxpayer was entitled to the exemption in 2011, but in addition, [Appellant] strongly urges this Court to reverse the ALC's ruling that Respondent is entitled to the exemption for the years following 2011. There has been no evidence presented or findings of fact made regarding taxpayer's eligibility for the homestead exemption beyond the year 2011...."

Under § 12-37-250(A)(4)(a), "[t]he application for the exemption must be made to the auditor of the county and to the governing body of the municipality in which the dwelling place is located upon forms provided by the county and municipality and approved by the department." Once the initial application for the Homestead Exemption has been approved, the exemption "continues to be effective for successive years in which *the ownership of the homestead...remain unchanged.*" S.C. Code Ann. § 12-37-252(A) (emphasis added). As stated above, the Respondent was granted the Homestead Exemption in 2005 on the basis of his age. Ownership of the residence has remained unchanged.

It is clear that Respondent meets the requirements for the Homestead Exemption contained in § 12-37-250. He has been a resident of South Carolina for at least one year and is over sixty-five years of age. He applied for and was granted the Homestead Exemption in 2005, and he has done nothing since then that could be considered "a change affecting eligibility, and "the ownership of the homestead . . . [has] remain[ed] unchanged." *Id.*

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

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

CONCLUSION

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

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February 24, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

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

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

v.

Beaufort County Assessor.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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Attorneys for Respondent

February 24, 2014

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Honorable John D. McLeod

RECEIVED
JAN 19 2017
SC Court of Appeals

Appellate Case No: 2014-002355

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

v.

BEAUFORT COUNTY ASSESSOR ..... Appellant.

APPELLANT'S PETITION FOR REHEARING

And now comes the Appellant, Beaufort County Assessor, and files the following Petition for Rehearing. For the reasons that follow, the Assessor hereby petitions the Court for rehearing of its Opinion No. 5460, filed on December 21, 2016, which affirmed, as modified, the Order of Summary Judgment, issued by the Administrative Law Court, in favor of the Respondent, Frank R. Mead, III.

INTRODUCTION

This appeal involves issues of statutory interpretation, specifically, a determination of those criteria which must be satisfied in order to qualify for the homestead exemption available under South Carolina law. It is the contention of the Appellant that property, to qualify for the homestead exemption, must satisfy not only those criteria imposed by section 12-37-250 of the South Carolina Code, but also

those criteria imposed by section 12-43-220(c)(2)(i). It is the further contention of the Appellant that the Court was in error in its determination that section 12-37-250 sets forth the sole criteria for eligibility for the homestead exemption, and in its corresponding determination that property which satisfies only those criteria set forth in section 12-37-250 is to be classified and taxed as residential on an assessment equal to 4% of the property's fair market value. For the reasons that follow, the Assessor respectfully requests that the Court of Appeals grant this petition for rehearing, and vacate its December 21, 2016 Opinion in this matter.

BACKGROUND

The captioned case is before this Court upon appeal from an Order of the Administrative Law Court, which granted summary judgment in favor of the Respondent, Mead. By its order, the ALC determined that Mead, upon satisfaction of only those criteria set forth in section 12-37-250(a)(1) of the South Carolina Code, became eligible for the homestead exemption, and eligible for a 4% assessment ratio on his residence, notwithstanding the taxpayer's rental of the residence for a period in excess of 138 days during the relevant tax year. In so ruling, the ALC rejected the arguments of the Appellant, who contended that Chapters 37 and 43 of Title 12 constituted parts of an overall statutory scheme involving taxation of real property, and that any determination of eligibility for the homestead exemption must thus consider the relevant provisions of both chapters. This Court, in disposing of the issues, affirmed the order of the ALC, as modified.

Based upon those considerations set forth hereinafter, this Court should grant rehearing in this matter, and reverse its holdings on these issues.

ARGUMENTS

A. **The Court erred in its determination that Chapter 37 is the sole determinant of eligibility for the homestead exemption, and in its failure to acknowledgement that section 12-43-220(c) of the South Carolina Code imposes an additional requirement for eligibility for the homestead exemption.**

The Court determined that the availability of the homestead exemption is governed exclusively by the provisions of section 12-37-220 of the South Carolina Code. The Court also determined that a taxpayer, who satisfies the limited criteria as set forth within section 12-37-220, qualifies not only for the homestead exemption, but also, pursuant to section 12-37-250(A), for the 4% assessment ratio upon his subject property. These rulings are not supported by substantial evidence or by a plain reading of the relevant statutes.

As noted by the Court, the cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. Chem Nuclear Systems, LLC v. South Carolina Board of Health and Environmental Control, 374 S.C. 201, 205, 648 S.E.2d 601, 603 (2007). If legislative intent can be reasonably determined in the language used, then that language must be construed in light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 437, 567 S.E. 2d 240, 242 (2002). Moreover, the language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Chem Nuclear Systems, LLC v. South Carolina Board of Health and Environmental Control, 374 S.C. 205, 648 S.E.2d 603 (2007).

Equally importantly, a statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given

effect. Duval v. S.C. Budget and Control Board, 377 S.C. 36, 42, 649 S.E.2d 125, 127 (2008). Additionally, the real purpose and intent of the law makers will prevail over the literal import of particular words. Floyd v. Nationwide Mutual Insurance Co., 367 S.C. 253, 260, 626 S.E.2d 6, 10 (2006).

Appropriate application of the foregoing rules of construction, to the statutory provisions at issue here, clearly renders the homestead exemption unavailable to the taxpayer, Mead.

The provisions of section 12-37-250 set forth limited requirements for qualification for the homestead exemption. Contrary, however, to the determination of the Court, Chapter 37, of Title 12, does not contain the only statutory provisions relating to the homestead exemption, and Chapter 37 is not the sole determinant of eligibility for that exemption. The homestead exemption is addressed not only within Chapter 37, but is also addressed, and additional requirements imposed, by the specific provisions of section 12-43-220(c)(2)(i), in Chapter 43 of Title 12.

Both Chapter 37 and 43 constitute parts of an overall statutory scheme encompassing taxation of real property. Both Chapters contain extensive cross-references to those respective chapters, including, among others, the following:

(a) Section 12-37-252(B), which provides in relevant part, that "when a person qualifies for a refund pursuant to sections 12-60-2560 and 12-43-220(c) for prior years' eligibility for the 4% owner-occupied residential assessment ratio, the person also may be certified for a homestead tax exemption pursuant to section 12-37-250." (emphasis added);

(b) Section 12-37-252(C), which provides in relevant part, that "... if a deceased taxpayer failed to claim the assessment ratio allowed pursuant to section 12-43-220(c) ... before the date of the taxpayer's death, then the personal representative of the deceased taxpayer's estate is deemed the agent of the deceased taxpayer for purposes of the applications required pursuant to these sections and any claim for refund arising pursuant to resulting over payments."

(c) Section 12-37-220(B)(1)(e)(iv), which defines "house" to mean "a dwelling and the lot on which it is situated classified in the hands of the current owner for property tax purposes pursuant to section 12-43-220(c)."

(d) Section 12-43-220(d)(6), which provides that "any property which becomes exempt from property taxes under section 12-37-220(A)(1) or any economic development property which becomes exempt under section 12-37-220(B) is not subject to roll back taxes.".

Moreover, both Chapters 37 (at section 12-37-220(A)(9), 12-37-250(A), and 12-37-252(A)), and 43 (at section 12-43-220Ic)(2)(i)) also set forth specific provisions governing the availability of the homestead exemption.

In light of the demonstrated inter-relationship of the statutory provisions, any inquiry into eligibility for the homestead exemption, or the qualification for the 4% assessment ratio under section 12-37-252(A), does not end solely with consideration of the provisions of section 12-37-250. Equal consideration must be given to other statutory provisions which also address the availability of the homestead exemption,

and any analysis is incomplete without due consideration of section 12-43-220(c)(2)(i), which, as noted above by its specific terms, imposes additional conditions and restrictions upon persons seeking eligibility for the homestead exemption.

Section 12-43-220(c)(2)(i) states, in relevant part, that "a residence which has been qualified as a legal residence for any part of the year is entitled to ... the homestead exemption under section 12-37-250, if otherwise eligible, for the entire year."

Section 12-43-220(c)(2)(i) thus sets forth

(1.) A specific reference to the homestead exemption under section 12-37-250

(2.) A specific recitation of additional requirements for eligibility for the homestead exemption under section 12-37-250 and

(3.) A specific statement of legislative intent that the homestead exemption be available only to those properties meeting the requirements for the preferential 4% residence assessment ratio as set forth in section 12-43-220(c)(1).

Therefore, by the specific terms of section 12-43-220(c)(2)(i), qualification for the preferential 4% residential assessment ratio, provided by section 12-43-220(c), is a pre-requisite to eligibility for the homestead exemption under section 12-37-250. It follows that a failure of the property to qualify for the residential assessment ratio provided by section 12-43-220(c) disqualifies the property for the homestead exemption under section 12-37-250.

Similar considerations apply to the availability of a 4% assessment ratio under section 12-37-252. The Court, in its order, clearly determined that, pursuant to section 12-37-252(A), any property which satisfies the limited criteria set forth in section 12-37-250(A) is entitled to be taxed on an assessment equal to 4% of the property's fair market value. It is submitted that the Court, in its determination, was in error.

A careful reading of section 12-37-252(A) reveals clearly that it is only where a legal residence actually qualifies for the homestead exemption that such residence will be assessed at 4% of its fair market value. As noted hereinabove, property which fails to satisfy the criteria for residential assessment, as set forth within section 12-43-220(c)(1), is not **qualified** as a legal residence, and therefore does not qualify for the homestead exemption.

By the specific language of section 12-43-220(c)(2)(i), the initial qualification for the residential assessment ratio provided by section 12-43-220(c) is a pre-requisite to eligibility for the homestead exemption under section 12-37-250. As previously determined by this Court in Ford v. Beaufort County Assessor, the "legal residence" is "qualified" for the 4% residential assessment ratio only where the property, among other criteria, is not rented for a period in excess of the rental period allowed by statute. Ford v. Beaufort County Assessor, 398 S.C. 508, 730 S.E.2d 335 (2012),

The specific provisions of section 12-43-220(c)(2)(i) clearly provide that it is only such a "qualified" legal residence (one which satisfies the criteria for eligibility for the residential assessment ratio under section 12-43-220(c)) which is, in turn, eligible for the homestead exemption under section 12-37-250.

The Court, in its failure to consider the statutory requirements for eligibility, as specifically set forth within section 12-43-220(c)(2)(i), in the determination of eligibility for the homestead exemption, and in its determination assessment under section 12-37-252(A), was in error.

B. The Court was in error in its implicit determination that the South Carolina Department of Revenue no longer considers eligibility for the 4% residential assessment ratio, available under section 12-43-220(c) of the South Carolina Code, as a necessary criterion for eligibility for the homestead exemption under section 12-37-220.

The Court, within its Order, noted that the Department of Revenue, by previous Revenue Ruling No 97-18, had adopted the perspective urged by the Appellant – i.e., that the availability of the homestead exemption is dependent, in the first instance, upon satisfaction of the criteria for the residential assessment ratio under section 12-43-220(c) of the South Carolina Code. The Court further noted that the Revenue Ruling had been withdrawn by the Department's Information Letter No. 99-4. The Court then implicitly determined that the Department's position as set forth within the referenced Revenue Ruling had been abandoned.

Neither the Revenue Ruling nor the Information Letter was before the Court for review or consideration, and the Court's determination was thus unsupported by substantial evidence and was conclusory. Baldwin v. James River Corporation, 304 S.C. 485, 405 S.E.2d 421 (Court of Appeals 1991).

Moreover, as demonstrated by the accompanying Affidavit of Meredith Cleland[1], the Court's determination is also contrary to the continuing practice of the Department of Revenue, which practice and interpretation are entitled to deference by

[1] The affidavit is filed and submitted pursuant to Rule 240(c)(3) SCACR.

this Court. The Court was in error both in its implicit factual determination, and in its failure to provide appropriate deference to the agency (Department of Revenue), charged with enforcement of relevant statutes. Brown v. S.C. Department of Health and Environmental Control, 348 S.C. 506, 566 S.E.2d 410 (2002).

C. The Court was in error in its determination that section 12-43-220(c)(2) of the South Carolina Code was merely a pro-ration statute.

As demonstrated hereinabove, both Chapters 37 and 43 of Title 12 contain provisions specifically relating to the availability of the homestead exemption, and due consideration of the relevant provisions of both chapters is essential to a determination of eligibility for the homestead exemption. Section 12-43-220(c)(2)(i) of the South Carolina Code, by its specific provisions, sets forth additional criteria for eligibility for the homestead exemption. The statute specifically mandates, as an additional requirement for qualification for the homestead exemption, that property, in the first instance, also satisfy the statutory criteria for eligibility for the 4% residential assessment ratio, as set forth in section 12-43-220(c)(1).

Although section 12-43-220(c)(2)(i) may encompass pro-ration, it nonetheless also, by its explicit terms, imposes additional criteria (as detailed more thoroughly hereinabove), upon eligibility for the homestead exemption. It bears emphasis that the criteria imposed by section 12-43-220(c)(2)(i) are explicitly reiterated in section 12-37-252(B), relating to qualifications for refund, pursuant to section 12-43-220(c), for prior years' eligibility "... for the 4% owner-occupied residential assessment ratio". Such parallel references, within the respective chapters of Title 12, clearly demonstrates the interrelationship between the respective chapters 37 and 43 of Title 12, and equally clearly evidence the legislative intent that eligibility for the homestead exemption be

conditioned upon corresponding eligibility for the 4% residential assessment ratio, under section 12-43-220(c)(1).

D. The Court was in error in its determination that the relevant statutes were not characterized by ambiguity, and in its further failure to construe such ambiguities against the taxpayer, and in favor of the Appellant Assessor.

As demonstrated hereinabove, it is the contention of the Appellant that the relevant statutory provisions are unambiguous in their imposition of specific requirements for qualification for the homestead exemption, including those requirements as set forth, respectively, in section 12-37-250 of the South Carolina Code, and section 12-43-220(c)(2)(i). However, even in the absence of such legislative clarity, the provisions, as set forth within the legislative scheme encompassed by Chapters 37 and 43 of Title 12, are, at the very least, ambiguous. Under established rules of construction, ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer, who must clearly bring himself within the constitutional or statutory language upon which he relies. State vs. Life Insurance Company of Georgia, 254 S.C. 286, 292, 175 S.E.2d 203, 206 (1970). Established rules, which require construction of exemption/deduction statutes against the taxpayer, are plainly applicable to the statutes addressing the homestead exemption, whether within section 12-37-250, or within section 12-43-220(c). CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Demonstrated ambiguities in the statutes at issue before the Court require construction against the taxpayer, and in favor of the Assessor. The Court, in its failure so to construe the statutes, was in error.

CONCLUSION

Based upon the foregoing considerations, it is respectfully submitted that the Court was in error in its failure to consider the relevant provisions of both Chapters 37 and 43 of Title 12 in its determination of eligibility for the homestead exemption. The Court was in further error in its determination that section 12-37-250 of the South Carolina Code sets forth the sole criteria for eligibility for the homestead exemption, in its determination that property satisfying the limited criteria in section 12-37-250 is entitled to a 4% assessment ratio pursuant to section 12-37-252(A), and in its failure to consider the additional criteria for eligibility as imposed by section 12-43-220(c)(2)(i). The Court was also in error in its implicit determination that the relevant statutes had been construed, against the position asserted by the Appellant, by the Department of Revenue, a finding which was without substantial evidence. The Court was also in error in its determination that section 12-43-220(c)(2)(i) was merely a pro-ration statute, and in its failure to consider the additional criteria, imposed by such statute, for eligibility for the homestead exemption. The Court was also in error in its failure to find ambiguity in the statutes under consideration, and in its failure to resolve such ambiguity against the taxpayer, and in favor of the Petition-Appellant.

For the foregoing reasons, the Appellant, Beaufort County Assessor, respectfully requests that this Honorable Court grant its petition for rehearing, vacate its opinion, and render judgment in favor of the Appellant.

SIGNATURE PAGE TO FOLLOW

HOWELL, GIBSON & HUGHES, P.A.

By: _____

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Beaufort, South Carolina

January 17, 2017

THE STATE OF SOUTH CAROLINA

South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Honorable John D. McLeod

RECEIVED

JAN 19 2017

SC Court of Appeals

Appellate Case No: 2014-002355

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

v.

BEAUFORT COUNTY ASSESSOR ..... Appellant.

AFFIDAVIT OF MEREDITH CLELAND, SOUTH CAROLINA DEPARTMENT OF REVENUE

I, Meredith Cleland, after being duly sworn, do hereby make oath and affirm as follows:

1. I am employed with the South Carolina Department of Revenue ("Department") as the Deputy Director, Government Services Division. I have been employed at the Department, in various capacities, for 36 years.
2. In my capacity as Deputy Director, Government Services, I oversee the Property Tax section of the Department. In addition, I am privy to the preparation, distribution and withdrawal of Policy documents as recommended to the Director of the Department by the Policy Section of the Department. I am, therefore, authorized to make this Affidavit on behalf of myself and the Department concerning the issues of legal residence and homestead and the longstanding Department position on these issues. Further, I make this Affidavit based on my own personal knowledge and my role and experience at the Department.
3. The Policy Section recommends advisory opinions to the Department's Director for approval, modification or withdrawal. See, SC Rev. Proc. #09-3. These proposed rulings are circulated within the Department for comments prior to issuance, and may be modified based on comments received from Department employees. Id.

4. In 1997, the Policy Section recommended Rev. Ruling #97-18 to the Director regarding the eligibility for Homestead Exemption and the reconciliation of the Homestead Exemption and Legal Residence. This Revenue Ruling was signed by Director Burnet R. Maybank, III on December 28, 1997 and noted that "the homestead exemption and legal residence are inextricably intertwined." SC Rev. Rul. #97-18, p. 5.
5. In 1999, the Department issued Information Letter 99-4 withdrawing Rev. Ruling #97-18.
6. At the time of Inf. Ltr. #99-4, the Department was in discussions with the Comptroller General's Office over which agency would be responsible for advice to and education of the local governments on issues of local government property taxes.
7. When Rev. Ruling #97-18 was withdrawn, no new Policy document was issued which addressed the connection of homestead and legal residence.
8. The Property Section at the Department has maintained, and continues to maintain, that the homestead exemption and legal residence issues are connected and that an applicant for a homestead exemption should first apply for, and qualify for, the legal residence assessment ratio.
9. The Property Section has advised County Auditors for many years, and continues to advise County Auditors, that if an applicant for Homestead Exemption has not yet applied for Legal Residency, that the Auditor should refer the applicant to the county assessor's office so the applicant can apply for and qualify for the legal resident assessment.

FURTHER AFFIANT SAYETH NOT.

Meredith Cleland

Meredith Cleland

SWORN and subscribed to before me
This 17th day of January, 2017

Notary Public for South Carolina
My Commission Expires: 1/10/2018

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Honorable John D. McLeod

RECEIVED
JAN 19 2017
SC Court of Appeals

Appellate Case No.: 2014-002355

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

v.

BEAUFORT COUNTY ASSESSOR ..... Appellant.

PROOF OF SERVICE

I certify that I served the Petition for Rehearing of Appellant Beaufort County Assessor, and accompanying Affidavit of Meredith Cleland, on Frank R. Mead, III by depositing a copy of it in the United States Mail, postage prepaid, on this 19th day of January, 2017, addressed to his attorneys of record, Burnet Maybank, III and James P. Rourke, at their office at Nexsen Pruet, PLLP, P.O. Box 2426, Columbia, SC 29202.

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Beaufort, South Carolina

The South Carolina Court of Appeals

Frank R. Mead, III, Respondent,

v.

Beaufort County Assessor, Appellant.

Appellate Case No. 2014-002355

ORDER

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

Thomas E. Huff J.

J.

John D. Beatty J.

Columbia, South Carolina

cc:
Stephen P. Hughes, Esquire
James Andrew Yoho, Esquire
Burnet Rhett Maybank, III, Esquire
James Peter Rourke, Esquire
The Honorable John D. McLeod

FILED

February 23, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Honorable John D. McLeod

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

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

v.

BEAUFORT COUNTY ASSESSOR ..... Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Frank R. Mead, III, Petitioner, vs. Beaufort County Assessor, Respondent.	)	Docket No. 13-ALJ-17-0585-CC **ORDER**

STATEMENT OF THE CASE

Petitioner's Motion and Respondent's cross-motion for Summary Judgment involves whether Petitioner is eligible for the homestead exemption available under S.C. Constitution Art. X, § 3(i) and S.C. Code Ann. §§ 12-37-220(9), 12-37-250, and 12-37-252(A) (collectively, the "Homestead Exemption") for his property located at [redacted] (hereinafter the "Subject Property") for the 2011 Tax Year and thereafter. In January 2011, Respondent Beaufort County Assessor determined that Petitioner was no longer eligible for the Homestead Exemption because he rented out the Subject Property for more than fourteen days in the prior year, and is thus not eligible for primary residence status under different code sections.

Petitioner and Respondent agree that the sole legal issue is whether "The homestead exemption under section 12-37-250 is only available to property that also qualifies for the preferential residential assessment ratio made available by section 12-43-220(c)." (Respondent's Memorandum of Law at pg. 2.)

Respondent argues that qualifying for the homestead exemption under the Constitutional (Art. X, § 3(i)) and statutory provisions (principally §§ 12-37-220(A)(9), 12-37-250, 12-37-252(A) and 12-37-290) relating to the homestead exemption is not sufficient. Respondent argues Petitioner must also meet the primary residence constitutional (Art. X, § 1(3)) and statutory provisions (§ 12-43-220(c)) as well. Petitioner contends that meeting the qualifications contained in the Homestead exemption constitutional provision and statutes suffices.

FILED
AUG 19 2014
SC ADMIN. LAW COURT

FINDINGS OF FACT

Having carefully considered all testimony, exhibits, and arguments present at the hearing of this matter, and taking into account the credibility and accuracy of the evidence, I make the following findings of fact by a preponderance of evidence:

1. This Court has procedural and subject matter jurisdiction over this case.

2. The parties have exhausted their pre-hearing remedies. Furthermore, notice of the date, time, place and subject matter of the hearing was timely given to all parties.

3. Petitioner is the owner of a home on Hilton Head Island in Beaufort, South Caroline and is a resident of and is domiciled in Beaufort County. The home is his legal residence and has been since he purchased it in 1976. The ownership of the home has remained unchanged since 1976. Before 2011, Petitioner's residence was assessed at the 4% ratio applicable to both primary residences and Homestead exemption.

4. Petitioner was born in 1939. He has been over 65 years of age since 2004.

5. Petitioner qualified for the Homestead Exemption in 2005 and received the Homestead Exemption on his property from 2005 through 2010.

6. In 2011 Petitioner rented his house for more than 14 days and, as a result was no longer eligible for the primary residence 4% ratio.

7. The Beaufort County Auditor revoked the Homestead exemption for 2011 on the grounds that because Petitioner had lost his primary residence 4% assessment ratio by virtue of renting his property for more than fourteen days, his property also no longer qualified for the Homestead Exemption. In other words, she stated that a property owner has to qualify for primary residence status in order to qualify for the Homestead Exemption.

8. Mead appealed and the revocation was upheld by the County Board, and this appeal followed.

CONCLUSIONS OF LAW

Rule 68, SCALC, allows this Court to use the South Carolina Rules of Civil Procedure when there is no corresponding Court Rule. Therefore, Motions for Summary Judgment are governed by Rule 56 of the South Carolina Rules of Civil Procedure. Rule 56(c), SCRCP, provides that summary judgment shall be granted if it is shown "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Summary judgment should be granted "when plain, palpable and undisputed facts exist on which

reasonable minds cannot differ." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *NHC Homecare – South Carolina, LLC v. S.C. Dep't of Health & Envtl. Control*, 2013 WL 1804102 (S.C. Admin. Law Ct. 2013) (citing *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005)).

I. General

The South Carolina Constitution and statutes provide a host of property tax exemptions and special rules for farmers, manufacturers, individuals and others. The major exemptions or incentives for individuals are (1) agricultural use; (2) primary residence; and (3) Homestead Exemption. Each has its own separate requirements and each provides different incentives. For example, the agricultural use incentive requires an individual to own at least 5 acres of timber, and the incentive is a special fair market valuation which is usually well below the true fair market value of the property.

II. Homestead Exemption

Article X, § 3(i) of the South Carolina Constitution establishes a "homestead exemption" for persons sixty-five years of age and older, totally and permanently disabled or blind. Article X, § 3 provides nine exemptions, only two of which are for individuals. (The other is for household goods.) There is no exemption or other tax incentive provided in this Constitutional provision for primary residences.

S.C. Const. Art. X, §3(j) further provides that "[h]omestead exemptions from ad valorem taxation not specifically provided for in this section may be provided for by the General Assembly by general law." With authority granted by this Article of the Constitution, the General Assembly codified the Homestead Exemption principally in S.C. Code Ann. §§ 12-37-220(A)(9), 12-37-250, and 12-37-290. Under these three code sections, a person's dwelling place qualifies for the Homestead exemption when he or she (1) has been a resident of this State for at least one year and has reached the age of sixty-five years on or before December thirty-first; (2) has been classified as totally and permanently disabled by a state or federal agency having the function of classifying persons; or (3) is legally blind preceding the tax year in which the exemption is claimed.

Under § 12-37-250(A)(4)(a), "[t]he application for the exemption must be made to the auditor of the county and to the governing body of the municipality in which the dwelling place is located upon forms provided by the county and municipality and approved by the department." Once the initial application for the Homestead Exemption has been approved, the exemption "continues to be effective for successive years in which *the ownership of the homestead...remain unchanged.*" S.C. Code Ann. § 12-37-252(A) (emphasis added). As stated above, the appellant was granted the Homestead exemption in 2005 on the basis of his age. Ownership of the residence has remained unchanged.

The Homestead Exemption provides two incentives. Section 12-37-250(A)(1) exempts the first $50,000 of the fair market value of the "dwelling place." "Dwelling place" is defined in subsection (5) as "the permanent home and legal residence of the applicant." The second benefit is found in § 12-37-252(A) which provides: "***Notwithstanding any other provision of law,*** property that qualifies for the homestead exemption *pursuant to section 12-37-250* is classified and taxed as residential on an assessment equal to four percent on the property's fair market value." (Emphasis added). This section was added in 1980

It is clear that Petitioner meets the requirements for the Homestead Exemption contained in § 12-37-250. He has been a resident of South Carolina for at least one year and is over sixty-five years of age. He applied for and was granted the Homestead Exemption in 2005, and he has done nothing since then that could be considered "a change affecting eligibility, and "the ownership of the homestead . . . [has] remain[ed] unchanged." *Id.*

Furthermore, [t]he exemption includes the dwelling place when...owned in complete fee simple...." The Subject Property, Petitioner's primary and permanent residence, is his dwelling place. Although there is no express definition for "dwelling place", whether property is considered a "dwelling place" is determined based on the facts. Petitioner has resided at the subject property since 1976. Every time the property is rented out, Petitioner temporarily rents an apartment to live in, always intending to return to the subject property once the rental period is over. The subject property is listed as Petitioner's address on his driver's license, and is where he receives his bills. He does not hold out any other property to be his primary residence, nor has he applied for the 4% legal residence assessment ratio for any other property.

III. Homestead Exemption vs. Primary Residence

Respondent's position is that Petitioner is not entitled to the Homestead Exemption because he no longer qualifies for the 4% primary residence classification. Stated another way, Beaufort County contends that in order to be eligible for the Homestead exemption, the property owner has to meet all of the qualifications for both the primary residence statute as well as the Homestead exemption statute. Simply put, as stated below, the Homestead Exemption and the primary residence classification are two ships in the night. The following summarizes the differences between the two.

A. Different Constitutional Provision and Statutes

The Homestead Exemption is created in the S.C. Constitution Article X, § 3 and is primarily codified in §§ 12-37-220(A)(9), 12-37-250, 12-37-252(A), and 12-37-290.

The primary residence preferential assessment ratio is found in a different constitutional provision, Article X, § 1. It is codified in a different Chapter of Title 12. (The Homestead exemption is in Chapter 37; primary residence is in Chapter 43.) It is codified in § 12-43-220(c). The "Fourteen Day Rental" rule is found in § 12-43-220(c)(7).

B. Different Requirements

The requirements for the incentives are different. The Homestead Exemption requires a person who is 65 or older, permanently disabled or blind who owns the dwelling place, see §§ 12-37-220(9), 12-37-250(A)(1) and 12-37-290. The primary residence statute requires a legal "primary" residence and not more than 5 contiguous acres owned by a person who does not claim legal residence in another state or the 4% assessment ratio on another residence in South Carolina and who does not rent the primary residence for more than fourteen days, see § 12-43-220(c).

C. Different Incentives

The actual incentives conferred on property owners are also different. Article X, § 3 provides a $10,000 homestead exemption, section 12-37-290 exempts the first $10,000 of fair market value and § 12-37-250 (A)(1) provides a $50,000 exemption. In addition, § 12-37-252(A) provides a 4% assessment ratio for homestead exemptions.

Section 12-43-220(c)(1) provides a 4% assessment ratio for primary legal residences. Other statutes, e.g. Local Option Sales Taxes, provide other credits for primary residences.

The fallacy of Beaufort County's argument is found in Respondent's brief in page 3: "Petitioner has argued further that one who satisfies the limited criteria set forth within those [Homestead exemption] statutes is qualified for the homestead exemption *as well as the 4% residential assessment ratio authorized by section 12-43-220(c).*" (Emp. added.) Petitioner has not argued that he is entitled to the 4% ratio authorized by § 12-43-220(c). The 4% assessment ratio which Petitioner is qualified for is found in an entirely different Code section and in a different Chapter of Title 12. The 4% assessment ratio for homestead exemption residences is found in § 12-37-252(A) – not § 12-43-220(c). This section states that "*[n]otwithstanding any other provision of law,* property that qualifies for the homestead exemption pursuant to Section 12-37-250 is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." (Emp. added.)

In enacting the 4% assessment ratio for persons entitled to the Homestead exemption in 1996, the General Assembly recognized that a person might meet the requirements for the Homestead Exemption but not the primary residence statute. Section 12-37-252(A) plainly states: "***Notwithstanding any other provision of law, property that qualifies for the homestead exemption pursuant to section 12-37-250*** is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." (Emphasis added).

If Respondent is correct – if a person has to meet the primary residence statutory requirements found in § 12-43-220(c) in order to be entitled to the 4% assessment ratio – then why would the General Assembly have enacted § 12-37-252(A)? (Stated another way, under Respondent's argument by definition a person would have already qualified for the 4% assessment ratio under § 12-43-220(c).) In construing statutes, courts must assume that the legislature intended to accomplish something through enactment of a statute and did not instead engage in futile or worthless action. *See Florence County Democratic Party v. Florence County Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). *See also Home Health Services, Inc. v. S.C. Dep't of Rev. & Taxation*, 333 S.C. 691, 511 S.E.2d 404 (Ct. App. 1999); *Purvis v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 283, 403 S.E.2d 662 (Ct. App. 1991) (*citing Charleston Television, Inc. v. S.C. Budget & Control Board*, 296 S.C. 444, 458, 373 S.E.2d 892, 900 (Ct. App. 1988), *rev'd on other grounds*, 301 S.C. 468, 392 S.E.2d 671 (1990)).

The Department of Revenue recognized this. In S.C. Rev. Rul. #97-18, the Department held that "the ownership and occupancy requirements for the Homestead exemption and for the

4% legal residence assessment ratio are the same." But then, in DOR Information Letter 99-4, the Department recanted and stated "SC Revenue Ruling #97-18 is hereby withdrawn."

D. Different Qualifying Properties

Section 12-43-220(c)(1) includes the legal residence and not more than five acres contiguous thereto. The Homestead exemption, section 12-37-250 is limited to $50,000 but has no acreage limitation.

Subsection 12-43-220(c)(1) includes property "owned totally or in part in fee or by life estate." The Homestead exemption, 12-37-250(j) contains similar language.

The primary resident subsection includes "additional dwellings located on the same property and occupied by immediate family members of the owner of the interest." The Homestead exemption contains no similar language.

Subsection 12-43-220(c)(2)(v) qualifies members of the armed services who are residents of other states but who have a permanent duty station in this state for primary residence. The Homestead exemption contains no such qualifier.

Subsection 12-43-220(c)(6) qualifies purchasers of property subject to time share vacation rentals for no longer the 90 days for the primary residence status. The Homestead exemption contains no similar qualifier.

Subsection 12-43-220(c)(8) allows a prorated primary residence assessment for persons who own less of 50% of the legal residence. The Homestead exemption contains no similar language.

III. Fourteen-Day Rental Rule Does not Apply to Homestead Exemption

A. General

Lastly, even if the requirements for primary residence and Homestead Exemption are largely the same, the fourteen-day rental rule still would not apply to the Homestead Exemption. The fourteen-day rule is contained in Chapter 43 at § 12-43-220(c)(7) (the primary residence statute). This section states: "Notwithstanding any other provision of law, the owner–occupant of a *legal residence* is not disqualified from receiving the four percent assessment ratio *allowed by this item*" (emphasis added) if the taxpayer meets the requirements of Section § 280A(g) of the Internal Revenue Code ("IRC") and is otherwise eligible to receive the 4% assessment ratio. (To repeat, the subsection references "this item," not "this Chapter" or "Title 12." Even if it said "this chapter" it would not apply, as Homestead exemption is in a different chapter.)

In this case, the Homestead Exemption is not dependent upon legal residence, nor does its 4% assessment ratio derive from "this item," i.e. § 12-43-220(C). The Homestead 4% ratio derives from § 12-37-252(A) which states that "[n]otwithstanding any other provision of law, property that qualifies for the homestead exemption *pursuant to section 12-37-250*" is entitled to a 4% assessment ratio (emphasis added). There is no such similar cross-reference in any of the homestead exemption statutes to IRC § 280A(g).

In addition, both *Tolpa v. Beaufort County Assessor*, 08-ALJ-17-0088-CC and *Ford v. Beaufort County Assessor, supra* make clear that the purpose of the fourteen day rule contained in (c)(7) is to modify (or provide limited relief) to the no "rented . . . residences" sentence contained in § 12-43-220(c)(1). This sentence states:

> *If this property has located on it any* rented mobile homes or *residences which are rented* or any business for profit, this four percent value does not apply to those businesses or rental properties. (emp. added).

As the Court noted in *Tolpa, supra*, "Section 12-43-220(c)(7), *supra*, was added as an amendment in 2005 after the parent subsection was enacted in 2002. The obvious intent of the amendment was to prevent the strict disqualification by rental in (c)(1) . . . the 4% assessment to taxpayers who may have occasion to rent their legal residences for 14 days or less in the tax year in question." By contrast none of the multiple Homestead Exemption statutes contain this no "rented . . . residences" language. In summary, § 12-43-220(c)(1) relates exclusively to primary residences (for persons under the age of 65). It has no application to the Homestead exemption.

The DOR publication, South Carolina Property Tax (2013 ed.) discusses legal residences in section 217. The publication discusses Homestead Exemption in section 619. Section 217 notes that "a residence rented for more than 14 days during the tax year is disqualified." (*Id.* At pg. 8) Section 619 makes no reference to the 14 day rule or to section 12-43-220(c)(7)

In addition, the requirements for the Homestead exemption are repeated in four separate places Art. X, § 3(i); § 12-37-220(9); § 12-37-250; and § 12-37-290. None of these statutes or the Constitutional provision contain a fourteen day rule nor do they cross-reference the rule.

S.C. Code Ann. § 12-37-252(B) does refer to § 12-43-220(c) in two places, but neither reference hinges the applicability of the homestead exemption on whether the taxpayer qualifies for the primary residence ratio. In fact, the section relates only to the availability of a refund claim—not to eligibility for the exemption. According to that section:

> (B) When a person qualifies for a refund pursuant to Sections 12-60-2560 and 12-43-220(c) for prior years' eligibility for the four percent owner-occupied residential assessment ratio, the person also may be certified for a homestead tax exemption pursuant to Section 12-37-250. The refund does not extend beyond the immediate preceding tax year....
>
> ...
>
> (C) Notwithstanding any other provision of law, if a deceased taxpayer failed to claim the assessment ratio allowed pursuant to Section 12-43-220(c) or the exemption allowed pursuant to Section 12-57-250, or both, before the date of the taxpayer's death, then the personal representative of the deceased taxpayer's estate is deemed the agent of the deceased taxpayer for purposes of the applications required pursuant to these sections and any claim for refund arising pursuant to resulting overpayments.

Moreover, if the General Assembly had sought to require that homestead exemptions meet the requirements contained in section 12-43-220(c), then it would have used the mechanism it has used elsewhere. For example, in Chapter 6 of Title 12, when the General Assembly seeks to limit the use of credits to legal residences that qualify under the primary residence statute (i.e., 12-43-220(c)), it uses the term "legal residence pursuant to Section 12-43-220(c)" or "legal residence that qualifies under Section 12-43-220(C)." *See, e.g.*, 12-6-3660(A) (limiting a credit for retrofitting taxpayer's legal residence to owners properties that qualify under 12-43-220(C)); 12-6-3665(A) (limiting credit for state sales tax paid on purchases used to retrofit taxpayer's legal residence to owners of properties that qualify under 12-43-220(C)); 12-6-3670 (limiting credit for property insurance premium payments to owners of properties that qualify under 12-43-220(C)).

It makes no more sense to require a person otherwise eligible for the Homestead exemption to also qualify for the primary residence statute than it does to say a person cannot qualify for the primary residence statute unless he or she also qualifies for the Homestead exemption (age 65 or older).

B. Section 12-43-220(c)(2)(i)

The remainder of Respondent's argument is based upon a reading of the anti-December 31st no proration statute, § 12-43-220(c)(2)(i). By way of background, property taxes are generally not prorated in South Carolina. *See* South Carolina Property Tax Manual, Part IV, § 310.1 ("Numerous opinions of the South Carolina Attorney General have stated that there is no proration when more than one person owns the property during the year.") The DOR or the assessor takes a "snapshot" of the property on December 31st of the prior year and taxes are

imposed on the value and usage of the property on that date for the entire following year regardless of subsequent change of usage or value, *e.g., Benson Investments, LP v. Lexington County Assessor*, 11-ALJ-17-0518 (2012) ("The taxable status of real property for a given year is to be determined as on December 31 of the proceeding tax year, S.C. Code § 12-337-900; *Atkinson Dredging Co. v. Thomas*, 226 S.C. 361, 223 S.E. 2d 592 (1976).") The Supreme Court described the issue in *Atkinson Dredging Co. v. Thomas*, 266 S.C. 361, 369-70, 223 S.E.2d 592, 596 (1976) as follows:

> If a Charleston taxpayer had bought an automobile on Christmas Day, 1974, and that automobile had been totally destroyed on New Year's Day, he would, none the less, be liable to pay property tax for the entire year 1975. On the other hand, if he had bought an automobile on January 2, 1975, he would owe no personal property tax on that for the year 1975. In an ideal state, it would probably be well to levy the personal property on a daily basis. However, this would be an administrative impossibility. Under our taxing system, there have always been inequalities and inequities resulting from the fact that the tax for an entire year is contingent . . . on the 31st day of December next preceding the tax year in question.

So, a $600,000 commercial building which is owned by a law firm on December 31, 2012 is taxed at a 6% assessment ratio on a value of $600,000 for all of 2013 notwithstanding that the YMCA or other exempt entity purchases it on July 1, 2013. In such a case, the exemption would not start until 2014.

This exact issue was very recently before the Court in *Hampton Friends of the Arts v. Department of Revenue*, 401 S.C. 372, 737 S.E.2d 628 (2013). Hampton Friends of the Arts purchased taxable property in March 2008. "It is undisputed that prior to Appellant's purchase, the property was subject to property taxes on December 31, 2007." *Id.* at 374, 737 S.E.2d at 629. The Appellant was granted an exemption for the property from the DOR for 2009 property taxes and subsequent years. The DOR denied the exemption for 2008, and Hampton appealed the 2008 determination. The Supreme Court upheld the ALC's determination that the property was not exempt in 2008, stating: "...[Hampton] avers that, because it acquired the property prior to the tax levy for the 2008 tax year, the property became exempt and no tax is owed. We disagree, for the law is clear that property tax liability is determined as of December 31st of the preceding tax

year, regardless of the subsequent transfer to an exempt corporation or when the tax is actually levied." *Id.* at 375, 737 S.E.2d at 629. The Supreme Court concluded:

> Pursuant to settled law, the 2008 tax status of the Hampton County property was determined on December 31, 2007. Because the property was subject to property taxes as of December 31, 2007, the property is subject to 2008 property taxes.

Id. at 376, 737 S.E.2d at 630.

All § 12-43-220(c)(2)(i) does is reverse this December 31st no proration rule where property is purchased by someone entitled to the primary residence or Homestead exemption. That is clearly its sole purpose. It states:

> To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address *for some period* during the applicable tax year. A residence which has been qualified as a legal residence *for any part of the year* is entitled to the four percent assessment ratio provided in this item *for the entire year*, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 *for the entire year*, and for the homestead exemption under Section 12-37-250, if otherwise eligible, *for the entire year*. (Emp. added.)

This section merely authorizes the 4% assessment ratio for primary residences as well as the homestead exemption "for the entire year" in order to overrule the normal December 31st no-proration rule. Stated another way, a person over the age of 65 who buys a residence which was taxed as a second home (*i.e.*, 6%) on July 1, 2013, is entitled under the statute to the 4% for all of 2013. This subsection (c)(2)(i) was added by the General Assembly in 1999 in Action 100 (H.B. 3696). The Act Title makes this clear: "To amend Section 12-43-220, as amended, relating to classification and the applicable assessment ratio of property for purposes of the property tax, *so as to provide that owner-occupied residential property receiving the four percent assessment ratio retains that assessment ratio*, the residential exemption from school operating millage, *and the Homestead exemption, if applicable, for the entire year in which the ownership or use of such property changes* and to make conforming amendments." (Emp. added.)

Respondent vigorously argues that § 12-43-220(c)(2)(i) imposes the 14 day rule contained in § 12-43-220(c)(7) on homestead exemptions because of the cross-reference to Homestead exemptions contained in it. But that is not what the section states. It first states that

"[a] residence which has been qualified as a legal residence for any part of the year is entitled to the 4% assessment ratio *provided in this item* for the entire year . . . ." "This item" refers to § 12-43-220(c). The 4% assessment ratio for homestead exemptions is found in § 12-37-252(A).

Section 12-43-220(c)(i) goes on to cross-reference the homestead exemption as follows: "and for the homestead exemption *under § 12-37-250*, if otherwise eligible, for the entire year." As previously stated the 4% assessment ratio is not found in § 12-37-250 – but rather in § 12-37-252(A). Section 12-37-250 provides the requirements to qualify for the Homestead Exemption.

Alternatively and notwithstanding that the plain language of the homestead exemption compels the conclusion that Petitioner is entitled to the exemption, the ambiguity of the statutory regime should be resolved in favor of the taxpayer. As the Supreme Court recently stated in *Media General Communications, Inc. v. Department of Revenue*, 388 S.C. 138, 694 S.E.2d 525 (2010):

> "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." "The determination of legislative intent is a matter of law." "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." The best evidence of intent is in the statute itself: "What legislature says in the text of the statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature."

388 S.C. at 147-48, 694 S.E.2d at 529-30 (citations omitted).

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

Admittedly, the general rule is that tax credits and exemptions are a matter of legislative grace and are strictly construed against the taxpayer. *M. Lowenstein & Sons, Inc. v. S.C. Tax Comm'n*, 277 S.C. 561, 290 S.E.2d 812 (1982). However, as the Supreme Court recently stated in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011):

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

395 S.C. at 74-5, 716 S.E.2d at 881 (*citing State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008)). There is no absurd result with respect to the literal application of the statute's plain language and use of the statutorily defined terms utilized within the homestead exemption.

ORDER

Accordingly, based on the foregoing reasons, Beaufort's motion for summary judgment is denied and Petitioner's motion for summary judgment is granted. Specifically,

1. Petitioner Frank R. Mead, III, is entitled to the Homestead Exemption with a 4% tax assessment ratio on his legal residence for the tax year 2011 and subsequent years, and;
2. Respondent Beaufort County's application of the 6% tax assessment ratio to Petitioner's legal residence for the tax year of 2011 and subsequent years was unlawful.

AND IT IS SO ORDERED.

August 19, 2014
Columbia, S.C.

John D. McLeod, Judge
South Carolina Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, 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).

August 19, 2014
Columbia, S.C.

Anthony R. Goldman
Judicial Law Clerk

BEAUFORT COUNTY TAX
EQUALIZATION BOARD

ROBERT CUMMINS JR.
CHAIRMAN

ANNE MCGOWAN
ADMINISTRATIVE ASSISTANT

MULTIGOVERNMENT CENTER
POST OFFICE DRAWER 1228
BEAUFORT, SOUTH CAROLINA 29901-1228
TELEPHONE: (843) 255-2377
FAX: (843) 255-9404
www.bcgov.net

November 25, 2013

Mr. & Mrs. Frank Mead
[redacted]

Re: Tax Equalization Board Appeal [redacted]

Dear Mr. and Mrs. Mead:

The appeals process is a procedure that is afforded to every property owner in the state of South Carolina pursuant to South Carolina Code Ann. § 12-60-2530. The Beaufort County Tax Equalization Board serves as an independent and neutral body to review property tax assessment value disputes between the Assessor and the taxpayer. The Board is charged with making a fair and impartial decision that takes into account the facts as presented by the Assessor and the taxpayer along with applicable South Carolina law. We understand the concerns of taxpayers and seek to give each individual a fair and full opportunity to present his or her appeal.

At the conference on November 20, 2013, the Beaufort County Assessor was represented by Steve Hughes, Esq. and the taxpayer was represented by Burnet R. Maybank III, Esq.. After careful consideration of both the written information and oral presentations the Beaufort County Tax Equalization Board finds that the property located at [redacted] does not qualify for the Homestead Exemption pursuant to S.C. Code Ann. 12-37-250 for Tax Year 2011.

The Petitioner may appeal the decision of this Board pursuant to S.C. Code Ann. § 12-60-2540(A) which states: Within thirty days after the date of the board's written decision, a property taxpayer or county assessor may appeal a property tax assessment made by the board by requesting a contested case hearing before the Administrative Law Judge Division in accordance with the rules of the Administrative Law Judge Division. The address is Administrative Law Judge Division, Edgar A. Brown Building and 1205 Pendleton Street, Columbia, S.C. 29201.

Sincerely,

Robert Cummins, Jr. /abw

Robert Cummins, Jr., Chairman

cc: Mr. Ed Hughes, Mrs. Eunice Wynn, Mrs. Elizabeth Rigg

South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM

Last Name: Mead | First: Frank | Middle: | ☒ Mr. ☐ Miss ☐ Mrs. ☐ Ms. | Docket No. (To Be Completed by ALC)

Mailing Address: [redacted] | City: | State and Zip:

Home Number: [redacted] | Work Number: | Cell Number: | *E-Mail Address:

*By providing your e-email address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No

Are you represented by an Attorney? ☒ Yes ☐ No

Name of Attorney: Burnet R. Maybank, III

Mailing Address: 1230 Main Street, Suite 700

City, State and Zip: Columbia, South Carolina 29201

Work Number, Cell Number and E-mail Address: 803-540-2048(w) 803-960-3024 (c) bmaybank@nexsenpruet.com

If No, please complete the following:

Are you represented by a CPA? ☐ Yes ☒ No

Name of CPA:

Mailing Address:

City, State and Zip:

Work Number, Cell Number and E-mail Address:

CASE INFORMATION

Name of the Agency that issued the decision: County of Beaufort
(Example – Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, **you must attach the agency decision.** Is it attached?:
☒ Yes ☐ No

If no, please explain:

Date the decision was issued: November 25, 2013

Date the decision was received: December 2, 2013

Please provide a brief statement regarding why the hearing is being requested and the relief sought: The Beaufort County Tax Equalization Board erroneously affirmed the Assessor's revocation of Petitioner's Homestead Exemption. Petitioners request a Hearing on their right to Homestead exemption.

Payment via ☒ Check ☐ Money Order ☐ Cash for $ 150.00 (applicable **filing fee pursuant to** ALC Rule 71) is being submitted today to the Administrative Law Court via ☐ U.S. Postal Service ☒ Hand-delivery

X *Your Signature or Signature of Attorney/CPA*

December 9, 2013
Date

CERTIFICATE OF SERVICE (MUST BE COMPLETED)

Your Name: Sharon Dodgins Date: December 9, 2013 City: Columbia State: SC

I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

Name and/or Agency	Address	City, State and Zip
Robert Cummins, Beaufort Co. Tax Equalization	Multigovernment Center P.O. Drawer 1228	Beaufort, South Carolina 29901-1228
Mr. Ed Hughes, Assessor, Beaufort	Multigovernment Center P. O. Drawer 1228	Beaufort, South Carolina 29901-1228

Sharon Dodgins
X *Your Signature or Signature of Attorney/CPA*

12-9-13
Date

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Frank R. Mead, III, Petitioner, vs. Beaufort County Assessor, Respondent.	Docket No. 13-ALJ-17-0585-CC **PETITIONER'S PREHEARING STATEMENT**

TO: The Honorable John D. McLeod, Administrative Law Judge:

Pursuant to the Order for Prehearing Statements dated December 16, 2013 and Rule 14 of the South Carolina Rules of Procedure for the Administrative Law Court, Frank R. Mead, III ("Petitioner"), responds as follows:

1. **Nature of this proceeding:**

Petitioner is challenging the November 13, 2013 decision of the Beaufort County Tax Equalization Board with respect to the property tax, finding Petitioner's primary residence located at [redacted] does not qualify for the Homestead Exemption for the 2011 Tax Year.

2. **Statutory provisions conferring subject matter jurisdiction to the agency and other applicable statutes and regulations:**

A. **Jurisdiction** – S.C. Code Ann. § 12-60-10 (Supp. 2009), et. seq., which establishes the appeal process for tax protests; S.C. Code §§ 1-23-310 – 600 (Supp. 2009) which confers subject matter jurisdiction to the Administrative Law Court.

B. **Homestead Exemption and Related Statutes** – S.C. Const. Art. X, § 3; S.C. Code Ann. §§ 12-37-220; 12-37-250; 12-37-252; 12-43-220.

FILED
JAN 14 2014
SC ADMIN. LAW COURT

3. **The issues presented for determination, including any claims or defenses expected to be raised:**

The primary issue for determination is whether Petitioner qualifies for the Homestead Exemption under S.C. Code Ann. §§ 12-37-220(9) and 12-37-250. Petitioner intends to demonstrate that he meets the requirements of the statute because he is over sixty-five years of age and because his use of the subject property as his dwelling place has remained unchanged since 2005, when the Respondent first granted Petitioner the Homestead Exemption.

Respondent claims that Petitioner is not entitled to the Homestead Exemption because Petitioner rents the property at issue for more than 14 days per year. However, in making this conclusion, Respondent relies on the primary residence rules and not the Homestead Exemption rules. Thus, as discussed below, Respondent's conclusion misstates the law and is without merit.

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

Petitioner is a resident of South Carolina who has been over sixty-five years of age since 2004. Petitioner's property, located at [redacted] has been the sole legal residence, his sole domicile since Petitioner purchased the property on April 1, 1976. From time to time, Petitioner does rent out the property for short periods. When he does rent the residence, he temporarily rents an apartment and intends to return to his dwelling place once the rental period has ended.

Plaintiff had the homestead exemption on his property since the year 2005 through 2010.

Petitioner never received any formal or any notice from Beaufort County that they were going to, or had rescinded his Homestead Exemption. It was only when Plaintiff received his 89 Dune Lane property tax bill that he had any clue that his Homestead Exemption was also rescinded by the Respondent.

On June 23, 2011, Petitioner formally appealed to the Beaufort County Tax Equalization Board. By letter dated November 25, 2013, the Board found that Petitioner's property did not qualify for the Homestead Exemption for the 2011 Tax Year.

5. **The action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations:**

The Petitioner requests that the Court find that the Petitioner qualifies for the Homestead Exemption pursuant to S.C. Code Ann. 12-37-250.

Article X, §3(i) of the SC Constitution establishes a homestead exemption for persons sixty-five years of age and older, totally and permanently disabled or blind. Article X, §3 provides nine exemptions, only two of which are for. Th ere is no exemption or other tax incentive provided in this section for primary residences.

Article X, §3(j) of the SC Constitution further provides that "[h]omestead exemptions from ad valorem taxation not specifically provided for in this section may be provided for by the General Assembly by general law." With authority granted by the S.C. Constitution, the General Assembly codified the homestead exemption in S.C. Code Ann. §§12-37-220(9) and 250. Under § 12-37-250, a person's dwelling place qualifies for the exemption when he or she has, *inter alia*, been a resident of this State for at least one year and has reached the age of sixty-five years on or before December thirty-first.

Under § 12-37-250(A)(4)(a), "[t]the application for the exemption must be made to the auditor of the county and to the governing body of the municipality in which the dwelling place is located upon forms provided by the county and municipality and approved by the department." Once the initial application for the homestead exemption has been approved, the exemption "continues to be effective for successive years in which the *ownership of the homestead...remain unchanged.*" § 12-37-252(A) (emphasis added).

It is clear that Petitioner meets the requirements for the Homestead Exemption contained in § 12-37-250. He has been a resident of South Carolina for at least one year and is over sixty-five years of age. He applied for and was initially granted a Homestead Exemption in 2005, and he has done nothing since then that could be considered "a change affecting eligibility."

Furthermore, [t]he exemption includes the dwelling place when...owned in complete fee simple...." The property at issue, Petitioner's primary permanent residence, is his dwelling place. Although there is no express definition for "dwelling place", whether property is considered a "dwelling place" is determined based on the facts. Petitioner has resided at 89 Dune Lane, the property at issue, since 1976. Every time the property is rented out, Petitioner temporarily rents an apartment to live in, always intending to return to the subject property once the rental period is over. The subject property is listed as Petitioner's address on his driver's license, and is where he receives his bills. He does not hold out any other property to be his primary residence, nor has he applied for the 4% legal residence assessment ratio for any other property.

Respondent takes the position that Petitioner is not entitled to the Homestead Exemption because he no longer qualifies for the 4% primary residence classification as a result of his renting his house for more than 14 days a year. Simply put, the Homestead Exemptions and the primary residence classification are two ships in the night. For one, the Homestead Exemption is created in the S.C. Constitution Article X, § 3 and is codified in §§ 12-37-220(9) and 12-37-250. On the other hand, the primary residence preferential assessment ratio is found in a different Constitutional provision, Article X, § 1, and is codified in § 12-43-220(c)(1).

In addition, the requirements for the incentives are different. The Homestead Exemption requires a person who is 65 or older, permanently disabled or blind who owns the dwelling place.

The primary residence statute requires a legal "primary" residence and not more than 5 contiguous acres owned by a person who does not claim legal residence in another state or the 4% assessment ratio on another residence in South Carolina and who does not rent the primary residence for more than 14 days.

Finally, the incentives are also different. Article X, § 3 provides a $10,000 homestead exemption and § 12-37-250 (A)(1) provides a $50,000 exemption. In addition, § 12-37-252(A) provides a 4% assessment ratio.

Section 12-43-220(c)(1) provides a 4% assessment ratio for primary legal residences. In enacting the 4% assessment ratio for persons entitled to the Homestead exemption in 1996, the General Assembly recognized that a person might meet the requirements for the Homestead exemption but not the primary residence statute. Section 12-37-252(A) plainly states: "*Notwithstanding any other provision of law*, property that qualifies for the homestead exemption *pursuant to section 12-37-250* is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." (emphasis added)

The Department of Revenue (the "Department") has recognized the differences between the Homestead Exemption and the primary residence statute. In Rev. Rul. #97-18 the Department held that "the ownership and occupancy requirements for the Homestead exemption and for the 4% legal residence assessment ratio are the same." However, in Information Letter 99-4 the Department withdrew that ruling.

Lastly, even if the requirements for primary residence and homestead exemption are largely the same the 14 day rental rule still would not apply to the Homestead Exemption. The 14 day rule is contained in Chapter 43, § 12-43-220(c)(6). It states: "Notwithstanding any other provision of law, the owner –occupant of a *legal residence* is not disqualified from receiving the

four percent assessment ratio *allowed by this item*" if the taxpayer meets the requirements of IRC § 280A(g) (emphasis added).

The Homestead exemption is not dependent upon legal residence nor does its 4% assessment ratio derive from "this item," i.e., § 12-43-220(C). The Homestead 4% ratio derives from § 12-37-252(A) which states that "Notwithstanding any other provision of law, property that qualifies for the homestead exemption *pursuant to section 12-37-250*" is entitled to a 4% assessment ratio (emphasis added).

6. **A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:**

Petitioner will move for summary judgment prior to the hearing. SCALC Rule 68 allows this Court to use the SC Rules of Civil Procedure when there is no corresponding rule in the ALC Rules, so Motions for Summary Judgment are governed by SCRCP 56.

7. **A list of proposed witnesses and exhibits includes:**

A. **Petitioner anticipates seeking testimony from the following:**

The Petitioner's witness list is uncertain at this time. Petitioner is naming the following as potential witnesses, and reserves the right to call any of the Respondent's witnesses either in cross-examination or in its case in chief:

Frank Mead

Petitioner may retain at least one expert witness.

B. **Petitioner anticipates that exhibits will include:**

Any and all documents demonstrating the legal and intended residence of Petitioner, including but not limited to:

- Petitioner's driver's license
- Petitioner's passport

- Bills showing Petitioner's primary residence

Board Decision (dated November 25, 2013)

Respondent's Information Package presented to the Board

Petitioner's presentation to the Board

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

At this time, the Petitioner anticipates minimal discovery will be necessary. Petitioner's counsel will discuss this issue with Respondent's counsel.

9. **Whether the party deems it necessary by the Judge to conduct a Pre-Hearing Scheduling Conference or issue an order regarding motions, discovery, etc.:**

At this time, Petitioner does not anticipate the need for a Pre-Hearing Scheduling Conference or an Order regarding motions or discovery.

10. **The estimated time required for the hearing:**

One day.

11. **A range of proposed hearing dates for which all of the parties are available for a hearing on the merits in this case:**

February 18, 19, 20

March 18, 19, 20

12. **An email address that the Court can use for email correspondence:**

bmaybank@nexsenpruet.com

jrourke@nexsenpruet.com

Dated: January 14, 2014

Respectfully submitted,

Burnie Maybank /sld

Burnet R. Maybank III
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Counsel for Petitioner
FRANK R. MEAD, III

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

FRANK R. MEAD, III, Petitioner, vs. BEAUFORT COUNTY ASSESSOR, Respondent.	) DOCKET NO: 13-ALJ-17-0585-CC))))))))	BEAUFORT COUNTY ASSESSOR'S PRE-HEARING STATEMENT

1. **The nature of this proceeding:**

By his demand for a contested case hearing, the taxpayer Petitioner, Frank R. Mead, III, has challenged the denial, by the Respondent, Beaufort County Assessor, of the homestead exemption, for the tax year 2011, on the taxpayer's property on [redacted]. The Assessor, in denying the relief sought by the taxpayer, determined that the subject property fails to satisfy the legislatively-imposed criteria governing the availability of the homestead exemption.

2. **The statutory provision(s) conferring subject matter jurisdiction to the Division and other applicable statutes and regulations – be specific, not general;**

Subject matter jurisdiction is conferred upon the Administrative Law Court pursuant to the provisions of S.C. Code Ann. §§12-60-2510—12-60-2540.

Additional statutes relevant to the matters at issue include the following:

a. South Carolina Code Ann. §12-37-220.

b. South Carolina Code Ann. §12-37-250;

c. South Carolina Code Ann. §12-37-252;

d. South Carolina Code Ann. § 12-43-220(c), including subsections (1), (2)(i), and (7).

The following provision of the South Carolina Constitution also appears relevant to the matters at issue:

a. South Carolina Constitution, Article X, §3(i).

3. The issues to be presented for determination, including any claims or defenses expected to be raised:

The issue before this Court is whether the subject property satisfies the legislatively-imposed criteria for the availability of the homestead exemption for the tax year 2011.

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

The subject residence, owned by the Petitioner, a resident of Hilton Head Island over 65 years of age, was rented for no fewer than 138 days during the 2011 tax year. Consequently, the property failed to qualify for the preferential residential assessment ratio, available to eligible properties, under S.C. Code Ann. §12-43-220, and correspondingly failed to qualify for the homestead exemption, available to eligible properties, under §12-37-250.

5. The action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations;

The Assessor seeks an affirmation of his denial of the homestead exemption for the subject property.

The homestead exemption under §12-37-250 is only available to property that also qualifies for the preferential residential assessment ratio made available by §12-43-220(c). As determined by the Court of Appeals in Ford vs. Beaufort County Assessor, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012) (*cert. pending*), a residence rented for more than 14 days does not qualify for the preferential residential assessment ratio provided for in §12-43-220(c). The Petitioner, having rented the subject property for a period of no fewer than 138 days during the relevant tax year, failed to satisfy the requirements for the preferential residential assessment ratio, and is therefore not qualified for either the preferential residential assessment ratio or the homestead exemption.

The taxpayer has argued that the availability of the homestead exemption is governed exclusively by the provisions of the South Carolina Ann. §12-37-220, §12-37-250, and §12-37-252. The taxpayer has argued further that the one who satisfies the limited criteria set forth within those statutes is then qualified for the homestead exemption, as well as the 4% residential assessment ratio authorized by §12-43-220(c).

Contrary to the taxpayer's position, however, Chapter 37 is not the sole determinant of the availability of the homestead exemption. The exemption is addressed not only within the referenced statutes in Chapter 37 of the code, but is also addressed, and additional requirements imposed, by the specific provisions of §12-43-220(c)(i), in Chapter 43 of the code. Both chapters constitute parts of an overall statutory scheme encompassing taxation of real property, and both set forth specific provisions governing the availability of the homestead exemption. Any determination, therefore, of the eligibility of the subject property for the requested homestead exemption is necessarily dependent upon an appropriate interpretation of the relevant provisions of each of these chapters.

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

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

Article X, §3(i) of the South Carolina Constitution establishes "...a homestead exemption for persons 65 years of age and older, for persons permanently and totally disabled, and for blind persons...under conditions prescribed by the General Assembly by general law...."

However, that constitutional provision is not a blanket grant, but rather authorizes the homestead exemption only under such "conditions" as may be "prescribed" by the General Assembly. Moreover, S.C. Code Ann. §12-37-220(A)(9), in initially recognizing the homestead exemption, mirrors the language of the Constitution, and grants the exemption only "under conditions prescribed" by the General Assembly.

Section 12-37-250 more comprehensively addresses the matter, specifying that the homestead exemption is available for the first $50,000.00 of the fair market value of the "dwelling place" of the owner, when the owner, among other qualifications, has

reached the age of 65 years, has been classified as totally and permanently disabled, or is legally blind. Section 12-37-250(a)(5), defines "dwelling place" as "...the permanent home and **legal residence** of the applicant." [emphasis supplied].

Section 12-37-252 provides, in relevant part, that "...property that **qualifies** for the homestead exemption pursuant to Section 23-37-250 is classified and taxed as a residential on an assessment equal to 4% of the property's fair market value." [emphasis supplied].

Any analysis of the availability of the homestead exemption does not, however, end with consideration of §§12-37-220, -250, and -252. Equal consideration must also be given to other statutory provisions that also address the availability of the homestead exemption. Therefore, any analysis of the availability of the homestead exemption is incomplete until due consideration is given to S.C. Code Ann. §12-43-220(c), which specifically imposes additional conditions and restrictions upon persons seeking eligibility for the homestead exemption.

Section12-43-220(c)(2)(i), states, in relevant part:

> A residence which has been qualified as a **legal residence** for any part of the year is entitled to the 4% assessment ratio provided in this item for the entire year, the exemption from property taxes levied for school operations pursuant to §12-37-251 for the entire year, and for the homestead exemption under §12-37-250, **if otherwise eligible**, for the entire year.

[Emphasis added].

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

Thus, by the specific language of §12-43-220(c)(2)(i), qualification for the preferential residential assessment ratio provided by §12-43-220(c) is a prerequisite to eligibility for the homestead exemption under §12-37-250. Any other interpretation would render the statutory language of §12-43-220(c)(2)(i) completely unnecessary, wholly without purpose, and utterly superfluous.

The South Carolina Court of Appeals, in Ford vs. Beaufort County Assessor, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012) (*cert. pending*) determined that the "legal residence" is "qualified" for the 4% residential assessment only where the property:

a. Is the legal residence of the taxpayer;
b. Is owned and occupied by the taxpayer; and
c. Has not been rented for more than 14 days during the relevant tax year.

As the provisions of §12-43-220(c)(2)(i) make clear, only a **qualified** legal residence (i.e. one which is eligible for the 4% assessment ratio under §12-43-220(c)) is eligible for, and entitled to, the homestead exemption available under §12-37-250.

Because all relevant statutes must be interpreted as a whole, any interpretation of §12-37-252 (concerning the availability of either the homestead exemption or the preferential residential assessment ratio) must also take into account the conditions imposed by §12-43-220(c).

An isolated reading of §12-37-252 could lead one to conclude that it affords an automatic entitlement to the 4% assessment ratio for any property satisfying the limited criteria set forth in §12-37-250. However, as demonstrated hereinabove, per the specific provisions of §12-43-220, property does not **qualify** for the homestead exemption unless and until the property is first **qualified as a legal residence** under §12-43-220(c). The taxpayer's subject property here, which was rented for more than 14 days during the relevant tax year, (1) fails to satisfy the requirements for residential assessment as imposed by §12-43-220(c), (2) fails to satisfy the requirements for the homestead exemption, as imposed by §12-43-220(c)(2)(i), and, therefore, (3) simply does not qualify for either the homestead exemption or the residential assessment.

The South Carolina appellate courts have provided specific rules for construction of statutes granting exemptions and/or deductions from taxation. Those rules, which require strict construction of such statutes against the taxpayer, are plainly applicable to the exemption provided by §12-37-250, and equally applicable to §12-43-220, which the South Carolina Supreme Court has recently addressed as an exemption statute. CFRE, LLC vs. Greenville County Assessor, 395 S.C. 67, 716 S.E. 2nd 877 (2011).

These statutory provisions clearly impose specific requirements for eligibility for the homestead exemption, including the requirement that such property must also satisfy those criteria for eligibility for the 4% assessment ratio under §12-43-220(c). However, even in the absence of such legislative clarity, the provisions set forth within the legislative scheme are, at the very least, ambiguous. Under established rules of construction, ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer. The S.C. Supreme Court, in State vs. Life Insurance Company of Georgia, 254 S.C. 286, 175 S.E.2d 203 (1970), recited the "...well settled rule that constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayers claiming exemption; he must clearly bring himself within the constitutional or statutory language upon which he relies." (Internal quotes omitted).

Inasmuch as the Supreme Court requires ambiguities within statutes affording benefits as a matter of legislative grace be strictly construed against the taxpayer, any purported ambiguity found within the provisions of these statutes must be resolved against the taxpayer, and in favor of the Assessor.

Based upon those considerations set forth hereinabove, and other legal and factual matters which may be presented during the course of the contested case hearing, the subject property fails to qualify for the homestead exemption. Therefore, the homestead exemption and the preferential residential assessment ratio should be denied.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:

The Assessor does not anticipate filing any additional motions.

7. A list of proposed witnesses and exhibits:

Proposed witnesses:

a. Edward Hughes, Beaufort County Assessor

Exhibits:

a. CFRE, LLC, v. Greenville County Assessor, 395 SC 67, 716 SE 2d 877 (2011);

b. Ford vs. Beaufort County Assessor, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012) (*cert. pending*);

c. Opinion issued by the South Carolina Administrative Law Court – Thomas P. Tolpa vs. Beaufort County Assessor (August 11, 2008);

d. Correspondence, dated November 16, 2010, from Carolyn W. Smalls, Senior Property Administrative Tech, Office of the Beaufort County Assessor, to Frank Mead, III;

e. Correspondence, dated December 2, 2010, from taxpayer Frank Mead, III to Carolyn W. Smalls, Office of the Beaufort County Tax Assessor;

f. Correspondence, dated December 16, 2010, from Edward Hughes, Beaufort County Assessor, to Frank R. Mead, III;

g. Assessor's request, dated May 6, 2011, for additional information from taxpayer concerning rental of subject property;

h. Correspondence, dated June 3, 2011, from Edward Hughes, Beaufort County Assessor, to Frank R. Mead, III;

i. Correspondence, dated June 23, 2011, from Frank R. Mead, III to Beaufort County Tax Equalization Board;

j. Interoffice correspondence, from Cliff Rumsey to Ed Hughes, Beaufort County Assessor, dated July 6, 2011;

k. Correspondence, dated July 8, 2011, from Robert Cummins, Jr., Chairman, Beaufort County Tax Equalization Board to Frank R. Mead, III;

l. Beaufort County Assessor's Office Assessment Notice dated September 21, 2011 addressed to Frank R. Mead, III ;

m. Correspondence, dated January 10, 2012, from Gary Kublic, Beaufort County Administrator addressed to Frank R. Mead, III;

n. "Appeal of Real Property Appraisal/Assessment" dated January 12, 2012, submitted by taxpayer, Frank Mead, III;

o. Correspondence, dated January 24, 2012, from Frank R. Mead, III addressed to Gary Kublic, Beaufort County Administrator;

p. "Appeal of Real Property Appraisal/Assessment" dated January 7, 2013, submitted by taxpayer, Frank R. Mead, III;

q. Subject property listing in Vacation Rentals By Owner;

r. South Carolina Code Section 12-43-220;

s. South Carolina Code Section 12-37-250;

t. South Carolina Code Section 12-37-252;

u. Appraisal prepared by the Office of the Beaufort County Assessor.

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

It is not anticipated that any formal discovery will be necessary in order adequately to present the issues during the contested case hearing.

9. Whether the party deems it necessary by the undersigned Judge to conduct a Pre-Hearing Scheduling Conference or issue an order regarding motions, discovery, etc.:

It is not anticipated that a Pre-Hearing Scheduling Conference, or the issuance of any order regarding motions, discovery, etc., will be required.

10. The estimated time required for the hearing:

Approximately 3 hours.

11. A range of proposed hearing dates for which all of the parties are available for a hearing on the merits in this case; and

April 1 through 11, 2014; and
April 21 through 30, 2014

12. An email address that the Court can use for email correspondence.

khopinson@hghpa.com

HOWELL, GIBSON & HUGHES, P.A.

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

Beaufort, South Carolina

January 23, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Pre-Hearing Statement upon all counsel/parties of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 28th day of January, 2014.

By:
Stephen P. Hughes

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Frank R. Mead, III, Petitioner, vs. Beaufort County Assessor, Respondent.	Docket No. 13-ALJ-17-0585-CC **PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

TO: The Honorable John D. McLeod, Administrative Law Judge:

PLEASE TAKE NOTICE that the undersigned, as attorney for Petitioner Frank R. Mead, III, moves for an Order of Summary Judgment pursuant to Rule 56(c), SCRCP, granting Petitioner's request to deny or overturn the decision of the Beaufort County Tax Equalization Board with respect to Petitioner's property located at 89 Dune Lane, Hilton Head Island, South Carolina. The grounds for the Motion are that there is no genuine issue of material fact and that Petitioner is entitled to the property tax Homestead Exemption as a matter of law. The specific grounds for this motion include that Petitioner met the requirements for the Homestead Exemption for the period at issue because he was at least sixty-five years old, and his ownership and use of the property remained unchanged.

THEREFORE, by the undersigned counsel as attorneys for Petitioner, Petitioner respectfully requests that this Court grant Summary Judgment pursuant to Rule 56(c), SCRCP.

Respectfully submitted,

May 29, 2014
Columbia, South Carolina

Burnet R. Maybank, III
Jim Rourke
Nexsen Pruet, LLC
PO Drawer 2426
Columbia, SC 29202
(803) 540-2048
Attorneys for Petitioner

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Frank R. Mead, III, Petitioner, vs. Beaufort County Assessor, Respondent.	Docket No. 13-ALJ-17-0585-CC **PETITIONER'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Petitioner's Motion for Summary Judgment involves whether he is entitled to the primary residence 4% assessment ratio (and other benefits for primary residences) even though he is not entitled to the Homestead exemption, as he is not age 65, permanently disabled or blind.

Actually, Petitioner's Motion does not involve this issue (and Petitioner is a few years past age 65). But as stated below, that is exactly the legal reasoning put forth by the County in this appeal.

Petitioner's Motion for Summary Judgment actually involves whether Petitioner is eligible for the homestead exemption available under S.C. Constitution Art. X, § 3(i) and S.C. Code Ann. §§ 12-37-220(9), 12-37-250, and 12-37-252(A) (collectively, the "Homestead Exemption") for his property located at [redacted] (hereinafter the "Subject Property") for the 2011 Tax Year and thereafter. In January 2011, Respondent Beaufort County Assessor determined that Petitioner was no longer eligible for the Homestead Exemption because he rented out the Subject Property for more than fourteen days in prior years, and is thus not eligible for primary residence status under different code sections.

As detailed below, Petitioner is entitled to Summary Judgment because he meets all of

the statutory qualifications of the Homestead Exemption as a matter of law. Respondent's denial based on the rental of the Subject Property is erroneous and irrelevant to the determination of whether Petitioner is eligible for the Homestead exemption.

II. RELEVANT FACTUAL BACKGROUND

The Subject Property has been the sole legal residence and the sole domicile of Petitioner since Petitioner purchased the property on April 1, 1976. (See Affidavit of Petitioner at **Exhibit 1**).

Petitioner had enjoyed the Homestead Exemption on his property since the year 2005 through 2010.

Petitioner never received any formal or other notice from Beaufort County that they were going to, or had rescinded his Homestead Exemption. It was only when Petitioner received his property tax bill for the Subject Property that he had any clue that his Homestead Exemption was also rescinded by the Auditor.

The Beaufort County Auditor's rationale was that because Petitioner had lost his primary residence 4% assessment ratio by virtue of renting his property for more than fourteen days, his property no longer qualified for the Homestead Exemption. In other words, she stated that a property owner has to qualify for primary residence status in order to qualify for the Homestead Exemption.

Mead appealed the revocation which was upheld by the County Board, and this appeal followed. As detailed below, Petitioner is entitled to the Homestead Exemption even where he rents his house out for more than fourteen days.

III. LEGAL STANDARD

Rule 68, SCALC, allows this Court to use the South Carolina Rules of Civil Procedure when there is no corresponding Court Rule. Therefore, Motions for Summary Judgment are

governed by Rule 56 of the South Carolina Rules of Civil Procedure. Rule 56(c), SCRCP, provides that summary judgment shall be granted if it is shown "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Summary judgment should be granted "when plain, palpable and undisputed facts exist on which reasonable minds cannot differ." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *NHC Homecare – South Carolina, LLC v. S.C. Dep't of Health & Envtl. Control*, 2013 WL 1804102 (S.C. Admin. Law Ct. 2013) (citing *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005)).

IV. LAW

A. In General

The South Carolina Constitution and statutes provide a host of property tax exemptions and special rules for farmers, manufacturers, individuals and others. The major exemptions or incentives for individuals are (1) agricultural use; (2) primary residence; and (3) Homestead Exemption. Each has its own separate requirements and each provides different incentives. For example, the agricultural use incentive requires an individual to own at least 5 acres of timber, and the incentive is a special fair market valuation which is usually well below the true fair market value of the property.

B. Homestead Exemption

Article X, § 3(i) of the South Carolina Constitution establishes a "homestead exemption" for persons sixty-five years of age and older, totally and permanently disabled or blind. Article X, § 3 provides nine exemptions, only two of which are for individuals. (The other is for

household goods.) There is no exemption or other tax incentive provided in this Constitutional provision for primary residences.

S.C. Const. Art. X, §3(j) further provides that "[h]omestead exemptions from ad valorem taxation not specifically provided for in this section may be provided for by the General Assembly by general law." With authority granted by this Article of the Constitution, the General Assembly codified the Homestead Exemption principally in S.C. Code Ann. §§ 12-37-220(9), 12-37-250, and 12-37-290. Under these three code sections, a person's dwelling place qualifies for the Homestead exemption when he or she (1) has been a resident of this State for at least one year and has reached the age of sixty-five years on or before December thirty-first; (2) has been classified as totally and permanently disabled by a state or federal agency having the function of classifying persons; or (3) is legally blind preceding the tax year in which the exemption is claimed. (Section 12-37-290 exempts the first $10,000 of FMV and 12-37-250 the first $50,000 of FMV. The requirements are the same.)

Under § 12-37-250(A)(4)(a), "[t]he application for the exemption must be made to the auditor of the county and to the governing body of the municipality in which the dwelling place is located upon forms provided by the county and municipality and approved by the department." Once the initial application for the Homestead Exemption has been approved, the exemption "continues to be effective for successive years in which *the ownership of the homestead...remain unchanged.*" S.C. Code Ann. §12-37-252(A) (emphasis added). As stated above, the appellant was granted the Homestead exemption in 2005 on the basis of his age.

The Homestead Exemption provides two incentives. Section 12-37-250(A)(1) exempts the first $50,000 of the fair market value of the "dwelling place." "Dwelling place" is defined in subsection (5) as "the permanent home and legal residence of the applicant." The second benefit

is found in § 12-37-252(A) which provides: "*Notwithstanding any other provision of law*, property that qualifies for the homestead exemption *pursuant to section 12-37-250* is classified and taxed as residential on an assessment equal to four percent on the property's fair market value." (Emphasis added).

It is clear that Petitioner meets the requirements for the Homestead Exemption contained in § 12-37-250. He has been a resident of South Carolina for at least one year and is over sixty-five years of age. *See* Exhibit 1. He applied for and was initially granted the Homestead Exemption in 2005, and he has done nothing since then that could be considered "a change affecting eligibility." *Id.*

Furthermore, [t]he exemption includes the dwelling place when...owned in complete fee simple...." The Subject Property, Petitioner's primary and permanent residence, is his dwelling place. Although there is no express definition for "dwelling place", whether property is considered a "dwelling place" is determined based on the facts. Petitioner has resided at the subject property since 1976. Every time the property is rented out, Petitioner temporarily rents an apartment to live in, always intending to return to the subject property once the rental period is over. The subject property is listed as Petitioner's address on his driver's license, and is where he receives his bills. He does not hold out any other property to be his primary residence, nor has he applied for the 4% legal residence assessment ratio for any other property.

C. Homestead Exemption vs. Primary Residence Exemption

Respondent's position is that Petitioner is not entitled to the Homestead Exemption because he no longer qualifies for the 4% primary residence classification. Stated another way, Beaufort County contends that in order to be eligible for the Homestead exemption, the property owner has to meet all of the qualifications for both the primary residence statute as well as the Homestead exemption statute. Simply put, as stated below, the Homestead Exemption and the

primary residence classification are two ships in the night. The following summarizes the differences between the two.

1. Different Constitutional Provision and Statutes

The Homestead Exemption is created in the S.C. Constitution Article X, § 3 and is primarily codified in §§ 12-37-220(9),12-37-250, 12-37-252(A), and 12-37-290. (As may be seen below, there are a number of other Code sections dealing with the Homestead exemption.)

The primary residence preferential assessment ratio is found in a different constitutional provision, Article X, § 1. It is codified in a different Chapter of Title 12. (The Homestead exemption is in Chapter 37; primary residence is in Chapter 43.) It is codified in § 12-43-220(c). The "Fourteen Day Rental" rule is found in section 12-43-220(c)(7).

2. Different Requirements

The requirements for the incentives are different. The Homestead Exemption requires a person who is 65 or older, permanently disabled or blind who owns the dwelling place, see 12-37-220(9), 12-37-250(A)(1) and 12-37-290. The primary residence statute requires a legal "primary" residence and not more than 5 contiguous acres owned by a person who does not claim legal residence in another state or the 4% assessment ratio on another residence in South Carolina and who does not rent the primary residence for more than fourteen days, see section 12-43-220(c).

3. Different Benefits of Incentives

The actual incentives conferred on property owners are also different. Article X, § 3 provides a $10,000 homestead exemption, section 12-37-290 exempts the first $10,000 of fair market value and § 12-37-250 (A)(1) provides a $50,000 exemption. In addition, § 12-37-252(A) provides a 4% assessment ratio for homestead exemptions.

Section 12-43-220(c)(1) provides a 4% assessment ratio for primary legal residences.

Other statutes, e.g. Local Option Sales Taxes, provide other credits for primary residences.

In enacting the 4% assessment ratio for persons entitled to the Homestead exemption in 1996, the General Assembly recognized that a person might meet the requirements for the Homestead Exemption but not the primary residence statute. Section 12-37-252(A) plainly states: "*Notwithstanding any other provision of law, property that qualifies for the homestead exemption pursuant to section 12-37-250* is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." (Emphasis added).

If Respondent is correct – if a person has to meet the primary residence statutory requirements found in section 12-43-220(c)(7) in order to be entitled to the 4% assessment ratio – then why would the General Assembly have enacted § 12-37-252(A)? In construing statutes, courts must assume that the legislature intended to accomplish something through enactment of a statute and did not instead engage in futile or worthless action. *See Centex Intern., Inc. v. S.C. Dep't of Rev.*, 406 S.C. 132, 145-46, 750 S.E.2d 65, 72 (2013) *and Florence County Democratic Party v. Florence County Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). *See also Home Health Services, Inc. v. S.C. Dep't of Rev. & Taxation*, 333 S.C. 691, 511 S.E.2d 404 (Ct. App. 1999); *Purvis v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 283, 403 S.E.2d 662 (Ct. App. 1991) (*citing Charleston Television, Inc. v. S.C. Budget & Control Board*, 296 S.C. 444, 458, 373 S.E.2d 892, 900 (Ct. App. 1988), *rev'd on other grounds*, 301 S.C. 468, 392 S.E.2d 671 (1990)).

The Department of Revenue recognized this. In S.C. Rev. Rul. #97-18, the Department held that "the ownership and occupancy requirements for the Homestead exemption and for the 4% legal residence assessment ratio are the same." But then, in DOR Information Letter 99-4, the Department recanted and stated "SC Revenue Ruling #97-18 is hereby withdrawn."

D. Fourteen-Day Rental Rule Does not Apply to Homestead Exemption

Lastly, even if the requirements for primary residence and Homestead Exemption are largely the same, the fourteen-day rental rule still would not apply to the Homestead Exemption. The fourteen-day rule is contained in Chapter 43 at § 12-43-220(c)(7) (the primary residence statute). This section states: "Notwithstanding any other provision of law, the owner–occupant of a *legal residence* is not disqualified from receiving the four percent assessment ratio *allowed by this item*" (emphasis added) if the taxpayer meets the requirements of Section § 280A(g) of the Internal Revenue Code ("IRC") and is otherwise eligible to receive the 4% assessment ratio. (To repeat, the subsection references "this item," not "this Chapter" or "Title 12." Even if it said "this chapter" it would not apply, as Homestead exemption is in a different chapter.)

To summarize, if a taxpayer rents his house for less than 15 days during the taxable year, then he is eligible to receive the primary residence exclusion, so long as he meets the other requirements. By negative implication, it has been argued that if the taxpayer rents his house for more 15 or more days per year, then he cannot qualify for the private residence ratio, and the Court of Appeals has so held, see *Ford v. Beaufort County Assessor*, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012).

In this case, the Homestead Exemption is not dependent upon legal residence, nor does its 4% assessment ratio derive from "this item," i.e. § 12-43-220(C). The Homestead 4% ratio derives from § 12-37-252(A) which states that "[n]otwithstanding any other provision of law, property that qualifies for the homestead exemption *pursuant to section 12-37-250*" is entitled to a 4% assessment ratio (emphasis added). There is no such similar cross-reference in any of the homestead exemption statutes to IRC § 280A(g).

In summary, the requirements for the Homestead exemption are somewhat uniquely repeated in four separate places: Art. X, § 3(i); section 12-37-220(9); 12-37-250; and 12-37-290.

(I say "somewhat uniquely" in that I am not aware of any other state tax incentive or exemption which lists or repeats the same qualifications in four separate places in Title 12.) None of these statutes or the Constitutional provision contain a fourteen day rule nor do they cross-reference the rule.

S.C. Code Ann. § 12-37-252(B) does refer to § 12-43-220(c) in two places, but neither reference hinges the applicability of the homestead exemption on whether the taxpayer qualifies for the primary residence ratio. In fact, the section relates only to the availability of a refund claim—not to eligibility for the exemption. According to that section:

> (B) When a person qualifies for a refund pursuant to Sections 12-60-2560 and 12-43-220(c) for prior years' eligibility for the four percent owner-occupied residential assessment ratio, the person also may be certified for a homestead tax exemption pursuant to Section 12-37-250. The refund does not extend beyond the immediate preceding tax year....
>
> ...
>
> (C) Notwithstanding any other provision of law, if a deceased taxpayer failed to claim the assessment ratio allowed pursuant to Section 12-43-220(c) or the exemption allowed pursuant to Section 12-57-250, or both, before the date of the taxpayer's death, then the personal representative of the deceased taxpayer's estate is deemed the agent of the deceased taxpayer for purposes of the applications required pursuant to these sections and any claim for refund arising pursuant to resulting overpayments.

It makes no more sense to require a person otherwise eligible for the Homestead exemption to also qualify for the primary residence statute than it does to say a person cannot qualify for the primary residence statute unless he or she also qualifies for the Homestead exemption (age 65 or older).

E. Summary of Constitutional and Statutory Citations

Homestead Exemption	Primary Residence
Art. X, § 3(i)	Art. X, § 1(3)
Section 12-37-220(9)	12-43-220(c)
Section 12-37-245	
Section 12-37-250	

Section 12-37-252
Section 12-37-255
Section 12-37-260
Section 12-37-265
Section 12-37-266
Section 12-37-270
Section 12-37-275
Section 12-37-280
Section 12-37-285
Section 12-37-290
Section 12-37-295

V. CONCLUSION

Based on the foregoing, Petitioner qualifies for the Homestead Exemption under the plan language of the statutes. To argue that the fourteen-day rental rule applies to the Homestead Exemption, the Respondent would have to ignore:

(A) The fourteen-day rental rule is found not only in a different code section (12-43-220) but in a different Chapter (43) than homestead (37)
(B) Nowhere does the primary residence code section cross-reference the Homestead Exemption sections
(C) The fourteen-day rental rule instead references "this item," i.e. section 12-43-220
(D) Section 12-37-252 states "notwithstanding any other provision of law;" and
(E) Section 12-37-252 explicitly references the requirements contained in § 12-37-250 (with no cross-reference in the requirements section whatsoever to § 12-43-220.)

For the foregoing reasons, Petitioner's Motion for Summary Judgment should be granted.

Burnet R. Maybank III
Jim Rourke
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, SC 29202
803.771.8900

Attorneys for Petitioner
Frank R. Mead, III

May 29, 2014
Columbia, South Carolina

EXHIBIT 1

AFFIDAVIT OF FRANK R. MEAD, III

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Frank R. Mead, III, Petitioner, vs. Beaufort County Assessor, Respondent.	Docket No.: 13-ALJ-17-0585-CC **AFFIDAVIT OF FRANK R. MEAD, III**

PERSONALLY appeared before me, Frank R. Mead, III, who upon oath duly sworn, deposes and states as follows:

1. My name is Frank R. Mead, III. I was born [redacted] Thus, I have been over sixty-five years of age since 2004.
2. I own the property located at [redacted] It has been my sole residence and sole domicile since I purchased the property on April 1, 1976. Thus, I have been a resident of the state of South Carolina for more than one year.
3. I applied for and was granted the homestead exemption with respect to the above-named property in 2005. Since 2005, the ownership of my property has remained unchanged.
4. I rented the residence for more than 15 days in tax year 2011.
5. I traveled or rented an apartment when my residence was rented.
6. Neither my wife nor I own another residence in South Carolina.
7. I discovered the county had revoked my Homestead exemption when I received my tax bill.

IN WITNESS WHEREOF, the undersigned executes this Affidavit on this 30 day of January, 2014.

Name: Frank R. Mead, III

SWORN TO before this 30th day of January, 2014.

Notary Public for South Carolina
My Commission Expires: 7/14/2021

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Frank R. Mead, III, Petitioner, vs. Beaufort County Assessor, Respondent.	Docket No. 13-ALJ-17-0585-CC **CERTIFICATE OF SERVICE**

I, Melanie Farnham, do hereby certify and affirm that on this day I have served the person listed below with a copy of the documents specified below by mailing a copy of the same by First Class United States Mail, postage prepaid, to the following address:

Addressed To: Stephen P. Hughes
Post Office Box 40
Beaufort, South Carolina 29901-0040

Enclosures: Petitioner's Motion for Summary Judgment and
Petitioner's Memorandum in Support of Motion for Summary Judgment

Columbia, South Carolina
Dated: May 29, 2014

Respectfully submitted,

Melanie Farnham

Melanie Farnham
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
P.O. Drawer 2426
Columbia, SC 29202
Telephone: (803) 771-8900
Fax: (803) 727-1472

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Copy

FRANK R. MEAD, III, Petitioner, vs. BEAUFORT COUNTY ASSESSOR, Respondent.	)	DOCKET NO: 13-ALJ-17-0585-CC RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

TO: BURNET R. MAYBANK, III, ESQUIRE, AND JIM ROURKE, ESQUIRE, ATTORNEYS FOR THE PETITIONER:

YOU WILL PLEASE TAKE NOTICE THAT the Respondent Assessor, by and through his undersigned counsel, Howell, Gibson and Hughes, P.A., will appear before the Honorable John D. McLeod, Administrative Law Judge, at the Administrative Law Court, Edgar A. Brown Building, Second Floor, 1205 Pendleton Street, Columbia, South Carolina, on the tenth day after service hereof, or at such other place and time as may be determined by the Court, and then and there move for an Order granting summary judgment, in favor of the Respondent, as to the contested availability of the homestead exemption, for the subject property, for the tax year 2011.

The within motion, made pursuant to the provisions of Rules 19(A) and 68, Rules of Procedure for the Administrative Law Court, and Rule 56, South Carolina Rules of Civil Procedure, is premised upon the following considerations:

FILED

JUN 10 2014

SC ADMIN. LAW COURT

a. The Petitioner Taxpayer, by his request for a contested case hearing, has sought a determination by this Court that the subject property qualifies for the homestead exemption authorized by relevant provisions of the South Carolina Code;

b. That the subject property, which, during the relevant tax year, was rented for a period in excess of fourteen (14) days, does not satisfy the legislatively imposed criteria for eligibility for the homestead exemption.

In light of the foregoing considerations, there is no genuine issue as to any material fact, and the Respondent Assessor is entitled to judgment in its favor as a matter of law, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

HOWELL, GIBSON & HUGHES, P.A.

By: _____

Stephen P. Hughes
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
SPHughes@hghpa.com
Attorney for Respondent

Beaufort, South Carolina
June 5, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion for Summary Judgment upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 6th day of June, 2014.

By: _____
Stephen P. Hughes

RULE 11 CERTIFICATION

I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that

___ I have consulted with opposing counsel and have been unable to resolve the matter.

___ Consultation with opposing counsel would serve no useful purpose, or is not required.

___ Consultation with opposing counsel could not be timely held

✓ I certify that there is no duty of consultation for the attached motion (to dismiss, for summary judgment, for new trial, for judgment NOV, in real estate foreclosures, or with pro se litigants.)

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Copy

FRANK R. MEAD, III, Petitioner, vs. BEAUFORT COUNTY ASSESSOR, Respondent.	)	DOCKET NO: 13-ALJ-17-0585-CC MEMO IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

The Beaufort County Assessor, by and through its undersigned counsel, submits this memorandum of law in support of its motion for summary judgment. For the reasons discussed herein, summary judgment in favor of the Assessor is warranted.

BACKGROUND

By his demand for a contested case hearing, the taxpayer petitioner, Frank R. Mead, III, has challenged the denial, by respondent, Beaufort County Assessor, of the homestead exemption, for the year 2011, on petitioner's property on Hilton Head Island (R550 015 00A 0136 0000). The Assessor, in denying the relief sought by petitioner, determined the subject property failed to satisfy the legislatively-imposed criteria governing the availability of the homestead exemption.

FACTS

Petitioner, a resident of Hilton Head Island over the age of sixty-five, rented the subject property for no fewer than 138 days during the 2011 tax year. As a result, petitioner failed to qualify for the preferential residential assessment ratio, available to eligible properties, under S.C. Code Ann. § 12-43-220 (Supp. 2013), and

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SC ADMIN. LAW COURT

correspondingly failed to qualify for the homestead exemption, available to eligible properties, under § 12-37-250 (Supp. 2013). The County Board upheld the denial of the exemptions.

LEGAL STANDARD

Pursuant to Rule 68, SCALC, this Court may allow use of the South Carolina Rule of Civil Procedure to resolve issues not addressed by the rules of the Administrative Law Court (ALC). Under Rule 56, SCRCP, judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.

ARGUMENT

The homestead exemption under section 12-37-250 is only available to property that also qualifies for the preferential residential assessment ratio made available by section12-43-220(c). A review of the relevant statutes dictates only one conclusion: any rental of a residence for more than fourteen days in a tax year renders a home ineligible for the preferential residential assessment ratio as well as the homestead exemption.

The Court of Appeals determined in Ford v. Beaufort County Assessor, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012) (*cert. denied* April 16, 2014) that a residence rented for more than fourteen days does not qualify for the preferential residential assessment ratio provided for in section 12-43-220(c). Petitioner in the case at hand rented the subject property for no fewer than 138 days during the relevant tax year;

therefore petitioner failed to satisfy the requirements of the preferential residential assessment ratio and thus, failed to qualify for the homestead exemption.

Petitioner has argued the availability of the homestead exemption is governed exclusively by the provisions of South Carolina Code Ann. §12-37-220, §12-37-250, and §12-37-252. Petitioner has argued further that one who satisfies the limited criteria set forth within those statutes is qualified for the homestead exemption, as well as the 4% residential assessment ratio authorized by section 12-43-220(c).[1] However, Chapter 37 is not the sole determinant of the availability of the homestead exemption. Chapter 43 of the Code, specifically, section 12-43-220(c)(1), addresses and imposes additional requirements for qualifying for the exemption. It is clear both chapters constitute parts of an overall statutory scheme encompassing real property taxation, and both set forth specific provisions governing the availability of the homestead exemption. Accordingly, any determination of the eligibility of the subject property for the requested homestead exemption is dependent upon an appropriate interpretation of the relevant provisions of both chapters.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. Chem-Nuclear Systems, LLC v. S.C. Bd. of Health and Envtl. Control, 374 S.C. 201, 648 S.E.2d 601 (2007). All rules of statutory construction are subordinate to this rule if the legislative intent can be reasonably determined in the

[1] Petitioner also argues, "Once the initial Homestead Exemption has been approved, the exemption 'continues to be effective for successive years in which the ownership of the homestead . . . remain unchanged.'" However, as codified in S.C. Code Ann. §12-37-255 (Supp. 2013), the homestead exemption continues to be effective in successive years in which the ownership of the home *or other qualifications* remain unchanged. We contend the renting of the residence in excess of fourteen days triggers this provision and justified the denial of the exemption.

language used, and that language must be construed in light of the intended purpose of the statute. McClanahan v. Richland County Council, 350 S.C. 433, 567 S.E. 2d 240 (2002). Moreover, "the language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose." Chem-Nuclear, 374 S.C. at 205, 648 S.E.2d at 603.

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

Article X, §3(i) of the South Carolina Constitution establishes "... a homestead exemption for persons 65 years of age and older, for persons permanently and totally disabled, and for blind persons...under conditions prescribed by the General Assembly by general law...."

However, that constitutional provision is not a blanket grant, but rather authorizes the homestead exemption only under such "conditions" as may be "prescribed" by the General Assembly. Moreover, S.C. Code Ann. §12-37-220(A)(9) (Supp.2013), in initially

recognizing the homestead exemption, mirrors the language of the Constitution, and grants the exemption only "under conditions prescribed" by the General Assembly.

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

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

Any analysis of the availability of the homestead exemption does not end with consideration of sections 12-37-220, -250, and -252. Equal consideration must also be given to other statutory provisions that also address the availability of the homestead exemption, most relevantly, section 12-43-220(c), which specifically imposes additional conditions and restrictions upon taxpayers seeking eligibility for the homestead exemption.

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

> A residence which has been qualified as a **legal residence** for any part of the year is entitled to the 4% assessment ratio provided in this item for the entire year, the exemption from property taxes levied for school operations pursuant to §12-37-251 for the entire year, and for the homestead exemption under §12-37-250, **if otherwise eligible**, for the entire year.

[Emphasis added].

Section 12-43-220(c)(2)(i) sets forth a specific reference to the homestead exemption under section 12-37-250 and serves as evidence of a statutory scheme providing that a taxpayer cannot qualify for the homestead exemption without meeting the qualifications for the preferential residential assessment ratio. As petitioner notes, section 12-37-250 and section 12-37-252 both reference the 4% assessment ratio and discuss how the preferential residential assessment ratio accompanies the homestead exemption. However, petitioner fails to note an additional and statutorily mandated provision contained in section 12-43-220(c)(2)(i) that outlines the need for a residence to qualify for the preferential residential assessment ratio in order to be eligible for the homestead exemption.

Section 12-43-220(c)(2)(i) explicitly states that a qualified legal residence is entitled to the 4% ratio as well as the homestead extension, if otherwise eligible under section 12-37-250. As noted above, in order for a legal residence to qualify for the 4% ratio, it cannot be rented for more than fourteen days. Furthermore, it is clear the General Assembly intended for that requirement to also apply to a residence seeking the benefit of the homestead extension. Thus, by the specific language of section 12-43-220(c)(2)(i), qualification for the preferential residential assessment ratio provided by section 12-43-220(c) is a prerequisite to eligibility for the homestead exemption under section 12-37-250. Any other interpretation would render the statutory language of section 12-43-220(c)(2)(i) completely unnecessary, wholly without purpose, and utterly superfluous. CFRE, LLC vs. Greenville County Assessor, 395 S.C. 67, 716 S.E. 2nd 877 (2011). (stating a court must read the statutes so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous).

The South Carolina Court of Appeals, in Ford, 398 S.C. 508, 730 S.E.2d 335, determined a "legal residence" is "qualified" for the 4% residential assessment only where the property:

a. Is the legal residence of the taxpayer;
b. Is owned and occupied by the taxpayer; and
c. Has not been rented for more than 14 days during the relevant tax year.

As the provisions of section12-43-220(c)(2)(i) make clear, only a **qualified** legal residence (i.e. one which is eligible for the 4% assessment ratio under section 12-43-220(c)) is eligible for, and entitled to, the homestead exemption available under section 12-37-250.

Because all relevant statutes must be interpreted as a whole, any interpretation of section 12-37-252 (concerning the availability of either the homestead exemption or the preferential residential assessment ratio) must also take into account the conditions imposed by section 12-43-220(c).

An isolated reading of section 12-37-252 could lead one to erroneously conclude that it affords an automatic entitlement to the preferential residential assessment ratio for any property satisfying the limited criteria set forth in section 12-37-250. However, as demonstrated hereinabove, per the specific provisions of section 12-43-220, property does not **qualify** for the homestead exemption unless and until the property is first **qualified as a legal residence** under section 12-43-220(c). The taxpayer's subject property here, which was rented for more than 14 days during the relevant tax year, (1) fails to satisfy the requirements for residential assessment as imposed by section 12-43-220(c), (2) fails to satisfy the requirements for the homestead exemption, as

imposed by section 12-43-220(c)(2)(i), and, therefore, (3) simply does not qualify for either the homestead exemption or the residential assessment ratio.

Furthermore, the South Carolina appellate courts have provided specific rules for construction of statutes granting exemptions and/or deductions from taxation. Those rules, which require strict construction of such statutes against the taxpayer, are plainly applicable to the exemption provided by section 12-37-250, and equally applicable to section 12-43-220, which the South Carolina Supreme Court has recently addressed as an exemption statute. CFRE, LLC, 395 S.C. 67, 716 S.E. 2nd 877.

These statutory provisions clearly impose specific requirements for eligibility for the homestead exemption, including the requirement that such property must also satisfy those criteria for eligibility for the preferential residential assessment ratio under section 12-43-220(c). However, even in the absence of such legislative clarity, the provisions set forth within the legislative scheme are, at the very least, ambiguous. Under established rules of construction, ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer. The Supreme Court, in State vs. Life Ins. Co. of Georgia, 254 S.C. 286, 175 S.E.2d 203 (1970), recited the "...well settled rule that constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayers claiming exemption; he must clearly bring himself within the constitutional or statutory language upon which he relies." (Internal quotes omitted).

Inasmuch as the Supreme Court requires ambiguities within statutes affording benefits as a matter of legislative grace be strictly construed against the taxpayer, any

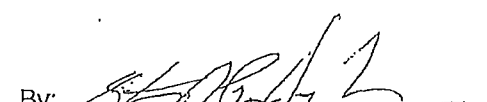
purported ambiguity found within the provisions of these statutes must be resolved against the taxpayer, and in favor of the Assessor.

CONCLUSION

Accordingly, because the statutory scheme clearly requires a taxpayer to comply with the requirements of the preferential residential assessment ratio in order to qualify for the homestead exemption, and because petitioner has failed do due so by renting his residence for more than fourteen days, there is no genuine issue of material fact to be decided and respondent is entitled to summary judgment. In the alternative and in the event this Court finds the statutory scheme ambiguous, as noted above, such ambiguities must be construed in favor of the assessor and further supports the granting of this motion.

Based on the foregoing, it is respectfully submitted that this Court should grant respondent's motion for summary judgment.

HOWELL, GIBSON & HUGHES, P.A.

By: 

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June 3, 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Frank R. Mead, III, Petitioner, vs. Beaufort County Assessor, Respondent.	Docket No. 13-ALJ-17-0585-CC MEMORANDUM OF LAW IN OPPOSITION TO BEAUFORT COUNTY'S MOTION FOR SUMMARY JUDGMENT

Both Beaufort County (hereinafter "County" or "Respondent") and Petitioner have moved for Summary Judgment. Petitioner submits this memorandum of law in opposition to the County's motion.

Both Petitioner and Respondent agree that this case should be decided by summary judgment. There are no facts in dispute. Petitioner and Respondent agree that the sole legal issue is whether "The homestead exemption under section 12-37-250 is only available to property that also qualifies for the preferential residential assessment ratio made available by section 12-43-220(c)." (Respondent's Memorandum of Law at pg. 2.)

Respondent argues that qualifying for the homestead exemption under the Constitutional (Art. X, § 3(i)) and statutory provisions (principally 12-37-220(A)(9), 12-37-250, 12-37-252(A) and 12-37-290) relating to the homestead exemption is not sufficient. Indeed, there is no argument that Petitioner does not meet those qualifications. Respondent argues Petitioner must also meet the primary residence constitutional (Art. X, § 1(3)) and statutory provisions (section 12-43-220(c)) as well. Mercifully, the County does not argue Petitioner must also own 5 acres of timber.

The fallacy of Beaufort County's argument is found in Respondent's brief in page 3: "Petitioner has argued further that one who satisfies the limited criteria[1] set forth within those [Homestead exemption] statutes is qualified for the homestead exemption *as well as the 4% residential assessment ratio authorized by section 12-43-220(c).*" (Emp. added.) Simply put, Petitioner has never argued he is entitled to the 4% ratio authorized by section 12-43-220(c)! The 4% assessment ratio which Petitioner is qualified for is found in an entirely different Code section and in a different Chapter of Title 12. The 4% assessment ratio for homestead exemption

[1] Some would argue that being totally and permanently disabled or blind is more than a "limited criteria."

residences is found in section 12-37-252(A) – not 12-43-220(c). This section states that "*[n]otwithstanding any other provision of law*, property that qualifies for the homestead exemption pursuant to Section 12-37-250 is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." (Emp. added.)

This error in law should alone qualify Petitioner for summary judgment.

The remainder of Respondent's argument is based upon a reading of the anti-December 31st no proration statute, section 12-43-220(c)(2)(i). By way of background, property taxes are generally not prorated in South Carolina. *See* South Carolina Property Tax Manual, Part IV, § 310.1 ("Numerous opinions of the South Carolina Attorney General have stated that there is no proration when more than one person owns the property during the year.") The DOR or the assessor takes a "snapshot" of the property on December 31st of the prior year and taxes are imposed on the value and usage of the property on that data for the entire following year regardless of subsequent change of usage or value, *e.g.*, *Benson Investments, LP v. Lexington County Assessor*, 11-ALJ-17-0518 (2012) ("The taxable status of real property for a given year is to be determined as on December 31 of the proceeding tax year, S.C. Code § 12-337-900; *Atkinson Dredging Co. v. Thomas*, 226 S.C. 361, 223 S.E. 2d 592 (1976).") The Supreme Court described the issue in *Atkinson Dredging Co. v. Thomas*, 266 S.C. 361, 369-70, 223 S.E.2d 592, 596 (1976):

> If a Charleston taxpayer had bought an automobile on Christmas Day, 1974, and that automobile had been totally destroyed on New Year's Day, he would, none the less, be liable to pay property tax for the entire year 1975. On the other hand, if he had bought an automobile on January 2, 1975, he would owe no personal property tax on that for the year 1975. In an ideal state, it would probably be well to levy the personal property on a daily basis. However, this would be an administrative impossibility. Under our taxing system, there have always been inequalities and inequities resulting from the fact that the tax for an entire year is contingent . . . on the 31st day of December next preceding the tax year in question.

So, a $600,000 commercial building which is owned by a law firm on December 31, 2012 is taxed at a 6% assessment ratio on a value of $600,000 for all of 2013 notwithstanding that the YMCA or other exempt entity purchases it on July 1, 2013. In such a case, the exemption would not start until 2014.

That exact issue was very recently before the Court in *Hampton Friends of the Arts v. Department of Revenue*, 401 S.C. 372, 737 S.E.2d 628 (2013). Hampton Friends of the Arts

purchased taxable property in March 2008. "It is undisputed that prior to Appellant's purchase, the property was subject to property taxes on December 31, 2007." *Id.* at 374, 737 S.E.2d at 629. The Appellant was granted an exemption for the property from the DOR for 2009 property taxes and subsequent years. The DOR denied the exemption for 2008, and Hampton appealed the 2008 determination. The Supreme Court upheld the ALC's determination that the property was not exempt in 2008, stating: "...[Hampton] avers that, because it acquired the property prior to the tax levy for the 2008 tax year, the property became exempt and no tax is owed. We disagree, for the law is clear that property tax liability is determined as of December 31st of the preceding tax year, regardless of the subsequent transfer to an exempt corporation or when the tax is actually levied." *Id.* at 375, 737 S.E.2d at 629. The Supreme Court concluded:

> Pursuant to settled law, the 2008 tax status of the Hampton County property was determined on December 31, 2007. Because the property was subject to property taxes as of December 31, 2007, the property is subject to 2008 property taxes.

Id. at 376, 737 S.E.2d at 630.

All Section 12-43-220(c)(2)(i) does is reverse this December 31st no proration rule. It states:

> To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address *for some period* during the applicable tax year. A residence which has been qualified as a legal residence *for any part of the year* is entitled to the four percent assessment ratio provided in this item *for the entire year*, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 *for the entire year*, and for the homestead exemption under Section 12-37-250, if otherwise eligible, *for the entire year*. (Emp. added.)

This section merely authorizes the 4% assessment ratio for primary residences as well as the homestead exemption "for the entire year" notwithstanding the normal December 31st no-proration rule. Stated another way, a person over the age of 65 who buys a residence which was taxed as a second home (*i.e.*, 6%) on July 1, 2013 is entitled under the statute to the 4% for all of 2013.

Respondent vigorously argues that section 12-43-220(c)(2)(i) imposes the 14 day rule contained in section 12-43-220(c)(7) on homestead exemptions because of the cross-reference to homestead exemptions contained in it. But that is not what the section states. It first says "A residence which has been qualified as a legal residence for any part of the year is entitled to the

4% assessment ratio *provided in this item* for the entire year . . . ." "This item" refers to section 12-43-220(c). The 4% assessment ratio for homestead exemptions is found in section 12-37-252(A).

Section 12-43-220(c)(i) goes on to cross-reference the homestead exemption as follows: "and for the homestead exemption *under § 12-37-250*, if otherwise eligible, for the entire year." As previously stated the 4% assessment ratio is not found in section 12-37-250 – but rather in section 12-37-252(A).

Alternatively and notwithstanding that the plain language of the homestead exemption compels the conclusion that Petitioner is entitled to the exemption, the ambiguity of the statutory regime should be resolved in favor of the taxpayer. As the Supreme Court recently stated in *Media General Communications, Inc. v. Department of Revenue*, 388 S.C. 138, 694 S.E.2d 525 (2010):

> "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." "The determination of legislative intent is a matter of law." "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." The best evidence of intent is in the statute itself: "What legislature says in the text of the statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature."

388 S.C. at 147-48, 694 S.E.2d at 529-30 (citations omitted).

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

Admittedly, the general rule is that tax credits and exemptions are a matter of legislative grace and are strictly construed against the taxpayer. *M. Lowenstein & Sons, Inc. v. S.C. Tax Comm'n*, 277 S.C. 561, 290 S.E.2d 812 (1982). However, as the Supreme Court recently stated in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011):

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

395 S.C. at 74-5, 716 S.E.2d at 881 (*citing State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008)). There is no absurd result with respect to the literal application of the statute's plain language and use of the statutorily defined terms utilized within the homestead exemption.

One other major roadblock lies in the County's way to impose the 14 day rule so as override the 4% assessment ratio contained in section 12-37-252(A). Subsection (7) was added to section 12-43-220(c) in 2005 Act No. 145. *See* Exhibit 1. The Act's legislative history can be seen in the attached House and Senate Journals (Exhibits 2 - 11). According to the legislative history, Act 145 did not receive a two-thirds readings in either House. Art. X, section 2(d) provides that the General Assembly may change the assessment ratios set forth in Section 1, but only with the approval of at least two-thirds of the membership of each house. Consequently Act No. 145 may not serve to provide Beaufort County with the authority to impose a 6% assessment ratio on Homestead exemptions which otherwise quality.

Respectfully submitted,

June 19, 2014
Columbia, South Carolina

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Exhibit 1

Session 116 - (2005-2006)

H*3768 (Rat #0150, Act #0145 of 2005) General Bill, By Kirsh

Summary: Overdue Debt Collection Act

AN ACT TO AMEND SECTIONS 12-36-140 AND 12-36-2120, CODE OF LAWS OF SOUTH CAROLINA, 1976, BOTH RELATING TO THE SALES AND USE TAX, SO AS TO EXEMPT CERTAIN PROMOTIONAL ADVERTISING DISTRIBUTIONS BY CHAMBERS OF COMMERCE AND VISITORS BUREAUS; BY ADDING SECTION 12-28-1400 SO AS TO REQUIRE THE REPORTING THE DEPARTMENT OF REVENUE REQUIRES BY REGULATION FOR PURPOSES OF THE USER FEE ON MOTOR FUELS AND PROVIDE AN ADDITIONAL CIVIL PENALTY FOR VIOLATORS; BY ADDING SECTION 12-54-123 SO AS TO PROTECT FROM LIABILITY A PERSON WHO SURRENDERS THE PROPERTY OF ANOTHER LEVIED ON BY THE DEPARTMENT OF REVENUE; BY ADDING CHAPTER 55 TO TITLE 12, ENACTING THE OVERDUE DEBT COLLECTION ACT AUTHORIZING THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO IMPOSE A COLLECTION ASSISTANCE FEE ON CERTAIN OVERDUE TAX DEBTS EQUAL TO TWENTY PERCENT OF THE OVERDUE AMOUNT AND TO ALLOW THE DEPARTMENT TO RETAIN A PORTION OF THE COLLECTION ASSISTANCE FEE FOR ITS OPERATION; BY ADDING SECTION 61-4-725 SO AS TO ALLOW A LICENSED WINERY TO SELL, DELIVER, AND PERMIT ON-PREMISES CONSUMPTION ON SUNDAYS IN JURISDICTIONS WHERE MINIBOTTLE SALES ARE ALLOWED ON SUNDAYS; TO AMEND SECTION 6-1-320, RELATING TO THE LIMITS ON ANNUAL INCREASES IN LOCAL GOVERNMENT AND SCHOOL DISTRICT PROPERTY TAX MILLAGE, SO AS TO CLARIFY THE METHOD OF CALCULATING THE ALLOWED CONSUMER PRICE INDEX INCREASE IN THE MILLAGE RATE; TO AMEND SECTIONS 12-6-40 AND 12-6-50, BOTH AS AMENDED, RELATING TO DEFINITIONS AND CONFORMITY PROVISIONS FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO UPDATE THE REFERENCE DATE BY WHICH THIS STATE ADOPTS VARIOUS PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 AND CLARIFY THOSE PROVISIONS NOT ADOPTED; TO AMEND SECTIONS 12-6-1110 AND 12-6-1130, RELATING TO CALCULATIONS OF INCOME, SO AS TO PROVIDE FOR CALCULATIONS WITHOUT SOME OF THE DEDUCTIONS ALLOWED BY THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO DEDUCTIONS FROM SOUTH CAROLINA INDIVIDUAL TAXABLE INCOME FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO DELETE AN OBSOLETE DEDUCTION RELATING TO MEDICAL INSURANCE PREMIUMS; TO AMEND SECTION 12-6-2220, RELATING TO ALLOCATION AND APPORTIONMENT FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO PROVIDE FOR THE ALLOCATION OF DIVIDENDS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE TARGETED JOBS TAX CREDIT, SO AS TO REVISE THE DEFINITION OF "NEW JOB"; TO AMEND SECTION 12-6-3365, AS AMENDED, RELATING TO THE CORPORATE INCOME TAX MORATORIUM FOR JOB CREATION, SO AS TO CLARIFY THE APPLICATION OF THE MORATORIUM TO INSURANCE PREMIUM TAXES; TO AMEND SECTION 12-6-3480, RELATING TO TAX CREDITS, SO AS TO FURTHER PROVIDE THE MANNER IN WHICH CREDITS ARE ALLOWED AND MAY BE CLAIMED; TO AMEND SECTION 12-6-4910, AS AMENDED, RELATING TO THOSE REQUIRED TO FILE INCOME TAX RETURNS, SO AS TO PROVIDE FOR THOSE NONRESIDENTS REQUIRED TO FILE IN THIS STATE; TO AMEND SECTIONS 12-6-5020, AS AMENDED, AND 12-6-5030, BOTH RELATING TO THE FILING OF CONSOLIDATED CORPORATE INCOME TAX RETURNS AND COMPOSITE INDIVIDUAL INCOME TAX RETURNS, BOTH SO AS TO REQUIRE THE DETERMINATION OF CREDITS ON A CONSOLIDATED BASIS AND FURTHER PROVIDE FOR COMPOSITE RETURNS; TO AMEND SECTION 12-8-520 RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE FOR THE WITHHOLDING OF PARTNERSHIP AND SUBCHAPTER "S" CORPORATION INCOME OF NONRESIDENTS; TO AMEND SECTION 12-8-1520, RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS FOR WITHHOLDING AGENTS; TO AMEND SECTION 12-10-105, RELATING TO ANNUAL FEES FOR JOB DEVELOPMENT CREDITS FOR PURPOSES OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO EXTEND THESE FEES TO JOB RETRAINING CREDITS IN EXCESS OF TEN THOUSAND DOLLARS AND PROVIDE FOR THE COLLECTION OF THESE FEES; TO AMEND SECTION 12-20-105, AS AMENDED, RELATING TO TAX CREDITS FOR PURPOSES OF THE CORPORATE LICENSE TAX, SO AS TO CLARIFY THE APPLICATION OF THESE CREDITS; TO AMEND SECTIONS 12-21-1090 AND 12-21-6550, BOTH RELATING TO LICENSE TAXES, BOTH SO AS TO PROVIDE FOR THE PERMISSIVE PROMULGATION OF REGULATIONS AND FURTHER PROVIDE FOR THE APPLICATIONS REQUIRED PURSUANT TO THE TOURISM INFRASTRUCTURE ADMISSIONS TAX ACT; TO AMEND SECTION 12-28-740, RELATING TO EXEMPTIONS FROM THE MOTOR FUELS USER FEE, SO AS TO DELETE A REFERENCE TO A CREDIT; TO AMEND SECTION 12-28-1730, AS AMENDED, RELATING TO PENALTIES FOR PURPOSES OF THE MOTOR FUELS TAX, SO AS TO DELETE A CIVIL PENALTY; TO AMEND SECTION 12-36-530, RELATING TO THE REQUIREMENT FOR THE RETURN OF A RETAIL LICENSE WHEN A BUSINESS CLOSES OR IS SOLD, SO AS TO ELIMINATE THE REQUIREMENT THAT THE TAX IS DUE AT THE TIME OF SALE AND CONSTITUTES A LIEN ON THE PROPERTY IN THE HANDS OF THE

PURCHASER; TO AMEND SECTION 12-36-1310, AS AMENDED, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO FURTHER PROVIDE FOR THE APPLICATION OF SALES TAX TO TELECOMMUNICATIONS SERVICES; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES AND USE TAX EXEMPTIONS, SO AS TO EXEMPT PRESCRIPTIONS AND OVER-THE-COUNTER MEDICINES AND MEDICAL SUPPLIES SOLD TO A FREE CLINIC; TO AMEND SECTION 12-36-2510, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO PROVIDE FURTHER FOR THE ISSUE OF CERTIFICATES BY THE DEPARTMENT OF REVENUE FOR DIRECT PAY AND EXEMPTIONS AND PROVIDE FOR MORE EFFICIENT ADMINISTRATION OF SALES TAXES AND SALES TAX EXEMPTIONS; TO AMEND SECTION 12-37-220, AS AMENDED, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO DELETE OBSOLETE REFERENCES IN EXISTING EXEMPTIONS; TO AMEND SECTIONS 12-54-42 AND 12-54-43, AS AMENDED, BOTH RELATING TO THE UNIFORM METHOD OF COLLECTION AND ENFORCEMENT OF STATE LEVIED TAXES, BOTH SO AS TO CLARIFY THE APPLICATION OF PENALTIES FOR FAILING TO PROVIDE WITHHOLDING STATEMENTS, AND CLARIFY AND REVISE THE APPLICATION OF CIVIL PENALTIES FOR FILING GROUNDLESS RETURNS OR FOR MISUSE OF A SALES TAX CERTIFICATE; TO AMEND SECTION 12-54-90, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO REFUSE TO ISSUE A LICENSE TO A TAXPAYER IN VIOLATION; TO AMEND SECTIONS 12-54-210 AND.12-54-240, AS AMENDED, BOTH RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, BOTH SO AS TO INCREASE THE PENALTY FOR FAILURE TO KEEP RECORDS, FILE RETURNS, AND COMPLY WITH REGULATIONS, UPDATE REFERENCES RELATING TO.THE CONFIDENTIALITY OF RETURNS, AND DELETE AN EXEMPTION TO THE CONFIDENTIALITY REQUIREMENTS FOR RECORDS SUBPOENAED BY A FEDERAL GRAND JURY; TO AMEND SECTION 12-58-185, AS AMENDED, RELATING TO THE TAXPAYERS' BILL OF RIGHTS, SO AS TO CLARIFY AND EXTEND THE APPLICATION OF HARDSHIP EXTENSIONS TO PAY; TO AMEND SECTIONS 12-60-420 AND 12-60-490, BOTH AS AMENDED, BOTH RELATING TO THE REVENUES PROCEDURE ACT, BOTH SO AS TO PROVIDE THAT THE APPLICATION OF A DIVISION DECISION OR A DETERMINATION OF DEFICIENCY APPLIES TO LOCAL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE AND REQUIRE THE NOTICE TO PROVIDE THAT FAILURE TO FILE A PROTEST RESULTS IN A DECISION BECOMING FINAL AND TO PROVIDE, FURTHER, FOR SETOFFS AGAINST TAX REFUNDS; TO AMEND SECTION 61-4-747, RELATING TO REGULATION OF WINE, SO AS TO REQUIRE OUT-OF-STATE WINE SHIPPERS TO PAY SALES AND EXCISE TAXES ON WINE SHIPPED TO RESIDENTS OF THIS STATE BY JANUARY TWENTIETH OF EACH YEAR FOR THE PRECEDING YEAR; BY ADDING SECTION 33-14-420 SO AS TO FURTHER PROVIDE FOR CLAIMANTS AGAINST FUNDS OF A DISSOLVED CORPORATION; TO PROVIDE THAT THIS ACT IS THE MOST RECENT ACTION OF THE GENERAL ASSEMBLY RELATING TO ADOPTION OF AND CONFORMITY WITH PROVISIONS OF THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1130, AS AMENDED, RELATING TO DEDUCTIONS FROM INCOME TAX, SO AS TO PROVIDE THAT THE DEDUCTION FOR CHARITABLE CONTRIBUTIONS BE DETERMINED AS IN THE INTERNAL REVENUE CODE; TO AMEND SECTIONS 12-6-3515, RELATING TO CHARITABLE CONTRIBUTIONS FOR CONSERVATION, SO AS TO PROVIDE THAT THE DETERMINATION MUST BE LIKE SECTION 170 OF THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-43-232, RELATING TO QUALIFICATION FOR AGRICULTURAL USE FOR PURPOSES OF ASSESSMENT, SO AS TO PROVIDE THAT A PERPETUAL CONSERVATION EASEMENT IS AGRICULTURAL REAL PROPERTY; BY ADDING SECTION 12-6-5590 SO AS TO FURTHER PROVIDE GUIDELINES FOR ALLOWING A DEDUCTION FOR A CHARITABLE CONTRIBUTION; TO AMEND SECTIONS 12-44-30, 4-12-30, AND 4-29-67, ALL RELATING TO A FEE IN LIEU OF TAXES, SO AS TO PROVIDE FOR QUALIFICATION OF A CERTIFIED ECONOMIC DEVELOPMENT PROJECT; BY ADDING SECTION 12-37-135 SO AS TO ALLOW A COUNTYWIDE BUSINESS REGISTRATION AND FEE; BY ADDING SECTION 12-45-430 AND TO AMEND SECTION 12-37-2650, AS AMENDED, RELATING TO RECEIPTS FOR PAYMENT OF TAXES, BOTH SO AS TO PROVIDE THAT A RECEIPT MUST NOT BE ISSUED UNLESS ALL TAXES AND OTHER CHARGES HAVE BEEN PAID; TO AMEND SECTION 12-37-2730, RELATING TO USE OF A TREASURER'S TAX RECEIPT TO OBTAIN A LICENSE PLATE, SO AS TO PROVIDE THAT BOTH MUNICIPAL AND COUNTY TAXES AND OTHER CHARGES MUST BE PAID BEFORE ISSUANCE OF A RECEIPT WHEN A MUNICIPALITY CONTRACTS WITH THE COUNTY FOR THE COLLECTION OF ITS VEHICLE AND TO PROVIDE FOR THE ISSUANCE OF A SUMMONS BY A CODE ENFORCEMENT OFFICER TO ENFORCE COLLECTION OF VEHICLE PROPERTY TAX AND VEHICLE REGISTRATION LAWS; TO AMEND SECTION 12-43-220, AS AMENDED, RELATING TO QUALIFICATION FOR THE FOUR PERCENT ASSESSMENT RATIO, SO AS TO PROVIDE A FURTHER PROVISION FOR QUALIFICATION; TO AMEND SECTIONS 12-49-950, 12-51-55, AS AMENDED, AND 12-51-130, AS AMENDED, ALL RELATING TO THE SALE OF PROPERTY FOR NONPAYMENT OF TAXES, SO AS TO PROVIDE THAT ALL UNPAID TAXES, ASSESSMENT, CHARGES, AND ACTUAL COSTS OF THE DELINQUENCY BE INCLUDED IN A BID AND TO PROVIDE THAT AN

ASSESSMENT INCLUDES AMOUNTS OWED TO A SPECIAL TAXING DISTRICT; TO AMEND SECTION 12-54-25, AS AMENDED, RELATING TO REFUND OF AN OVERPAYMENT OF TAXES, SO AS TO PROVIDE THAT NO INTEREST IS DUE IF THE REFUND IS MADE WITHIN SEVENTY-FIVE DAYS; AND TO AMEND SECTION 12-54-240, RELATING TO CONFIDENTIALITY OF TAX RETURN INFORMATION, SO AS TO ALLOW DISCLOSURE TO A STATE OR COUNTY AGENT OF COUNTY CODE AND CERTAIN JOINT FILING INFORMATION; BY ADDING SECTION 12-37-712 SO AS TO PROVIDE THAT A MARINA PROVIDE ACCESS TO TAXING AUTHORITIES FOR PROPERTY TAX ASSESSMENT; TO PROVIDE FOR A POSTPONEMENT FOR ONE YEAR OF IMPLEMENTATION OF A TAX EQUALIZATION AND REASSESSMENT PROGRAM; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO EXEMPTIONS FROM SALES TAX, SO AS TO ADD TO THE "HOLIDAY" FOR SCHOOL SUPPLIES CERTAIN BEDDING AND BATH LINENS; BY ADDING SECTION 12-45-185 SO AS TO PROVIDE FOR THE WAIVER OF PENALTY FOR LATE TAX PAYMENT UPON PROOF OF TIMELY DELIVERY; AND BY ADDING SECTION 12-6-3575 SO AS TO PROVIDE FOR A NONREFUNDABLE CREDIT AGAINST INCOME TAX FOR FIFTY PERCENT OF THE PREMIUM COSTS FOR HEALTH INSURANCE UNDER CERTAIN CONDITIONS AND WITH CERTAIN LIMITATIONS. - ratified title

03/15/05	House	Introduced and read first time HJ-52
03/15/05	House	Referred to Committee on Ways and Means HJ-56
04/13/05	House	Committee report: Favorable with amendment Ways and Means HJ-10
04/19/05	House	Amended HJ-75
04/19/05	House	Read second time HJ-77
04/20/05	House	Read third time and sent to Senate HJ-24
04/21/05	Senate	Introduced and read first time SJ-2
04/21/05	Senate	Referred to Committee on Finance SJ-2
05/18/05	Senate	Committee report: Favorable with amendment Finance SJ-24
05/19/05	Senate	Amended SJ-93
05/24/05		Scrivener's error corrected
05/25/05	Senate	Amended SJ-60
05/25/05	Senate	Read second time SJ-60
05/26/05	Senate	Amended SJ-308
05/26/05	Senate	Read third time and returned to House with amendments SJ-308
05/31/05	House	Concurred in Senate amendment and enrolled HJ-69
06/01/05		Ratified R 150
06/07/05		Signed By Governor
06/15/05		Copies available
06/15/05		Effective date See Act for Effective Date
06/16/05		Act No. 145

Exhibit 2

JOURNAL

OF THE

HOUSE OF REPRESENTATIVES

OF THE

FIRST SESSION OF THE

116TH GENERAL ASSEMBLY

OF THE

STATE OF SOUTH CAROLINA

BEING THE

REGULAR SESSION BEGINNING
TUESDAY, JANUARY 11, 2005

Volume II

13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 23A, 24, 25, 26, 27, 28, 29, 29A, 30, 32, 33, 34, 35, 36, 36A, 37, 38, 39, 40, 41, 42, 42A, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 53A, 53B, 54A, 54B, 54C, 54D, 54E, 54H, 55, 56A, 56B, 56C, 56D, 57, 58, 59, 60, 61, 62, 63, 63A, 63B, 63C, 64, 65, 66, 68, 69A, 69B, 69C, in part 1A and Sections 1A, 1AA, 2, 3, 4, 5A, 5B, 5D, 5K, 5M, 5N, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29A, 30, 32, 33, 35, 36, 36A, 37, 38, 39, 40, 41, 42, 42A, 43, 44, 47, 48, 49, 50, 51, 53, 53C, 54, 55, 56DD, 57, 58, 59, 60, 61, 62, 63, 63A, 63B, 63C, 64, 65, 66 and 69A in Part 1B were adopted and the motion was noted.

Further proceedings were interrupted by adjournment, the pending question being consideration of Part IB, Section 72.

ADJOURNMENT

At 7:05 p.m. the House, in accordance with the motion of Rep. TALLEY, adjourned in memory of Reece Valerie O'Sullivan of Moore, to meet at 9:30 a.m. tomorrow.

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~~Indicates Matter Stricken~~
Indicates New Matter

The House assembled at 9:30 a.m.

Deliberations were opened with prayer by Rev. Charles E. Seastrunk, Jr. as follows:

Our thought for today is from 2 Corinthians 13:11: "Put things in order, listen to my appeal, agree with one another, live in peace."

Let us pray. Almighty God, giver of all good gifts. Look in favor on this legislative group with grace and guide the minds of those chosen to serve here. Grant them courage to stand for the cause they believe will lead our State in the right direction. Bless them with integrity and wisdom. Invoke Your divine care on our Nation, President, State and leaders. Protect our defenders of freedom and keep them safe. In Your Holy name. Amen.

Pursuant to Rule 6.3, the House of Representatives was led in the Pledge of Allegiance to the Flag of the United States of America by the SPEAKER.

After corrections to the Journal of the proceedings of yesterday, the SPEAKER ordered it confirmed.

MOTION ADOPTED

Rep. HASKINS moved that when the House adjourns, it adjourn in memory of Dr. Elizabeth Edwards of Greenville, professor at Bob Jones University, which was agreed to.

REPORT RECEIVED

The following was received:

Findings of Fact

The Committee to Screen Candidates for Boards of Trustees of State Colleges and Universities finds the following candidates for Boards of Trustees qualified. Background reports from the State Law Enforcement Division show no felony charges against any of the candidates.

INCOME REPORTABLE BY A NONRESIDENT, SO AS TO INCLUDE LOTTERY AND BINGO WINNINGS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE JOB TAX CREDIT, SO AS TO CORRECT A CROSS REFERENCE; TO AMEND SECTION 12-6-3570, AS AMENDED, RELATING TO TAX CREDITS FOR A MOTION PICTURE PRODUCTION COMPANY, SO AS TO CORRECT A CROSS REFERENCE; TO AMEND SECTION 12-10-80, AS AMENDED, RELATING TO JOB DEVELOPMENT CREDITS, SO AS TO PROVIDE THAT THE COUNTY DESIGNATION IS EFFECTIVE AS OF THE DATE THE APPLICATION FOR CREDITS IS RECEIVED; TO AMEND SECTION 12-54-55, AS AMENDED, RELATING TO INTEREST ON THE UNDERPAYMENT OF ESTIMATED TAX, SO AS TO INCLUDE SMALL AMOUNT PROVISIONS; TO AMEND SECTION 12-54-70, RELATING TO THE EXTENSION OF TIME FOR FILING TAX RETURNS, SO AS TO CLARIFY A CROSS REFERENCE; TO AMEND SECTION 12-54-110, AS AMENDED, RELATING TO THE POWER OF THE DEPARTMENT OF REVENUE TO SUMMON A PERSON, SO AS TO PROVIDE THAT AN ADMINISTRATIVE LAW JUDGE HOLD A CONTEMPT HEARING ON FAILURE TO COMPLY WITH A SUMMONS; AND TO AMEND SECTION 12-60-90, AS AMENDED, RELATING TO SANCTIONS AGAINST A PERSON AUTHORIZED TO REPRESENT A TAXPAYER ADMINISTRATIVELY, SO AS TO INCLUDE A MONETARY PENALTY AND MAKE A CLARIFICATION.

Referred to Committee on Ways and Means

H. 3768 -- Rep. Kirsh: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-21-1085 SO AS TO PROVIDE FOR SALES AND USE TAXES ON BEER AND WINE; BY ADDING SECTION 12-28-1400 SO AS TO REQUIRE THE REPORTING THE DEPARTMENT OF REVENUE REQUIRES BY REGULATION FOR PURPOSES OF THE USER FEE ON MOTOR FUELS AND PROVIDE AN ADDITIONAL CIVIL PENALTY FOR VIOLATORS; BY ADDING SECTION 12-54-123 SO AS TO PROTECT FROM LIABILITY A PERSON WHO SURRENDERS THE PROPERTY OF ANOTHER LEVIED ON BY THE DEPARTMENT OF REVENUE; BY ADDING CHAPTER 55 TO TITLE 12, ENACTING THE OVERDUE DEBT COLLECTION ACT AUTHORIZING THE SOUTH CAROLINA DEPARTMENT

OF REVENUE TO IMPOSE A COLLECTION ASSISTANCE FEE ON CERTAIN OVERDUE TAX DEBTS EQUAL TO TWENTY PERCENT OF THE OVERDUE AMOUNT AND TO ALLOW THE DEPARTMENT TO RETAIN A PORTION OF THE COLLECTION ASSISTANCE FEE FOR ITS OPERATION; BY ADDING SECTION 61-4-725 SO AS TO ALLOW A LICENSED WINERY TO SELL, DELIVER, AND PERMIT ON-PREMISES CONSUMPTION ON SUNDAYS IN JURISDICTIONS WHERE MINIBOTTLE SALES ARE ALLOWED ON SUNDAYS; TO AMEND SECTION 4-29-67, AS AMENDED, RELATING TO THE FEE IN LIEU OF PROPERTY TAX, SO AS TO DELETE THE NET PERCENT VALUE METHOD OF CALCULATING ANNUAL FEE PAYMENTS; TO AMEND SECTION 6-1-320, AS AMENDED, RELATING TO THE LIMITS ON ANNUAL INCREASES IN LOCAL GOVERNMENT AND SCHOOL DISTRICT PROPERTY TAX MILLAGE, SO AS TO CLARIFY THE METHOD OF CALCULATING THE ALLOWED CONSUMER PRICE INDEX INCREASE IN THE MILLAGE RATE; TO AMEND SECTIONS 12-6-40 AND 12-6-50, BOTH AS AMENDED, RELATING TO DEFINITIONS AND CONFORMITY PROVISIONS FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO UPDATE THE REFERENCE DATE BY WHICH THIS STATE ADOPTS VARIOUS PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 AND CLARIFY THOSE PROVISIONS NOT ADOPTED; TO AMEND SECTIONS 12-6-1110 AND 12-6-1130, RELATING TO CALCULATIONS OF INCOME, SO AS TO PROVIDE FOR CALCULATIONS WITHOUT SOME OF THE DEDUCTIONS ALLOWED BY THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO DEDUCTIONS FROM SOUTH CAROLINA INDIVIDUAL TAXABLE INCOME FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO DELETE AN OBSOLETE DEDUCTION RELATING TO MEDICAL INSURANCE PREMIUMS; TO AMEND SECTION 12-6-2220, RELATING TO ALLOCATION AND APPORTIONMENT FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO PROVIDE FOR THE ALLOCATION OF DIVIDENDS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE TARGETED JOBS TAX CREDIT, SO AS TO REVISE THE DEFINITION OF "NEW JOB"; TO AMEND SECTION 12-6-3365, AS AMENDED, RELATING TO THE CORPORATE INCOME TAX MORATORIUM FOR JOB CREATION, SO AS TO CLARIFY THE APPLICATION

APP 000157

OF THE MORATORIUM TO INSURANCE PREMIUM TAXES; TO AMEND SECTION 12-6-3480, RELATING TO TAX CREDITS, SO AS TO FURTHER PROVIDE THE MANNER IN WHICH CREDITS ARE ALLOWED AND MAY BE CLAIMED; TO AMEND SECTION 12-6-4910, AS AMENDED, RELATING TO THOSE REQUIRED TO FILE INCOME TAX RETURNS, SO AS TO PROVIDE FOR THOSE NONRESIDENTS REQUIRED TO FILE IN THIS STATE; TO AMEND SECTIONS 12-6-5020, AS AMENDED, AND 12-6-5030, RELATING TO THE FILING OF CONSOLIDATED CORPORATE INCOME TAX RETURNS AND COMPOSITE INDIVIDUAL INCOME TAX RETURNS, SO AS TO REQUIRE THE DETERMINATION OF CREDITS ON A CONSOLIDATED BASIS AND FURTHER PROVIDE FOR COMPOSITE RETURNS; TO AMEND SECTION 12-8-520 RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE FOR THE WITHHOLDING OF PARTNERSHIP AND SUBCHAPTER "S" CORPORATION INCOME OF NONRESIDENTS; TO AMEND SECTION 12-8-1520, RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS FOR WITHHOLDING AGENTS; TO AMEND SECTION 12-10-105, RELATING TO ANNUAL FEES FOR JOB DEVELOPMENT CREDITS FOR PURPOSES OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO EXTEND THESE FEES TO JOB RETRAINING CREDITS IN EXCESS OF TEN THOUSAND DOLLARS AND PROVIDE FOR THE COLLECTION OF THESE FEES; TO AMEND SECTION 12-20-105, AS AMENDED, RELATING TO TAX CREDITS FOR PURPOSES OF THE CORPORATE LICENSE TAX, SO AS TO CLARIFY THE APPLICATION OF THESE CREDITS; TO AMEND SECTION 12-28-740, RELATING TO EXEMPTIONS FROM THE MOTOR FUELS USER FEE, SO AS TO DELETE A REFERENCE TO A CREDIT; TO AMEND SECTIONS 12-21-1090 AND 12-21-6550, RELATING TO LICENSE TAXES, SO AS TO PROVIDE FOR THE PERMISSIVE PROMULGATION OF REGULATIONS AND FURTHER PROVIDE FOR THE APPLICATIONS REQUIRED PURSUANT TO THE TOURISM INFRASTRUCTURE ADMISSIONS TAX ACT; TO AMEND SECTION 12-28-1730, AS AMENDED, RELATING TO PENALTIES FOR PURPOSES OF THE MOTOR FUELS TAX, SO AS TO DELETE A CIVIL PENALTY; TO AMEND SECTION 12-36-530, RELATING TO THE REQUIREMENT FOR THE RETURN OF A RETAIL LICENSE

WHEN A BUSINESS CLOSES OR IS SOLD, SO AS TO ELIMINATE THE REQUIREMENT THAT THE TAX IS DUE AT THE TIME OF SALE AND CONSTITUTES A LIEN ON THE PROPERTY IN THE HANDS OF THE PURCHASER; TO AMEND SECTION 12-36-1310, AS AMENDED, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO FURTHER PROVIDE FOR THE APPLICATION OF SALES TAX TO TELECOMMUNICATIONS SERVICES; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES AND USE TAX EXEMPTIONS, SO AS TO EXEMPT PRESCRIPTIONS AND OVER-THE-COUNTER MEDICINES AND MEDICAL SUPPLIES SOLD TO A FREE CLINIC; TO AMEND SECTION 12-36-2510, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO PROVIDE FURTHER FOR THE ISSUE OF CERTIFICATES BY THE DEPARTMENT OF REVENUE FOR DIRECT PAY AND EXEMPTIONS AND PROVIDE FOR MORE EFFICIENT ADMINISTRATION OF SALES TAXES AND SALES TAX EXEMPTIONS; TO AMEND SECTION 12-37-220, AS AMENDED, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO DELETE OBSOLETE REFERENCES IN EXISTING EXEMPTIONS; TO AMEND SECTION 12-37-230, RELATING TO SERVICE CONTRACTS WITH NONPROFIT HOUSING CORPORATIONS, SO AS TO ALLOW A COUNTY OR MUNICIPALITY TO CHARGE REASONABLE FEES FOR SERVICES NOT TO EXCEED TAXES THAT WOULD OTHERWISE BE DUE ON THE PROPERTY; TO AMEND SECTION 12-44-50, AS AMENDED, RELATING TO THE "FEE IN LIEU OF TAX SIMPLIFICATION ACT OF 1997", SO AS TO REVISE THE ELIGIBILITY TO USE THE NET PERCENT VALUE METHOD OF CALCULATING THE ANNUAL FEE PAYMENT; TO AMEND SECTIONS 12-54-42 AND 12-54-43, AS AMENDED, RELATING TO THE UNIFORM METHOD OF COLLECTION AND ENFORCEMENT OF STATE LEVIED TAXES, SO AS TO CLARIFY THE APPLICATION OF PENALTIES FOR FAILING TO PROVIDE WITHHOLDING STATEMENTS, AND CLARIFY AND REVISE THE APPLICATION OF CIVIL PENALTIES FOR FILING GROUNDLESS RETURNS OR FOR MISUSE OF A SALES TAX CERTIFICATE; TO AMEND SECTION 12-54-90, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO REFUSE TO ISSUE A LICENSE TO A TAXPAYER IN VIOLATION; TO

AMEND SECTIONS 12-54-210 AND 12-54-240, AS AMENDED, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO INCREASE THE PENALTY FOR FAILURE TO KEEP RECORDS, FILE RETURNS, AND COMPLY WITH REGULATIONS, UPDATE REFERENCES RELATING TO THE CONFIDENTIALITY OF RETURNS, AND DELETE AN EXEMPTION TO THE CONFIDENTIALITY REQUIREMENTS FOR RECORDS SUBPOENAED BY A FEDERAL GRAND JURY; TO AMEND SECTION 12-58-185, AS AMENDED, RELATING TO THE TAXPAYERS' BILL OF RIGHTS, SO AS TO CLARIFY AND EXTEND THE APPLICATION OF HARDSHIP EXTENSIONS TO PAY; TO AMEND SECTIONS 12-60-420 AND 12-60-490, BOTH AS AMENDED, RELATING TO THE REVENUES PROCEDURE ACT, SO AS TO PROVIDE THAT THE APPLICATION OF A DIVISION DECISION OR A DETERMINATION OF DEFICIENCY APPLIES TO LOCAL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE AND REQUIRE THE NOTICE TO PROVIDE THAT FAILURE TO FILE A PROTEST RESULTS IN A DECISION BECOMING FINAL AND TO PROVIDE, FURTHER, FOR SETOFFS AGAINST TAX REFUNDS; TO AMEND SECTION 61-4-747, RELATING TO REGULATION OF WINE, SO AS TO REQUIRE OUT-OF-STATE WINE SHIPPERS TO PAY SALES AND EXCISE TAXES ON WINE SHIPPED TO RESIDENTS OF THIS STATE BY JANUARY TWENTIETH OF EACH YEAR FOR THE PRECEDING YEAR; BY ADDING SECTION 33-14-420 SO AS TO FURTHER PROVIDE FOR CLAIMANTS AGAINST FUNDS OF A DISSOLVED CORPORATION; TO REPEAL SECTION 12-37-240, RELATING TO PAYMENTS IN LIEU OF TAXES BY EXEMPT NONPROFIT HOUSING CORPORATIONS AND SECTION 12-37-290, RELATING TO AN OBSOLETE HOMESTEAD EXEMPTION PROVISION.

Referred to Committee on Ways and Means

CONCURRENT RESOLUTION

The following was introduced:

H. 3769 -- Reps. Bingham, Ballentine, Clark, Frye, Haley, Huggins, McLeod, Ott, E. H. Pitts and Toole: A CONCURRENT RESOLUTION TO EXPRESS THE DEEPEST SYMPATHY OF THE MEMBERS OF THE GENERAL ASSEMBLY TO THE FAMILY AND MANY FRIENDS OF LOWELL C. "BUTCH" SPIRES, JR., OF

LEXINGTON COUNTY UPON HIS DEATH AND TO EXPRESS THE GRATITUDE OF THE CITIZENS OF LEXINGTON COUNTY, THE MIDLANDS REGION, AND THE STATE OF SOUTH CAROLINA FOR HIS MANY CONTRIBUTIONS TO HIS COMMUNITY, COUNTY, AND STATE.

The Concurrent Resolution was agreed to and ordered sent to the Senate.

ROLL CALL

The roll call of the House of Representatives was taken resulting as follows:

Agnew	Altman	Anderson
Anthony	Bales	Ballentine
Barfield	Battle	Bingham
Brady	Branham	Breeland
J. Brown	R. Brown	Cato
Ceips	Chalk	Clark
Clemmons	Cooper	Dantzler
Delleney	Duncan	Edge
Frye	Funderburk	Hagood
Haley	Hardwick	Harrell
Harrison	Haskins	Hayes
Herbkersman	J. Hines	M. Hines
Hinson	Hiott	Hosey
Huggins	Jefferson	Kirsh
Leach	Lee	Littlejohn
Loftis	Mahaffey	McCraw
McGee	McLeod	Merrill
Miller	Moody-Lawrence	J. H. Neal
J. M. Neal	Neilson	Norman
Ott	Owens	Parks
Perry	Pinson	E. H. Pitts
M. A. Pitts	Rice	Rivers
Sandifer	Scarborough	Scott
Simrill	Skelton	D. C. Smith
G. R. Smith	J. E. Smith	J. R. Smith
Stewart	Talley	Taylor
Thompson	Toole	Townsend
Umphlett	Vaughn	Vick
Walker	Weeks	White

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Exhibit 3

JOURNAL

OF THE

HOUSE OF REPRESENTATIVES

OF THE

FIRST SESSION OF THE

116^{H} GENERAL ASSEMBLY

OF THE

STATE OF SOUTH CAROLINA

BEING THE

REGULAR SESSION BEGINNING
TUESDAY, JANUARY 11, 2005

Volume III

~~Indicates Matter Stricken~~
Indicates New Matter

The House assembled at 10:00 a.m.

Deliberations were opened with prayer by Rev. Charles E. Seastrunk, Jr. as follows:

Our thought for today is from Psalm 138:3: "When I called you made me bold and stouthearted."

Let us pray. Heavenly Father, enable us to change the lives of the people of this State for the better. Make us bold in effecting change. Help us to separate the dust and dirt of thought and deed from that which is pleasing to You. Give courage, integrity and strength to each as these Representatives strive to accomplish the good. Look in favor upon our Nation, President, State and her leaders. Protect our defenders of freedom and keep them safe. O Lord, hear our prayer. Amen.

Pursuant to Rule 6.3, the House of Representatives was led in the Pledge of Allegiance to the Flag of the United States of America by the SPEAKER.

After corrections to the Journal of the proceedings of yesterday, the SPEAKER ordered it confirmed.

MOTION ADOPTED

Rep. BALLENTINE moved that when the House adjourns, it adjourn in memory of his aunt, Margaret Jane Clarke of Greenville, Mississippi, which was agreed to.

MESSAGE FROM THE SENATE

The following was received:

Columbia, S.C., April 18, 2005

Mr. Speaker and Members of the House:

The Senate respectfully informs your Honorable Body that it has overridden the veto by the Governor on R. 39, S. 547 by a vote of 46 to 0.

(R39, S547 -- Senator Sheheen: AN ACT TO AMEND ACT 587 OF 1994, AS AMENDED, RELATING TO THE CREATION OF

THE CHESTERFIELD COUNTY BOARD OF ELECTIONS AND REGISTRATION, SO AS TO PROVIDE FOR THE TERMS OF THE ADDITIONAL MEMBERS ADDED TO THE BOARD AND TO DELETE ARCHAIC LANGUAGE.

Very respectfully,
President

R. 39, S. 547--ORDERED PRINTED IN THE JOURNAL

The SPEAKER ordered the following veto printed in the Journal:

April 15, 2005
The Honorable André Bauer
President of the Senate
State House, 1st Floor, East Wing
Columbia, South Carolina 29202

Dear Mr. President and Members of the Senate:

I am hereby returning without my approval S. 547, R. 39, an Act:

TO AMEND ACT 587 OF 1994, AS AMENDED, RELATING TO THE CREATION OF THE CHESTERFIELD COUNTY BOARD OF ELECTIONS AND REGISTRATION, SO AS TO PROVIDE FOR THE TERMS OF THE ADDITIONAL MEMBERS ADDED TO THE BOARD AND TO DELETE ARCHAIC LANGUAGE.

This veto is based on my belief that this bill is unconstitutional. S. 547, R. 39 provides for the terms of new members of the Chesterfield County Board of Elections and Registration. As such, S. 547, R. 39, affects only Chesterfield County and is, therefore, clearly an act for a specific county. Such acts are in violation of Article VIII, Section 7 of the Constitution of the State of South Carolina, which provides that "[n]o laws for a specific county shall be enacted." Acts similar to S. 547, R. 39 have been struck down by the South Carolina Supreme Court as violative of Article VIII, Section 7.

For this reason, I am returning S. 547, R. 39 to you without my signature.

Sincerely,
Mark Sanford
Governor

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INCLUDING PRESCRIPTION MEDICATIONS, SO AS TO ALSO INCLUDE IN THIS EXEMPTION, PRESCRIPTIONS FOR THE TREATMENT OF RHEUMATOID ARTHRITIS.

Rep. LITTLEJOHN explained the Bill.

H. 3580 -- Reps. Scott, Hosey, Vick, Clyburn, J. Hines, Govan, McCraw, Clark, Anthony, Bales, Branham, Breeland, J. Brown, R. Brown, Ceips, Chalk, Cooper, Davenport, Edge, Emory, Frye, Hamilton, Hardwick, Harrison, Herbkersman, M. Hines, Jefferson, Littlejohn, Mack, Martin, Moody-Lawrence, Ott, Owens, Parks, Phillips, Rhoad, Rice, Simrill, D. C. Smith, G. R. Smith, J. E. Smith, Taylor, Townsend, Umphlett, Witherspoon, Talley and McLeod: A BILL TO AMEND SECTION 12-6-1140, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEDUCTIONS ALLOWED FROM SOUTH CAROLINA TAXABLE INCOME OF AN INDIVIDUAL FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO ALLOW A MAXIMUM THREE THOUSAND DOLLARS A YEAR DEDUCTION FOR MEMBERS OF THE STATE GUARD AND TO PROVIDE THE ELIGIBILITY REQUIREMENTS FOR THIS DEDUCTION.

Rep. LITTLEJOHN explained the Bill.

H. 3768--AMENDED AND ORDERED TO THIRD READING

The following Bill was taken up:

H. 3768 -- Rep. Kirsh: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-21-1085 SO AS TO PROVIDE FOR SALES AND USE TAXES ON BEER AND WINE; BY ADDING SECTION 12-28-1400 SO AS TO REQUIRE THE REPORTING THE DEPARTMENT OF REVENUE REQUIRES BY REGULATION FOR PURPOSES OF THE USER FEE ON MOTOR FUELS AND PROVIDE AN ADDITIONAL CIVIL PENALTY FOR VIOLATORS; BY ADDING SECTION 12-54-123 SO AS TO PROTECT FROM LIABILITY A PERSON WHO SURRENDERS THE PROPERTY OF ANOTHER LEVIED ON BY THE DEPARTMENT OF REVENUE; BY ADDING CHAPTER 55 TO TITLE 12, ENACTING THE OVERDUE DEBT COLLECTION ACT AUTHORIZING THE SOUTH CAROLINA DEPARTMENT

OF REVENUE TO IMPOSE A COLLECTION ASSISTANCE FEE ON CERTAIN OVERDUE TAX DEBTS EQUAL TO TWENTY PERCENT OF THE OVERDUE AMOUNT AND TO ALLOW THE DEPARTMENT TO RETAIN A PORTION OF THE COLLECTION ASSISTANCE FEE FOR ITS OPERATION; BY ADDING SECTION 61-4-725 SO AS TO ALLOW A LICENSED WINERY TO SELL, DELIVER, AND PERMIT ON-PREMISES CONSUMPTION ON SUNDAYS IN JURISDICTIONS WHERE MINIBOTTLE SALES ARE ALLOWED ON SUNDAYS; TO AMEND SECTION 4-29-67, AS AMENDED, RELATING TO THE FEE IN LIEU OF PROPERTY TAX, SO AS TO DELETE THE NET PERCENT VALUE METHOD OF CALCULATING ANNUAL FEE PAYMENTS; TO AMEND SECTION 6-1-320, AS AMENDED, RELATING TO THE LIMITS ON ANNUAL INCREASES IN LOCAL GOVERNMENT AND SCHOOL DISTRICT PROPERTY TAX MILLAGE, SO AS TO CLARIFY THE METHOD OF CALCULATING THE ALLOWED CONSUMER PRICE INDEX INCREASE IN THE MILLAGE RATE; TO AMEND SECTIONS 12-6-40 AND 12-6-50, BOTH AS AMENDED, RELATING TO DEFINITIONS AND CONFORMITY PROVISIONS FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO UPDATE THE REFERENCE DATE BY WHICH THIS STATE ADOPTS VARIOUS PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 AND CLARIFY THOSE PROVISIONS NOT ADOPTED; TO AMEND SECTIONS 12-6-1110 AND 12-6-1130, RELATING TO CALCULATIONS OF INCOME, SO AS TO PROVIDE FOR CALCULATIONS WITHOUT SOME OF THE DEDUCTIONS ALLOWED BY THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO DEDUCTIONS FROM SOUTH CAROLINA INDIVIDUAL TAXABLE INCOME FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO DELETE AN OBSOLETE DEDUCTION RELATING TO MEDICAL INSURANCE PREMIUMS; TO AMEND SECTION 12-6-2220, RELATING TO ALLOCATION AND APPORTIONMENT FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO PROVIDE FOR THE ALLOCATION OF DIVIDENDS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE TARGETED JOBS TAX CREDIT, SO AS TO REVISE THE DEFINITION OF "NEW JOB"; TO AMEND SECTION 12-6-3365, AS AMENDED, RELATING TO THE CORPORATE INCOME TAX MORATORIUM FOR JOB CREATION, SO AS TO CLARIFY THE APPLICATION

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OF THE MORATORIUM TO INSURANCE PREMIUM TAXES; TO AMEND SECTION 12-6-3480, RELATING TO TAX CREDITS, SO AS TO FURTHER PROVIDE THE MANNER IN WHICH CREDITS ARE ALLOWED AND MAY BE CLAIMED; TO AMEND SECTION 12-6-4910, AS AMENDED, RELATING TO THOSE REQUIRED TO FILE INCOME TAX RETURNS, SO AS TO PROVIDE FOR THOSE NONRESIDENTS REQUIRED TO FILE IN THIS STATE; TO AMEND SECTIONS 12-6-5020, AS AMENDED, AND 12-6-5030, RELATING TO THE FILING OF CONSOLIDATED CORPORATE INCOME TAX RETURNS AND COMPOSITE INDIVIDUAL INCOME TAX RETURNS, SO AS TO REQUIRE THE DETERMINATION OF CREDITS ON A CONSOLIDATED BASIS AND FURTHER PROVIDE FOR COMPOSITE RETURNS; TO AMEND SECTION 12-8-520 RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE FOR THE WITHHOLDING OF PARTNERSHIP AND SUBCHAPTER "S" CORPORATION INCOME OF NONRESIDENTS; TO AMEND SECTION 12-8-1520, RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS FOR WITHHOLDING AGENTS; TO AMEND SECTION 12-10-105, RELATING TO ANNUAL FEES FOR JOB DEVELOPMENT CREDITS FOR PURPOSES OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO EXTEND THESE FEES TO JOB RETRAINING CREDITS IN EXCESS OF TEN THOUSAND DOLLARS AND PROVIDE FOR THE COLLECTION OF THESE FEES; TO AMEND SECTION 12-20-105, AS AMENDED, RELATING TO TAX CREDITS FOR PURPOSES OF THE CORPORATE LICENSE TAX, SO AS TO CLARIFY THE APPLICATION OF THESE CREDITS; TO AMEND SECTION 12-28-740, RELATING TO EXEMPTIONS FROM THE MOTOR FUELS USER FEE, SO AS TO DELETE A REFERENCE TO A CREDIT; TO AMEND SECTIONS 12-21-1090 AND 12-21-6550, RELATING TO LICENSE TAXES, SO AS TO PROVIDE FOR THE PERMISSIVE PROMULGATION OF REGULATIONS AND FURTHER PROVIDE FOR THE APPLICATIONS REQUIRED PURSUANT TO THE TOURISM INFRASTRUCTURE ADMISSIONS TAX ACT; TO AMEND SECTION 12-28-1730, AS AMENDED, RELATING TO PENALTIES FOR PURPOSES OF THE MOTOR FUELS TAX, SO AS TO DELETE A CIVIL PENALTY; TO AMEND SECTION 12-36-530, RELATING TO THE REQUIREMENT FOR THE RETURN OF A RETAIL LICENSE

WHEN A BUSINESS CLOSES OR IS SOLD, SO AS TO ELIMINATE THE REQUIREMENT THAT THE TAX IS DUE AT THE TIME OF SALE AND CONSTITUTES A LIEN ON THE PROPERTY IN THE HANDS OF THE PURCHASER; TO AMEND SECTION 12-36-1310, AS AMENDED, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO FURTHER PROVIDE FOR THE APPLICATION OF SALES TAX TO TELECOMMUNICATIONS SERVICES; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES AND USE TAX EXEMPTIONS, SO AS TO EXEMPT PRESCRIPTIONS AND OVER-THE-COUNTER MEDICINES AND MEDICAL SUPPLIES SOLD TO A FREE CLINIC; TO AMEND SECTION 12-36-2510, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO PROVIDE FURTHER FOR THE ISSUE OF CERTIFICATES BY THE DEPARTMENT OF REVENUE FOR DIRECT PAY AND EXEMPTIONS AND PROVIDE FOR MORE EFFICIENT ADMINISTRATION OF SALES TAXES AND SALES TAX EXEMPTIONS; TO AMEND SECTION 12-37-220, AS AMENDED, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO DELETE OBSOLETE REFERENCES IN EXISTING EXEMPTIONS; TO AMEND SECTION 12-37-230, RELATING TO SERVICE CONTRACTS WITH NONPROFIT HOUSING CORPORATIONS, SO AS TO ALLOW A COUNTY OR MUNICIPALITY TO CHARGE REASONABLE FEES FOR SERVICES NOT TO EXCEED TAXES THAT WOULD OTHERWISE BE DUE ON THE PROPERTY; TO AMEND SECTION 12-44-50, AS AMENDED, RELATING TO THE "FEE IN LIEU OF TAX SIMPLIFICATION ACT OF 1997", SO AS TO REVISE THE ELIGIBILITY TO USE THE NET PERCENT VALUE METHOD OF CALCULATING THE ANNUAL FEE PAYMENT; TO AMEND SECTIONS 12-54-42 AND 12-54-43, AS AMENDED, RELATING TO THE UNIFORM METHOD OF COLLECTION AND ENFORCEMENT OF STATE LEVIED TAXES, SO AS TO CLARIFY THE APPLICATION OF PENALTIES FOR FAILING TO PROVIDE WITHHOLDING STATEMENTS, AND CLARIFY AND REVISE THE APPLICATION OF CIVIL PENALTIES FOR FILING GROUNDLESS RETURNS OR FOR MISUSE OF A SALES TAX CERTIFICATE; TO AMEND SECTION 12-54-90, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO REFUSE TO ISSUE A LICENSE TO A TAXPAYER IN VIOLATION; TO

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AMEND SECTIONS 12-54-210 AND 12-54-240, AS AMENDED, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO INCREASE THE PENALTY FOR FAILURE TO KEEP RECORDS, FILE RETURNS, AND COMPLY WITH REGULATIONS, UPDATE REFERENCES RELATING TO THE CONFIDENTIALITY OF RETURNS, AND DELETE AN EXEMPTION TO THE CONFIDENTIALITY REQUIREMENTS FOR RECORDS SUBPOENAED BY A FEDERAL GRAND JURY; TO AMEND SECTION 12-58-185, AS AMENDED, RELATING TO THE TAXPAYERS' BILL OF RIGHTS, SO AS TO CLARIFY AND EXTEND THE APPLICATION OF HARDSHIP EXTENSIONS TO PAY; TO AMEND SECTIONS 12-60-420 AND 12-60-490, BOTH AS AMENDED, RELATING TO THE REVENUES PROCEDURE ACT, SO AS TO PROVIDE THAT THE APPLICATION OF A DIVISION DECISION OR A DETERMINATION OF DEFICIENCY APPLIES TO LOCAL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE AND REQUIRE THE NOTICE TO PROVIDE THAT FAILURE TO FILE A PROTEST RESULTS IN A DECISION BECOMING FINAL AND TO PROVIDE, FURTHER, FOR SETOFFS AGAINST TAX REFUNDS; TO AMEND SECTION 61-4-747, RELATING TO REGULATION OF WINE, SO AS TO REQUIRE OUT-OF-STATE WINE SHIPPERS TO PAY SALES AND EXCISE TAXES ON WINE SHIPPED TO RESIDENTS OF THIS STATE BY JANUARY TWENTIETH OF EACH YEAR FOR THE PRECEDING YEAR; BY ADDING SECTION 33-14-420 SO AS TO FURTHER PROVIDE FOR CLAIMANTS AGAINST FUNDS OF A DISSOLVED CORPORATION; TO REPEAL SECTION 12-37-240, RELATING TO PAYMENTS IN LIEU OF TAXES BY EXEMPT NONPROFIT HOUSING CORPORATIONS AND SECTION 12-37-290, RELATING TO AN OBSOLETE HOMESTEAD EXEMPTION PROVISION.

The Ways and Means Committee proposed the following Amendment No. 1 (Doc Name COUNCIL\BBM\10793MM05), which was tabled:

Amend the bill, as and if amended, SECTION 38, as contained on page 27, line 22, by deleting / ~~five hundred~~ one thousand / and inserting / five hundred /.

Renumber sections to conform.

Amend title to conform.

Rep. LITTLEJOHN moved to table the amendment, which was agreed to.

The Ways and Means Committee proposed the following Amendment No. 2 (Doc Name COUNCIL\BBM\10794MM05), which was tabled:

Amend the bill, as and if amended, SECTION 6, as found on pages 8 and 9, and SECTION 34, as found on page 25, by deleting SECTION 6 and SECTION 34 in their entirety.

Renumber sections to conform.

Amend title to conform.

Rep. LITTLEJOHN moved to table the amendment, which was agreed to.

The Ways and Means Committee proposed the following Amendment No. 3 (Doc Name COUNCIL\BBM\10775MM05), which was tabled:

Amend the bill, as and if amended, by deleting SECTION 1 and inserting:

/ SECTION 1.A. Section 12-36-140(C)(3), as added by Act 387 of 2000, is amended to read:

"(3) for the purpose of being distributed as (i) cooperative direct mail promotional advertising materials, or (ii) promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus who are exempt from income taxation pursuant to Internal Revenue Code Section 501(c) by means of interstate carrier, a mailing house, or a United States Post Office to residents of this State from locations both inside and outside the State. For purposes of this item, 'cooperative direct mail promotional advertising materials' means discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material."

B. Section 12-36-2120(58) of the 1976 Code, as added by Act 387 of 2000, is amended to read:

"(58) cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus

who are exempt from income taxation pursuant to Internal Revenue Code Section 501(c) delivered at no charge by means of interstate carrier, a mailing house, or a United States Post Office to residents of this State from locations both inside and outside the State. For purposes of this item, 'cooperative direct mail promotional advertising materials' means discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material."

C. This section takes effect for tax years beginning after 2005, but does not authorize or permit refunds of taxes paid. /

Renumber sections to conform.

Amend title to conform.

Rep. LITTLEJOHN moved to table the amendment, which was agreed to.

The Ways and Means Committee proposed the following Amendment No. 4 (Doc Name COUNCIL\BBM\10825MM05), which was adopted:

Amend the bill, as and if amended, by deleting SECTION 1 and inserting:

/ SECTION 1.A. Section 12-36-140(C)(3), as added by Act 387 of 2000, is amended to read:

"(3) for the purpose of being distributed as (i) cooperative direct mail promotional advertising materials, or (ii) promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus who are exempt from income taxation pursuant to Internal Revenue Code Section 501(c) by means of interstate carrier, a mailing house, or a United States Post Office to residents of this State from locations both inside and outside the State. For purposes of this item, 'cooperative direct mail promotional advertising materials' means discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material."

B. Section 12-36-2120(58) of the 1976 Code, as added by Act 387 of 2000, is amended to read:

"(58) cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus who are exempt from income taxation pursuant to Internal Revenue Code Section 501(c) delivered at no charge by means of interstate carrier, a mailing house, or a United States Post Office to residents of this State from locations both inside and outside the State. For purposes of this item, 'cooperative direct mail promotional advertising materials' means discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material."

C. This section takes effect for tax years beginning after 2005, but does not authorize or permit refunds of taxes paid. /

Amend the bill further, SECTION 6, as found on pages 8 and 9, and SECTION 34, as found on page 25, by deleting SECTION 6 and SECTION 34 in their entirety.

Amend the bill further, SECTION 38, as contained on page 27, line 22, by deleting / ~~five hundred~~ one thousand / and inserting / five hundred /.

Renumber sections to conform.

Amend title to conform.

Rep. KIRSH explained the amendment.

The amendment was then adopted.

Reps. CHELLIS and KIRSH proposed the following Amendment No. 5 (Doc Name COUNCIL\BBM\10819MM05), which was adopted:

Amend the bill, as and if amended, Section 12-28-1400(A) as found in SECTION 2, page 5, lines 36-41, by deleting subsection (A) in its entirety and inserting:

/ All information required to be reported in this chapter must be used in the tracking of petroleum products and must be submitted in the manner provided by the department. The requirements may include, but not be limited to, the data elements, the format of the data elements, and the method and medium of transmission to the department. /

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Renumber sections to conform.
Amend title to conform.

Rep. CHELLIS explained the amendment.
The amendment was then adopted.

Rep. KIRSH proposed the following Amendment No. 7 (Doc Name COUNCIL\BBM\10828MM05), which was adopted:

Amend the bill, as and if amended, Section 33A, as found on page 24, beginning at line 30 and ending at line 41, by deleting SECTION 33A in its entirety.

Amend the bill further, SECTION 46 as found on page 30, lines 23-24, by deleting SECTION 46 in its entirety.

Renumber sections to conform.
Amend title to conform.

Rep. KIRSH explained the amendment.
The amendment was then adopted.

The Bill, as amended, was read the second time and ordered to third reading.

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H. 3767--AMENDED AND INTERRUPTED DEBATE

The following Bill was taken up:

H. 3767 -- Rep. Kirsh: A BILL TO AMEND SECTION 12-2-75, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SIGNATORIES TO TAX RETURNS, SO AS TO AUTHORIZE A QUALIFIED TAX PREPARER TO SIGN ELECTRONICALLY; TO AMEND SECTION 12-4-30, RELATING TO COMPOSITION OF THE DEPARTMENT OF REVENUE, SO AS TO DELETE OUT-DATED LANGUAGE; TO AMEND SECTION 12-4-540, RELATING TO APPRAISAL, ASSESSMENT, AND EQUALIZATION OF TAXABLE VALUES OF CORPORATE PROPERTY, SO AS TO MAKE A GRAMMATICAL CHANGE; TO AMEND SECTION 12-6-50, AS AMENDED, RELATING TO SECTIONS OF THE INTERNAL REVENUE CODE NOT ADOPTED BY SOUTH CAROLINA, SO AS TO ADD A CROSS REFERENCE; TO AMEND SECTION 12-6-1170, RELATING TO INCOME DEDUCTION FROM TAXABLE RETIREMENT INCOME, SO AS TO ADD CLARIFYING LANGUAGE; TO

AMEND SECTION 12-6-1720, RELATING TO TAXABLE INCOME REPORTABLE BY A NONRESIDENT, SO AS TO INCLUDE LOTTERY AND BINGO WINNINGS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE JOB TAX CREDIT, SO AS TO CORRECT A CROSS REFERENCE; TO AMEND SECTION 12-6-3570, AS AMENDED, RELATING TO TAX CREDITS FOR A MOTION PICTURE PRODUCTION COMPANY, SO AS TO CORRECT A CROSS REFERENCE; TO AMEND SECTION 12-10-80, AS AMENDED, RELATING TO JOB DEVELOPMENT CREDITS, SO AS TO PROVIDE THAT THE COUNTY DESIGNATION IS EFFECTIVE AS OF THE DATE THE APPLICATION FOR CREDITS IS RECEIVED; TO AMEND SECTION 12-54-55, AS AMENDED, RELATING TO INTEREST ON THE UNDERPAYMENT OF ESTIMATED TAX, SO AS TO INCLUDE SMALL AMOUNT PROVISIONS; TO AMEND SECTION 12-54-70, RELATING TO THE EXTENSION OF TIME FOR FILING TAX RETURNS, SO AS TO CLARIFY A CROSS REFERENCE; TO AMEND SECTION 12-54-110, AS AMENDED, RELATING TO THE POWER OF THE DEPARTMENT OF REVENUE TO SUMMON A PERSON, SO AS TO PROVIDE THAT AN ADMINISTRATIVE LAW JUDGE HOLD A CONTEMPT HEARING ON FAILURE TO COMPLY WITH A SUMMONS; AND TO AMEND SECTION 12-60-90, AS AMENDED, RELATING TO SANCTIONS AGAINST A PERSON AUTHORIZED TO REPRESENT A TAXPAYER ADMINISTRATIVELY, SO AS TO INCLUDE A MONETARY PENALTY AND MAKE A CLARIFICATION.

The Ways and Means Committee proposed the following Amendment No. 1 (Doc Name COUNCIL\BBM\10774MM05), which was tabled:

Amend the bill, as and if amended, by adding appropriately numbered SECTIONS to read:

/ SECTION __. A.Chapter 58 of Title 12 of the 1976 Code is amended by adding:

"Section 12-58-190. (A) An officer or employee of the department may not deny a refund or delay the issuance of the department's order to the State Treasurer to pay a refund that has been determined to be due because the department is auditing or planning an audit of the taxpayer for a different tax or different tax period. This

APP 000

Exhibit 4

JOURNAL

OF THE

HOUSE OF REPRESENTATIVES

OF THE

FIRST SESSION OF THE

116^{H} GENERAL ASSEMBLY

OF THE

STATE OF SOUTH CAROLINA

BEING THE

REGULAR SESSION BEGINNING
TUESDAY, JANUARY 11, 2005

Volume III

Wednesday, April 20, 2005
(Statewide Session)

~~Indicates Matter Stricken~~
Indicates New Matter

The House assembled at 10:00 a.m.

Deliberations were opened with prayer by Rev. Charles E. Seastrunk, Jr. as follows:

Our thought for today is from Psalm 118:27: "The Lord is God and he has made his light shine upon us."

Let us pray. Spirit of God, motivate us to do the work of the people in South Carolina. Enable Your servants to accomplish what they are charged to do. May they do this work with courage, wisdom and integrity. Look in favor upon our Nation, President, State and her leaders. Keep our defenders of freedom in Your safe care. O Lord, hear our prayer. Amen.

Pursuant to Rule 6.3, the House of Representatives was led in the Pledge of Allegiance to the Flag of the United States of America by the SPEAKER.

After corrections to the Journal of the proceedings of yesterday, the SPEAKER ordered it confirmed.

MOTION ADOPTED

Rep. TALLEY moved that when the House adjourns, it adjourn in memory of Vivian Grace O'Sullivan of Moore, which was agreed to.

REPORTS OF STANDING COMMITTEES

Rep. CATO, from the Committee on Labor, Commerce and Industry, submitted a favorable report with amendments on:

H. 3840 -- Reps. Sandifer and Cato: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 58-9-295 SO AS TO PROVIDE THAT NO COMMUNICATIONS SERVICE PROVIDER OR PARENT, SUBSIDIARY, OR AFFILIATE OF SUCH A PROVIDER MAY ENTER INTO ANY CONTRACT OR AGREEMENT THAT REQUIRES ANOTHER PERSON TO RESTRICT OR LIMIT THE ABILITY OF ANY OTHER COMMUNICATIONS SERVICE PROVIDER FROM OBTAINING EASEMENTS OR RIGHTS-OF-

1976, RELATING TO EXEMPTIONS FROM SALES TAX, INCLUDING PRESCRIPTION MEDICATIONS, SO AS TO ALSO INCLUDE IN THIS EXEMPTION, PRESCRIPTIONS FOR THE TREATMENT OF RHEUMATOID ARTHRITIS.

H. 3580 -- Reps. Scott, Hosey, Vick, Clyburn, J. Hines, Govan, McCraw, Clark, Anthony, Bales, Branham, Breeland, J. Brown, R. Brown, Ceips, Chalk, Cooper, Davenport, Edge, Emory, Frye, Hamilton, Hardwick, Harrison, Herbkersman, M. Hines, Jefferson, Littlejohn, Mack, Martin, Moody-Lawrence, Ott, Owens, Parks, Phillips, Rhoad, Rice, Simrill, D. C. Smith, G. R. Smith, J. E. Smith, Taylor, Townsend, Umphlett, Witherspoon, Talley and McLeod: A BILL TO AMEND SECTION 12-6-1140, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEDUCTIONS ALLOWED FROM SOUTH CAROLINA TAXABLE INCOME OF AN INDIVIDUAL FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO ALLOW A MAXIMUM THREE THOUSAND DOLLARS A YEAR DEDUCTION FOR MEMBERS OF THE STATE GUARD AND TO PROVIDE THE ELIGIBILITY REQUIREMENTS FOR THIS DEDUCTION.

H. 3768 -- Rep. Kirsh: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-21-1085 SO AS TO PROVIDE FOR SALES AND USE TAXES ON BEER AND WINE; BY ADDING SECTION 12-28-1400 SO AS TO REQUIRE THE REPORTING THE DEPARTMENT OF REVENUE REQUIRES BY REGULATION FOR PURPOSES OF THE USER FEE ON MOTOR FUELS AND PROVIDE AN ADDITIONAL CIVIL PENALTY FOR VIOLATORS; BY ADDING SECTION 12-54-123 SO AS TO PROTECT FROM LIABILITY A PERSON WHO SURRENDERS THE PROPERTY OF ANOTHER LEVIED ON BY THE DEPARTMENT OF REVENUE; BY ADDING CHAPTER 55 TO TITLE 12, ENACTING THE OVERDUE DEBT COLLECTION ACT AUTHORIZING THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO IMPOSE A COLLECTION ASSISTANCE FEE ON CERTAIN OVERDUE TAX DEBTS EQUAL TO TWENTY PERCENT OF THE OVERDUE AMOUNT AND TO ALLOW THE DEPARTMENT TO RETAIN A PORTION OF THE COLLECTION ASSISTANCE FEE FOR ITS OPERATION; BY ADDING SECTION 61-4-725 SO AS TO ALLOW A LICENSED WINERY TO SELL,

DELIVER, AND PERMIT ON-PREMISES CONSUMPTION ON SUNDAYS IN JURISDICTIONS WHERE MINIBOTTLE SALES ARE ALLOWED ON SUNDAYS; TO AMEND SECTION 4-29-67, AS AMENDED, RELATING TO THE FEE IN LIEU OF PROPERTY TAX, SO AS TO DELETE THE NET PERCENT VALUE METHOD OF CALCULATING ANNUAL FEE PAYMENTS; TO AMEND SECTION 6-1-320, AS AMENDED, RELATING TO THE LIMITS ON ANNUAL INCREASES IN LOCAL GOVERNMENT AND SCHOOL DISTRICT PROPERTY TAX MILLAGE, SO AS TO CLARIFY THE METHOD OF CALCULATING THE ALLOWED CONSUMER PRICE INDEX INCREASE IN THE MILLAGE RATE; TO AMEND SECTIONS 12-6-40 AND 12-6-50, BOTH AS AMENDED, RELATING TO DEFINITIONS AND CONFORMITY PROVISIONS FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO UPDATE THE REFERENCE DATE BY WHICH THIS STATE ADOPTS VARIOUS PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 AND CLARIFY THOSE PROVISIONS NOT ADOPTED; TO AMEND SECTIONS 12-6-1110 AND 12-6-1130, RELATING TO CALCULATIONS OF INCOME, SO AS TO PROVIDE FOR CALCULATIONS WITHOUT SOME OF THE DEDUCTIONS ALLOWED BY THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO DEDUCTIONS FROM SOUTH CAROLINA INDIVIDUAL TAXABLE INCOME FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO DELETE AN OBSOLETE DEDUCTION RELATING TO MEDICAL INSURANCE PREMIUMS; TO AMEND SECTION 12-6-2220, RELATING TO ALLOCATION AND APPORTIONMENT FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO PROVIDE FOR THE ALLOCATION OF DIVIDENDS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE TARGETED JOBS TAX CREDIT, SO AS TO REVISE THE DEFINITION OF "NEW JOB"; TO AMEND SECTION 12-6-3365, AS AMENDED, RELATING TO THE CORPORATE INCOME TAX MORATORIUM FOR JOB CREATION, SO AS TO CLARIFY THE APPLICATION OF THE MORATORIUM TO INSURANCE PREMIUM TAXES; TO AMEND SECTION 12-6-3480, RELATING TO TAX CREDITS, SO AS TO FURTHER PROVIDE THE MANNER IN WHICH CREDITS ARE ALLOWED AND MAY BE CLAIMED; TO AMEND SECTION 12-6-4910, AS AMENDED, RELATING TO THOSE REQUIRED TO FILE INCOME TAX RETURNS, SO AS TO

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PROVIDE FOR THOSE NONRESIDENTS REQUIRED TO FILE IN THIS STATE; TO AMEND SECTIONS 12-6-5020, AS AMENDED, AND 12-6-5030, RELATING TO THE FILING OF CONSOLIDATED CORPORATE INCOME TAX RETURNS AND COMPOSITE INDIVIDUAL INCOME TAX RETURNS, SO AS TO REQUIRE THE DETERMINATION OF CREDITS ON A CONSOLIDATED BASIS AND FURTHER PROVIDE FOR COMPOSITE RETURNS; TO AMEND SECTION 12-8-520 RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE FOR THE WITHHOLDING OF PARTNERSHIP AND SUBCHAPTER "S" CORPORATION INCOME OF NONRESIDENTS; TO AMEND SECTION 12-8-1520, RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS FOR WITHHOLDING AGENTS; TO AMEND SECTION 12-10-105, RELATING TO ANNUAL FEES FOR JOB DEVELOPMENT CREDITS FOR PURPOSES OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO EXTEND THESE FEES TO JOB RETRAINING CREDITS IN EXCESS OF TEN THOUSAND DOLLARS AND PROVIDE FOR THE COLLECTION OF THESE FEES; TO AMEND SECTION 12-20-105, AS AMENDED, RELATING TO TAX CREDITS FOR PURPOSES OF THE CORPORATE LICENSE TAX, SO AS TO CLARIFY THE APPLICATION OF THESE CREDITS; TO AMEND SECTION 12-28-740, RELATING TO EXEMPTIONS FROM THE MOTOR FUELS USER FEE, SO AS TO DELETE A REFERENCE TO A CREDIT; TO AMEND SECTIONS 12-21-1090 AND 12-21-6550, RELATING TO LICENSE TAXES, SO AS TO PROVIDE FOR THE PERMISSIVE PROMULGATION OF REGULATIONS AND FURTHER PROVIDE FOR THE APPLICATIONS REQUIRED PURSUANT TO THE TOURISM INFRASTRUCTURE ADMISSIONS TAX ACT; TO AMEND SECTION 12-28-1730, AS AMENDED, RELATING TO PENALTIES FOR PURPOSES OF THE MOTOR FUELS TAX, SO AS TO DELETE A CIVIL PENALTY; TO AMEND SECTION 12-36-530, RELATING TO THE REQUIREMENT FOR THE RETURN OF A RETAIL LICENSE WHEN A BUSINESS CLOSES OR IS SOLD, SO AS TO ELIMINATE THE REQUIREMENT THAT THE TAX IS DUE AT THE TIME OF SALE AND CONSTITUTES A LIEN ON THE PROPERTY IN THE HANDS OF THE PURCHASER; TO AMEND SECTION 12-36-1310, AS AMENDED, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO

FURTHER PROVIDE FOR THE APPLICATION OF SALES TAX TO TELECOMMUNICATIONS SERVICES; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES AND USE TAX EXEMPTIONS, SO AS TO EXEMPT PRESCRIPTIONS AND OVER-THE-COUNTER MEDICINES AND MEDICAL SUPPLIES SOLD TO A FREE CLINIC; TO AMEND SECTION 12-36-2510, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO PROVIDE FURTHER FOR THE ISSUE OF CERTIFICATES BY THE DEPARTMENT OF REVENUE FOR DIRECT PAY AND EXEMPTIONS AND PROVIDE FOR MORE EFFICIENT ADMINISTRATION OF SALES TAXES AND SALES TAX EXEMPTIONS; TO AMEND SECTION 12-37-220, AS AMENDED, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO DELETE OBSOLETE REFERENCES IN EXISTING EXEMPTIONS; TO AMEND SECTION 12-37-230, RELATING TO SERVICE CONTRACTS WITH NONPROFIT HOUSING CORPORATIONS, SO AS TO ALLOW A COUNTY OR MUNICIPALITY TO CHARGE REASONABLE FEES FOR SERVICES NOT TO EXCEED TAXES THAT WOULD OTHERWISE BE DUE ON THE PROPERTY; TO AMEND SECTION 12-44-50, AS AMENDED, RELATING TO THE "FEE IN LIEU OF TAX SIMPLIFICATION ACT OF 1997", SO AS TO REVISE THE ELIGIBILITY TO USE THE NET PERCENT VALUE METHOD OF CALCULATING THE ANNUAL FEE PAYMENT; TO AMEND SECTIONS 12-54-42 AND 12-54-43, AS AMENDED, RELATING TO THE UNIFORM METHOD OF COLLECTION AND ENFORCEMENT OF STATE LEVIED TAXES, SO AS TO CLARIFY THE APPLICATION OF PENALTIES FOR FAILING TO PROVIDE WITHHOLDING STATEMENTS, AND CLARIFY AND REVISE THE APPLICATION OF CIVIL PENALTIES FOR FILING GROUNDLESS RETURNS OR FOR MISUSE OF A SALES TAX CERTIFICATE; TO AMEND SECTION 12-54-90, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO REFUSE TO ISSUE A LICENSE TO A TAXPAYER IN VIOLATION; TO AMEND SECTIONS 12-54-210 AND 12-54-240, AS AMENDED, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES; SO AS TO INCREASE THE PENALTY FOR FAILURE TO KEEP RECORDS, FILE RETURNS, AND COMPLY WITH REGULATIONS, UPDATE REFERENCES RELATING TO THE CONFIDENTIALITY OF RETURNS, AND DELETE AN

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EXEMPTION TO THE CONFIDENTIALITY REQUIREMENTS FOR RECORDS SUBPOENAED BY A FEDERAL GRAND JURY; TO AMEND SECTION 12-58-185, AS AMENDED, RELATING TO THE TAXPAYERS' BILL OF RIGHTS, SO AS TO CLARIFY AND EXTEND THE APPLICATION OF HARDSHIP EXTENSIONS TO PAY; TO AMEND SECTIONS 12-60-420 AND 12-60-490, BOTH AS AMENDED, RELATING TO THE REVENUES PROCEDURE ACT, SO AS TO PROVIDE THAT THE APPLICATION OF A DIVISION DECISION OR A DETERMINATION OF DEFICIENCY APPLIES TO LOCAL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE AND REQUIRE THE NOTICE TO PROVIDE THAT FAILURE TO FILE A PROTEST RESULTS IN A DECISION BECOMING FINAL AND TO PROVIDE, FURTHER, FOR SETOFFS AGAINST TAX REFUNDS; TO AMEND SECTION 61-4-747, RELATING TO REGULATION OF WINE, SO AS TO REQUIRE OUT-OF-STATE WINE SHIPPERS TO PAY SALES AND EXCISE TAXES ON WINE SHIPPED TO RESIDENTS OF THIS STATE BY JANUARY TWENTIETH OF EACH YEAR FOR THE PRECEDING YEAR; BY ADDING SECTION 33-14-420 SO AS TO FURTHER PROVIDE FOR CLAIMANTS AGAINST FUNDS OF A DISSOLVED CORPORATION; TO REPEAL SECTION 12-37-240, RELATING TO PAYMENTS IN LIEU OF TAXES BY EXEMPT NONPROFIT HOUSING CORPORATIONS AND SECTION 12-37-290, RELATING TO AN OBSOLETE HOMESTEAD EXEMPTION PROVISION.

H. 3767 -- Rep. Kirsh: A BILL TO AMEND SECTION 12-2-75, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO SIGNATORIES TO TAX RETURNS, SO AS TO AUTHORIZE A QUALIFIED TAX PREPARER TO SIGN ELECTRONICALLY; TO AMEND SECTION 12-4-30, RELATING TO COMPOSITION OF THE DEPARTMENT OF REVENUE, SO AS TO DELETE OUT-DATED LANGUAGE; TO AMEND SECTION 12-4-540, RELATING TO APPRAISAL, ASSESSMENT, AND EQUALIZATION OF TAXABLE VALUES OF CORPORATE PROPERTY, SO AS TO MAKE A GRAMMATICAL CHANGE; TO AMEND SECTION 12-6-50, AS AMENDED, RELATING TO SECTIONS OF THE INTERNAL REVENUE CODE NOT ADOPTED BY SOUTH CAROLINA, SO AS TO ADD A CROSS REFERENCE; TO AMEND SECTION 12-6-1170, RELATING TO INCOME DEDUCTION FROM TAXABLE RETIREMENT

INCOME, SO AS TO ADD CLARIFYING LANGUAGE; TO AMEND SECTION 12-6-1720, RELATING TO TAXABLE INCOME REPORTABLE BY A NONRESIDENT, SO AS TO INCLUDE LOTTERY AND BINGO WINNINGS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE JOB TAX CREDIT, SO AS TO CORRECT A CROSS REFERENCE; TO AMEND SECTION 12-6-3570, AS AMENDED, RELATING TO TAX CREDITS FOR A MOTION PICTURE PRODUCTION COMPANY, SO AS TO CORRECT A CROSS REFERENCE; TO AMEND SECTION 12-10-80, AS AMENDED, RELATING TO JOB DEVELOPMENT CREDITS, SO AS TO PROVIDE THAT THE COUNTY DESIGNATION IS EFFECTIVE AS OF THE DATE THE APPLICATION FOR CREDITS IS RECEIVED; TO AMEND SECTION 12-54-55, AS AMENDED, RELATING TO INTEREST ON THE UNDERPAYMENT OF ESTIMATED TAX, SO AS TO INCLUDE SMALL AMOUNT PROVISIONS; TO AMEND SECTION 12-54-70, RELATING TO THE EXTENSION OF TIME FOR FILING TAX RETURNS, SO AS TO CLARIFY A CROSS REFERENCE; TO AMEND SECTION 12-54-110, AS AMENDED, RELATING TO THE POWER OF THE DEPARTMENT OF REVENUE TO SUMMON A PERSON, SO AS TO PROVIDE THAT AN ADMINISTRATIVE LAW JUDGE HOLD A CONTEMPT HEARING ON FAILURE TO COMPLY WITH A SUMMONS; AND TO AMEND SECTION 12-60-90, AS AMENDED, RELATING TO SANCTIONS AGAINST A PERSON AUTHORIZED TO REPRESENT A TAXPAYER ADMINISTRATIVELY, SO AS TO INCLUDE A MONETARY PENALTY AND MAKE A CLARIFICATION.

H. 3472 -- Reps. Neilson, J. Hines and Lucas: A BILL TO PROVIDE THAT EACH MEMBER OF THE DARLINGTON COUNTY TRANSPORTATION COMMITTEE SHALL BE ALLOWED AND PAID FROM DARLINGTON COUNTY "C" FUND REVENUES SEVENTY-FIVE DOLLARS FOR EACH MEETING AT WHICH HE IS IN ATTENDANCE, TO PROVIDE THAT THE COMMITTEE SHALL RECEIVE THE PAYMENT AUTHORIZED IN THIS ACT UPON ISSUANCE OF APPROVED VOUCHERS BY THE COMMITTEE'S CHAIRMAN, EXCEPT THAT THE CHAIRMAN MAY NOT APPROVE VOUCHERS IN ANY SINGLE FISCAL YEAR WHICH VOUCHERS AUTHORIZE PAYMENT FOR MORE THAN FIFTEEN MEETINGS PER FISCAL

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Exhibit 5

JOURNAL

OF THE

SENATE

OF THE

FIRST SESSION OF THE

116th GENERAL ASSEMBLY

OF THE

STATE OF SOUTH CAROLINA

BEING THE

REGULAR SESSION BEGINNING
TUESDAY, JANUARY 11, 2005

Volume III

WEDNESDAY, APRIL 20, 2005

MOTION ADOPTED

On motion of Senator PINCKNEY, with unanimous consent, the Senate stood adjourned out of respect to the memory of Mr. Walter Lloyd, retired educator who served in the House of Representatives from Colleton County, S.C. from 1995 to the present until a recent illness kept him away from the State House.

ADJOURNMENT

At 12:54 P.M., on motion of Senator McCONNELL, the Senate adjourned to meet tomorrow at 11:00 A.M. under the provisions of Rule 1B.

* * *

Thursday, April 21, 2005
(Statewide Session)

~~Indicates Matter Stricken~~
Indicates New Matter

The Senate assembled at 11:00 A.M., the hour to which it stood adjourned, and was called to order by the ACTING PRESIDENT, Senator SETZLER. **(This is a Statewide Session day established under the provisions of Senate Rule 1B. Members not having scheduled committee or subcommittee meetings may be in their home districts without effect on their session attendance record.)**

The ACTING PRESIDENT called for Petitions, Memorials, Presentments of Grand Juries and such like papers.

REGULATION WITHDRAWN AND RESUBMITTED

Document No. 2927
Agency: Department of Health and Environmental Control
SUBJECT: The Practice of Selling and Fitting Hearing Aids
Received by Lieutenant Governor January 20, 2005
Referred to Medical Affairs Committee
Legislative Review Expiration May 20, 2005
Revised: June 4, 2005
(Subject to *Sine Die* Revision)
120 Day Period Tolled
Withdrawn and Resubmitted April 20, 2005

INTRODUCTION OF BILLS AND RESOLUTIONS

The following were introduced:

S. 782 -- Senators Williams, J. Verne Smith, Bryant, Ford, Land, Cleary, Knotts, Grooms, Scott, Elliott, Reese, Mescher, Hutto, Fair, Cromer, Thomas and Short: A BILL TO AMEND SECTION 58-5-35, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EXEMPTION FROM REGULATION BY THE PUBLIC SERVICE COMMISSION OF CERTAIN PUBLIC UTILITIES AND PIPELINE COMPANIES ENGAGED IN THE EXTRACTION, DISTRIBUTION, OR SALE OF LANDFILL GAS DERIVED FROM SANITARY LANDFILLS, SO AS TO INCLUDE WITHIN THIS EXEMPTION BIOGAS DERIVED FROM A BIOMASS SOURCE.
l:\council\bills\gjk\20396sd05.doc
Read the first time and referred to the Committee on Judiciary.

H. 3467 -- Reps. Rice and Davenport: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 43-1-85 SO AS TO AUTHORIZE THE DEPARTMENT OF SOCIAL SERVICES TO IMPOSE FINES FOR VIOLATIONS OF STATUTES AND REGULATIONS RELATING PROGRAMS REGULATED BY THE DEPARTMENT AND TO REQUIRE THE DEPARTMENT TO PROMULGATE REGULATIONS CONTAINING REQUIREMENTS FOR EACH PROGRAM THE DEPARTMENT REGULATES, INCLUDING PROVISIONS TO ESTABLISH GUIDELINES FOR IMPOSING FINES AND RANGES OF FINES; AND TO ADD SECTION 20-7-2255 SO AS TO PROVIDE THAT LICENSURE FOR GROUP HOMES, CHILD CARING INSTITUTIONS, AND CHILD PLACING AGENCIES ARE EFFECTIVE FOR TWO YEARS AND THAT FIRE INSPECTIONS MUST BE CONDUCTED ANNUALLY FOR GROUP HOMES AND CHILD CARING INSTITUTIONS.

Read the first time and referred to the Committee on Medical Affairs.

H. 3768 -- Rep. Kirsh: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-21-1085 SO AS TO PROVIDE FOR SALES AND USE TAXES ON BEER AND WINE; BY ADDING SECTION 12-28-1400 SO AS TO REQUIRE THE REPORTING THE DEPARTMENT OF REVENUE REQUIRES BY REGULATION FOR PURPOSES OF THE USER FEE ON MOTOR FUELS AND PROVIDE AN ADDITIONAL CIVIL PENALTY FOR VIOLATORS; BY ADDING SECTION 12-54-123 SO AS TO PROTECT FROM LIABILITY A PERSON WHO SURRENDERS THE PROPERTY OF ANOTHER LEVIED ON BY THE DEPARTMENT OF REVENUE; BY ADDING CHAPTER 55 TO TITLE 12, ENACTING THE OVERDUE DEBT COLLECTION ACT AUTHORIZING THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO IMPOSE A COLLECTION ASSISTANCE FEE ON CERTAIN OVERDUE TAX DEBTS EQUAL TO TWENTY PERCENT OF THE OVERDUE AMOUNT AND TO ALLOW THE DEPARTMENT TO RETAIN A PORTION OF THE COLLECTION ASSISTANCE FEE FOR ITS OPERATION; BY ADDING SECTION 61-4-725 SO AS TO ALLOW A LICENSED WINERY TO SELL, DELIVER, AND PERMIT ON-PREMISES CONSUMPTION ON SUNDAYS IN JURISDICTIONS WHERE MINIBOTTLE SALES

ARE ALLOWED ON SUNDAYS; TO AMEND SECTION 4-29-67, AS AMENDED, RELATING TO THE FEE IN LIEU OF PROPERTY TAX, SO AS TO DELETE THE NET PERCENT VALUE METHOD OF CALCULATING ANNUAL FEE PAYMENTS; TO AMEND SECTION 6-1-320, AS AMENDED, RELATING TO THE LIMITS ON ANNUAL INCREASES IN LOCAL GOVERNMENT AND SCHOOL DISTRICT PROPERTY TAX MILLAGE, SO AS TO CLARIFY THE METHOD OF CALCULATING THE ALLOWED CONSUMER PRICE INDEX INCREASE IN THE MILLAGE RATE; TO AMEND SECTIONS 12-6-40 AND 12-6-50, BOTH AS AMENDED, RELATING TO DEFINITIONS AND CONFORMITY PROVISIONS FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO UPDATE THE REFERENCE DATE BY WHICH THIS STATE ADOPTS VARIOUS PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 AND CLARIFY THOSE PROVISIONS NOT ADOPTED; TO AMEND SECTIONS 12-6-1110 AND 12-6-1130, RELATING TO CALCULATIONS OF INCOME, SO AS TO PROVIDE FOR CALCULATIONS WITHOUT SOME OF THE DEDUCTIONS ALLOWED BY THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO DEDUCTIONS FROM SOUTH CAROLINA INDIVIDUAL TAXABLE INCOME FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO DELETE AN OBSOLETE DEDUCTION RELATING TO MEDICAL INSURANCE PREMIUMS; TO AMEND SECTION 12-6-2220, RELATING TO ALLOCATION AND APPORTIONMENT FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO PROVIDE FOR THE ALLOCATION OF DIVIDENDS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE TARGETED JOBS TAX CREDIT, SO AS TO REVISE THE DEFINITION OF "NEW JOB"; TO AMEND SECTION 12-6-3365, AS AMENDED, RELATING TO THE CORPORATE INCOME TAX MORATORIUM FOR JOB CREATION, SO AS TO CLARIFY THE APPLICATION OF THE MORATORIUM TO INSURANCE PREMIUM TAXES; TO AMEND SECTION 12-6-3480, RELATING TO TAX CREDITS, SO AS TO FURTHER PROVIDE THE MANNER IN WHICH CREDITS ARE ALLOWED AND MAY BE CLAIMED; TO AMEND SECTION 12-6-4910, AS AMENDED, RELATING TO THOSE REQUIRED TO FILE INCOME TAX RETURNS, SO AS TO PROVIDE FOR THOSE NONRESIDENTS REQUIRED TO FILE IN THIS STATE; TO AMEND SECTIONS 12-6-5020, AS AMENDED, AND 12-6-5030,

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RELATING TO THE FILING OF CONSOLIDATED CORPORATE INCOME TAX RETURNS AND COMPOSITE INDIVIDUAL INCOME TAX RETURNS, SO AS TO REQUIRE THE DETERMINATION OF CREDITS ON A CONSOLIDATED BASIS AND FURTHER PROVIDE FOR COMPOSITE RETURNS; TO AMEND SECTION 12-8-520 RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE FOR THE WITHHOLDING OF PARTNERSHIP AND SUBCHAPTER "S" CORPORATION INCOME OF NONRESIDENTS; TO AMEND SECTION 12-8-1520, RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS FOR WITHHOLDING AGENTS; TO AMEND SECTION 12-10-105, RELATING TO ANNUAL FEES FOR JOB DEVELOPMENT CREDITS FOR PURPOSES OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO EXTEND THESE FEES TO JOB RETRAINING CREDITS IN EXCESS OF TEN THOUSAND DOLLARS AND PROVIDE FOR THE COLLECTION OF THESE FEES; TO AMEND SECTION 12-20-105, AS AMENDED, RELATING TO TAX CREDITS FOR PURPOSES OF THE CORPORATE LICENSE TAX, SO AS TO CLARIFY THE APPLICATION OF THESE CREDITS; TO AMEND SECTION 12-28-740, RELATING TO EXEMPTIONS FROM THE MOTOR FUELS USER FEE, SO AS TO DELETE A REFERENCE TO A CREDIT; TO AMEND SECTIONS 12-21-1090 AND 12-21-6550, RELATING TO LICENSE TAXES, SO AS TO PROVIDE FOR THE PERMISSIVE PROMULGATION OF REGULATIONS AND FURTHER PROVIDE FOR THE APPLICATIONS REQUIRED PURSUANT TO THE TOURISM INFRASTRUCTURE ADMISSIONS TAX ACT; TO AMEND SECTION 12-28-1730, AS AMENDED, RELATING TO PENALTIES FOR PURPOSES OF THE MOTOR FUELS TAX, SO AS TO DELETE A CIVIL PENALTY; TO AMEND SECTION 12-36-530, RELATING TO THE REQUIREMENT FOR THE RETURN OF A RETAIL LICENSE WHEN A BUSINESS CLOSES OR IS SOLD, SO AS TO ELIMINATE THE REQUIREMENT THAT THE TAX IS DUE AT THE TIME OF SALE AND CONSTITUTES A LIEN ON THE PROPERTY IN THE HANDS OF THE PURCHASER; TO AMEND SECTION 12-36-1310, AS AMENDED, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO FURTHER PROVIDE FOR THE APPLICATION OF SALES TAX TO TELECOMMUNICATIONS SERVICES; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES AND USE

TAX EXEMPTIONS, SO AS TO EXEMPT PRESCRIPTIONS AND OVER-THE-COUNTER MEDICINES AND MEDICAL SUPPLIES SOLD TO A FREE CLINIC; TO AMEND SECTION 12-36-2510, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO PROVIDE FURTHER FOR THE ISSUE OF CERTIFICATES BY THE DEPARTMENT OF REVENUE FOR DIRECT PAY AND EXEMPTIONS AND PROVIDE FOR MORE EFFICIENT ADMINISTRATION OF SALES TAXES AND SALES TAX EXEMPTIONS; TO AMEND SECTION 12-37-220, AS AMENDED, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO DELETE OBSOLETE REFERENCES IN EXISTING EXEMPTIONS; TO AMEND SECTION 12-37-230, RELATING TO SERVICE CONTRACTS WITH NONPROFIT HOUSING CORPORATIONS, SO AS TO ALLOW A COUNTY OR MUNICIPALITY TO CHARGE REASONABLE FEES FOR SERVICES NOT TO EXCEED TAXES THAT WOULD OTHERWISE BE DUE ON THE PROPERTY; TO AMEND SECTION 12-44-50, AS AMENDED, RELATING TO THE "FEE IN LIEU OF TAX SIMPLIFICATION ACT OF 1997", SO AS TO REVISE THE ELIGIBILITY TO USE THE NET PERCENT VALUE METHOD OF CALCULATING THE ANNUAL FEE PAYMENT; TO AMEND SECTIONS 12-54-42 AND 12-54-43, AS AMENDED, RELATING TO THE UNIFORM METHOD OF COLLECTION AND ENFORCEMENT OF STATE LEVIED TAXES, SO AS TO CLARIFY THE APPLICATION OF PENALTIES FOR FAILING TO PROVIDE WITHHOLDING STATEMENTS, AND CLARIFY AND REVISE THE APPLICATION OF CIVIL PENALTIES FOR FILING GROUNDLESS RETURNS OR FOR MISUSE OF A SALES TAX CERTIFICATE; TO AMEND SECTION 12-54-90, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO REFUSE TO ISSUE A LICENSE TO A TAXPAYER IN VIOLATION; TO AMEND SECTIONS 12-54-210 AND 12-54-240, AS AMENDED, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO INCREASE THE PENALTY FOR FAILURE TO KEEP RECORDS, FILE RETURNS, AND COMPLY WITH REGULATIONS, UPDATE REFERENCES RELATING TO THE CONFIDENTIALITY OF RETURNS, AND DELETE AN EXEMPTION TO THE CONFIDENTIALITY REQUIREMENTS FOR RECORDS SUBPOENAED BY A FEDERAL GRAND JURY; TO AMEND SECTION 12-58-185, AS AMENDED, RELATING TO

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THE TAXPAYERS' BILL OF RIGHTS, SO AS TO CLARIFY AND EXTEND THE APPLICATION OF HARDSHIP EXTENSIONS TO PAY; TO AMEND SECTIONS 12-60-420 AND 12-60-490, BOTH AS AMENDED, RELATING TO THE REVENUES PROCEDURE ACT, SO AS TO PROVIDE THAT THE APPLICATION OF A DIVISION DECISION OR A DETERMINATION OF DEFICIENCY APPLIES TO LOCAL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE AND REQUIRE THE NOTICE TO PROVIDE THAT FAILURE TO FILE A PROTEST RESULTS IN A DECISION BECOMING FINAL AND TO PROVIDE, FURTHER, FOR SETOFFS AGAINST TAX REFUNDS; TO AMEND SECTION 61-4-747, RELATING TO REGULATION OF WINE, SO AS TO REQUIRE OUT-OF-STATE WINE SHIPPERS TO PAY SALES AND EXCISE TAXES ON WINE SHIPPED TO RESIDENTS OF THIS STATE BY JANUARY TWENTIETH OF EACH YEAR FOR THE PRECEDING YEAR; BY ADDING SECTION 33-14-420 SO AS TO FURTHER PROVIDE FOR CLAIMANTS AGAINST FUNDS OF A DISSOLVED CORPORATION; TO REPEAL SECTION 12-37-240, RELATING TO PAYMENTS IN LIEU OF TAXES BY EXEMPT NONPROFIT HOUSING CORPORATIONS AND SECTION 12-37-290, RELATING TO AN OBSOLETE HOMESTEAD EXEMPTION PROVISION.

Read the first time and referred to the Committee on Finance.

H. 3813 -- Rep. Harrell: A BILL TO AMEND SECTIONS 25-1-3235 AND 25-1-3240, BOTH AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE NATIONAL GUARD PENSION FUND AND ELIGIBILITY FOR THE NATIONAL GUARD PENSION AND THE ADMINISTRATION OF PENSIONS FOR MEMBERS OF THE NATIONAL GUARD, SO AS TO ESTABLISH THE STATE BUDGET AND CONTROL BOARD AS TRUSTEE OF THE NATIONAL GUARD PENSION FUND AND PROVIDE FOR THE INVESTMENT OF ITS FUNDS AS THE FUNDS OF OTHER STATE RETIREMENT FUNDS ARE INVESTED, PROVIDE FOR THE ADMINISTRATION OF THOSE PENSIONS BY THE RETIREMENT SYSTEM OF THE STATE BUDGET AND CONTROL BOARD, AND PROVIDE FOR THE EXPENSES OF ADMINISTRATION TO BE PAID FROM EARNINGS.

Read the first time and referred to the General Committee.

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REPORTS OF STANDING COMMITTEES

Senator COURSON from the Committee on Education submitted a favorable with amendment report on:

S. 100 -- Senator Richardson: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 59-25-280 SO AS TO PROVIDE DIFFERENT SALARY SUPPLEMENTS FOR TEACHERS CERTIFIED BY THE NATIONAL BOARD FOR PROFESSIONAL TEACHING STANDARDS, PROVIDE FOR LOANS TO TEACHERS FOR THE NATIONAL BOARD CERTIFICATION APPLICATION FEE, PROVIDE FOR FORGIVENESS OF THE LOANS PURSUANT TO CERTAIN CONDITIONS, AND PROVIDE FOR THE APPROPRIATION OF FUNDS; BY ADDING SECTION 59-25-290 SO AS TO PROVIDE FOR THE CREATION OF A COMMISSION TO DETERMINE NECESSARY CHANGES TO THE SALARY SCHEDULE FOR TEACHERS AND PROVIDE ITS COMPOSITION; AND TO AMEND SECTION 59-18-1530, RELATING TO TEACHER SPECIALISTS, SO AS TO PROVIDE GUIDANCE IN THE CALCULATION OF COMPENSATION FOR TEACHER SPECIALISTS.

Ordered for consideration tomorrow.

Senator COURSON from the Committee on Education submitted a favorable with amendment report on:

S. 114 -- Senators Ritchie, Richardson and Fair: A BILL TO AMEND SECTION 59-18-700, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CRITERIA FOR THE ADOPTION OF INSTRUCTIONAL MATERIALS FOR THE PUBLIC SCHOOLS, SO AS TO REVISE THIS CRITERIA BY PROVIDING THAT ALL INSTRUCTIONAL MATERIALS PLACED ON THE APPROVED LIST OF INSTRUCTIONAL MATERIALS AND TEXTBOOKS FOR USE IN THE PUBLIC SCHOOLS OF THIS STATE SHALL CONTAIN THE SUBSTANCE AND LEVEL OF PERFORMANCE OUTLINED IN THE GRADE AND SUBJECT SPECIFIC ACADEMIC STANDARDS ADOPTED BY THE STATE BOARD OF EDUCATION; BY ADDING SECTION 59-18-705 SO AS TO CREATE THE SOUTH CAROLINA SCIENCE COMMITTEE AND PROVIDE FOR ITS MEMBERSHIP AND DUTIES; AND TO REPEAL SECTION 59-31-45, RELATING TO THE SELECTION OF TEXTBOOKS.

Ordered for consideration tomorrow.

Exhibit 6

JOURNAL

OF THE

SENATE

OF THE

FIRST SESSION OF THE

116th GENERAL ASSEMBLY

OF THE

STATE OF SOUTH CAROLINA

BEING THE

REGULAR SESSION BEGINNING
TUESDAY, JANUARY 11, 2005

Volume III

WEDNESDAY, MAY 18, 2005

ADJOURNMENT

At 6:58 P.M., on motion of Senator McCONNELL, the Senate adjourned to meet tomorrow at 11:00 A.M.

* * *

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Thursday, May 19, 2005
(Statewide Session)

~~Indicates Matter Stricken~~
Indicates New Matter

The Senate assembled at 11:00 A.M., the hour to which it stood adjourned, and was called to order by the PRESIDENT.

A quorum being present, the proceedings were opened with a devotion by the Chaplain as follows:

Beloved, hear words that St. Paul wrote to his young friend Timothy (II Timothy 2:6-7):

"Therefore, I remind you to stir up the gift of God which is in you...for God has not given us a spirit of fear, but of power and of love and of a sound mind."

Let us pray.

Father, You are our Lord and Master. You have given, even to us, the gifts of power, love and sound MINDS.

St. Paul is saying across the years: Stir up those gifts!

Many are praying. Our children, young people, old folks are praying for a happier life - and a world with higher hope for the future.

Thank You for wise leaders, attitudes of character, and social insights that will give us better times.

In the Holy Name we pray!

Amen.

The PRESIDENT called for Petitions, Memorials, Presentments of Grand Juries and such like papers.

Doctor of the Day

Senator RYBERG introduced Dr. Allen Sloan of North Augusta, S.C., Doctor of the Day.

RECALLED AND ADOPTED

S. 860 -- Senator McConnell: A CONCURRENT RESOLUTION TO REQUEST THE DEPARTMENT OF TRANSPORTATION TO NAME THE TWO TOWERS OF THE NEW ARTHUR RAVENEL BRIDGE IN CHARLESTON AS THE "JOHN P. GRACE TOWER" AND THE "SILAS N. PEARMAN TOWER" RESPECTIVELY IN HONOR OF THE MEN FOR WHOM THE TWO OLD BRIDGES THAT WILL BE REPLACED BY THE ARTHUR RAVENEL BRIDGE WERE NAMED AND TO REQUEST THE DEPARTMENT

AMEND SECTION 12-10-80, AS AMENDED, RELATING TO JOB DEVELOPMENT CREDITS, SO AS TO PROVIDE THAT THE COUNTY DESIGNATION IS EFFECTIVE AS OF THE DATE THE APPLICATION FOR CREDITS IS RECEIVED; TO AMEND SECTION 12-54-55, AS AMENDED, RELATING TO INTEREST ON THE UNDERPAYMENT OF ESTIMATED TAX, SO AS TO INCLUDE SMALL AMOUNT PROVISIONS; TO AMEND SECTION 12-54-70, RELATING TO THE EXTENSION OF TIME FOR FILING TAX RETURNS, SO AS TO CLARIFY A CROSS REFERENCE; TO AMEND SECTION 12-54-110, AS AMENDED, RELATING TO THE POWER OF THE DEPARTMENT OF REVENUE TO SUMMON A PERSON, SO AS TO PROVIDE THAT AN ADMINISTRATIVE LAW JUDGE HOLD A CONTEMPT HEARING ON FAILURE TO COMPLY WITH A SUMMONS; AND TO AMEND SECTION 12-60-90, AS AMENDED, RELATING TO SANCTIONS AGAINST A PERSON AUTHORIZED TO REPRESENT A TAXPAYER ADMINISTRATIVELY, SO AS TO INCLUDE A MONETARY PENALTY AND MAKE A CLARIFICATION.

On motion of Senator THOMAS, the Bill was carried over.

COMMITTEE AMENDMENT ADOPTED AMENDED, CARRIED OVER

H. 3768 -- Rep. Kirsh: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-21-1085 SO AS TO PROVIDE FOR SALES AND USE TAXES ON BEER AND WINE; BY ADDING SECTION 12-28-1400 SO AS TO REQUIRE THE REPORTING THE DEPARTMENT OF REVENUE REQUIRES BY REGULATION FOR PURPOSES OF THE USER FEE ON MOTOR FUELS AND PROVIDE AN ADDITIONAL CIVIL PENALTY FOR VIOLATORS; BY ADDING SECTION 12-54-123 SO AS TO PROTECT FROM LIABILITY A PERSON WHO SURRENDERS THE PROPERTY OF ANOTHER LEVIED ON BY THE DEPARTMENT OF REVENUE; BY ADDING CHAPTER 55 TO TITLE 12, ENACTING THE OVERDUE DEBT COLLECTION ACT AUTHORIZING THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO IMPOSE A COLLECTION ASSISTANCE FEE ON CERTAIN OVERDUE TAX DEBTS EQUAL TO TWENTY PERCENT OF THE OVERDUE AMOUNT AND TO ALLOW THE DEPARTMENT TO RETAIN A PORTION OF THE COLLECTION ASSISTANCE FEE FOR ITS OPERATION; BY

ADDING SECTION 61-4-725 SO AS TO ALLOW A LICENSED WINERY TO SELL, DELIVER, AND PERMIT ON-PREMISES CONSUMPTION ON SUNDAYS IN JURISDICTIONS WHERE MINIBOTTLE SALES ARE ALLOWED ON SUNDAYS; TO AMEND SECTION 4-29-67, AS AMENDED, RELATING TO THE FEE IN LIEU OF PROPERTY TAX, SO AS TO DELETE THE NET PERCENT VALUE METHOD OF CALCULATING ANNUAL FEE PAYMENTS; TO AMEND SECTION 6-1-320, AS AMENDED, RELATING TO THE LIMITS ON ANNUAL INCREASES IN LOCAL GOVERNMENT AND SCHOOL DISTRICT PROPERTY TAX MILLAGE, SO AS TO CLARIFY THE METHOD OF CALCULATING THE ALLOWED CONSUMER PRICE INDEX INCREASE IN THE MILLAGE RATE; TO AMEND SECTIONS 12-6-40 AND 12-6-50, BOTH AS AMENDED, RELATING TO DEFINITIONS AND CONFORMITY PROVISIONS FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO UPDATE THE REFERENCE DATE BY WHICH THIS STATE ADOPTS VARIOUS PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 AND CLARIFY THOSE PROVISIONS NOT ADOPTED; TO AMEND SECTIONS 12-6-1110 AND 12-6-1130, RELATING TO CALCULATIONS OF INCOME, SO AS TO PROVIDE FOR CALCULATIONS WITHOUT SOME OF THE DEDUCTIONS ALLOWED BY THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO DEDUCTIONS FROM SOUTH CAROLINA INDIVIDUAL TAXABLE INCOME FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO DELETE AN OBSOLETE DEDUCTION RELATING TO MEDICAL INSURANCE PREMIUMS; TO AMEND SECTION 12-6-2220, RELATING TO ALLOCATION AND APPORTIONMENT FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO PROVIDE FOR THE ALLOCATION OF DIVIDENDS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE TARGETED JOBS TAX CREDIT, SO AS TO REVISE THE DEFINITION OF "NEW JOB"; TO AMEND SECTION 12-6-3365, AS AMENDED, RELATING TO THE CORPORATE INCOME TAX MORATORIUM FOR JOB CREATION, SO AS TO CLARIFY THE APPLICATION OF THE MORATORIUM TO INSURANCE PREMIUM TAXES; TO AMEND SECTION 12-6-3480, RELATING TO TAX CREDITS, SO AS TO FURTHER PROVIDE THE MANNER IN WHICH CREDITS ARE ALLOWED AND MAY BE CLAIMED; TO AMEND SECTION

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12-6-4910, AS AMENDED, RELATING TO THOSE REQUIRED TO FILE INCOME TAX RETURNS, SO AS TO PROVIDE FOR THOSE NONRESIDENTS REQUIRED TO FILE IN THIS STATE; TO AMEND SECTIONS 12-6-5020, AS AMENDED, AND 12-6-5030, RELATING TO THE FILING OF CONSOLIDATED CORPORATE INCOME TAX RETURNS AND COMPOSITE INDIVIDUAL INCOME TAX RETURNS, SO AS TO REQUIRE THE DETERMINATION OF CREDITS ON A CONSOLIDATED BASIS AND FURTHER PROVIDE FOR COMPOSITE RETURNS; TO AMEND SECTION 12-8-520 RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE FOR THE WITHHOLDING OF PARTNERSHIP AND SUBCHAPTER "S" CORPORATION INCOME OF NONRESIDENTS; TO AMEND SECTION 12-8-1520, RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS FOR WITHHOLDING AGENTS; TO AMEND SECTION 12-10-105, RELATING TO ANNUAL FEES FOR JOB DEVELOPMENT CREDITS FOR PURPOSES OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO EXTEND THESE FEES TO JOB RETRAINING CREDITS IN EXCESS OF TEN THOUSAND DOLLARS AND PROVIDE FOR THE COLLECTION OF THESE FEES; TO AMEND SECTION 12-20-105, AS AMENDED, RELATING TO TAX CREDITS FOR PURPOSES OF THE CORPORATE LICENSE TAX, SO AS TO CLARIFY THE APPLICATION OF THESE CREDITS; TO AMEND SECTION 12-28-740, RELATING TO EXEMPTIONS FROM THE MOTOR FUELS USER FEE, SO AS TO DELETE A REFERENCE TO A CREDIT; TO AMEND SECTIONS 12-21-1090 AND 12-21-6550, RELATING TO LICENSE TAXES, SO AS TO PROVIDE FOR THE PERMISSIVE PROMULGATION OF REGULATIONS AND FURTHER PROVIDE FOR THE APPLICATIONS REQUIRED PURSUANT TO THE TOURISM INFRASTRUCTURE ADMISSIONS TAX ACT; TO AMEND SECTION 12-28-1730, AS AMENDED, RELATING TO PENALTIES FOR PURPOSES OF THE MOTOR FUELS TAX, SO AS TO DELETE A CIVIL PENALTY; TO AMEND SECTION 12-36-530, RELATING TO THE REQUIREMENT FOR THE RETURN OF A RETAIL LICENSE WHEN A BUSINESS CLOSES OR IS SOLD, SO AS TO ELIMINATE THE REQUIREMENT THAT THE TAX IS DUE AT THE TIME OF SALE AND CONSTITUTES A LIEN ON THE PROPERTY IN THE HANDS OF THE PURCHASER; TO AMEND SECTION 12-36-1310, AS AMENDED,

RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO FURTHER PROVIDE FOR THE APPLICATION OF SALES TAX TO TELECOMMUNICATIONS SERVICES; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES AND USE TAX EXEMPTIONS, SO AS TO EXEMPT PRESCRIPTIONS AND OVER-THE-COUNTER MEDICINES AND MEDICAL SUPPLIES SOLD TO A FREE CLINIC; TO AMEND SECTION 12-36-2510, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO PROVIDE FURTHER FOR THE ISSUE OF CERTIFICATES BY THE DEPARTMENT OF REVENUE FOR DIRECT PAY AND EXEMPTIONS AND PROVIDE FOR MORE EFFICIENT ADMINISTRATION OF SALES TAXES AND SALES TAX EXEMPTIONS; TO AMEND SECTION 12-37-220, AS AMENDED, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO DELETE OBSOLETE REFERENCES IN EXISTING EXEMPTIONS; TO AMEND SECTION 12-37-230, RELATING TO SERVICE CONTRACTS WITH NONPROFIT HOUSING CORPORATIONS, SO AS TO ALLOW A COUNTY OR MUNICIPALITY TO CHARGE REASONABLE FEES FOR SERVICES NOT TO EXCEED TAXES THAT WOULD OTHERWISE BE DUE ON THE PROPERTY; TO AMEND SECTION 12-44-50, AS AMENDED, RELATING TO THE "FEE IN LIEU OF TAX SIMPLIFICATION ACT OF 1997", SO AS TO REVISE THE ELIGIBILITY TO USE THE NET PERCENT VALUE METHOD OF CALCULATING THE ANNUAL FEE PAYMENT; TO AMEND SECTIONS 12-54-42 AND 12-54-43, AS AMENDED, RELATING TO THE UNIFORM METHOD OF COLLECTION AND ENFORCEMENT OF STATE LEVIED TAXES, SO AS TO CLARIFY THE APPLICATION OF PENALTIES FOR FAILING TO PROVIDE WITHHOLDING STATEMENTS, AND CLARIFY AND REVISE THE APPLICATION OF CIVIL PENALTIES FOR FILING GROUNDLESS RETURNS OR FOR MISUSE OF A SALES TAX CERTIFICATE; TO AMEND SECTION 12-54-90, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO REFUSE TO ISSUE A LICENSE TO A TAXPAYER IN VIOLATION; TO AMEND SECTIONS 12-54-210 AND 12-54-240, AS AMENDED, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO INCREASE THE PENALTY FOR FAILURE TO KEEP RECORDS, FILE RETURNS, AND COMPLY WITH REGULATIONS, UPDATE REFERENCES RELATING TO

THE CONFIDENTIALITY OF RETURNS, AND DELETE AN EXEMPTION TO THE CONFIDENTIALITY REQUIREMENTS FOR RECORDS SUBPOENAED BY A FEDERAL GRAND JURY; TO AMEND SECTION 12-58-185, AS AMENDED, RELATING TO THE TAXPAYERS' BILL OF RIGHTS, SO AS TO CLARIFY AND EXTEND THE APPLICATION OF HARDSHIP EXTENSIONS TO PAY; TO AMEND SECTIONS 12-60-420 AND 12-60-490, BOTH AS AMENDED, RELATING TO THE REVENUES PROCEDURE ACT, SO AS TO PROVIDE THAT THE APPLICATION OF A DIVISION DECISION OR A DETERMINATION OF DEFICIENCY APPLIES TO LOCAL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE AND REQUIRE THE NOTICE TO PROVIDE THAT FAILURE TO FILE A PROTEST RESULTS IN A DECISION BECOMING FINAL AND TO PROVIDE, FURTHER, FOR SETOFFS AGAINST TAX REFUNDS; TO AMEND SECTION 61-4-747, RELATING TO REGULATION OF WINE, SO AS TO REQUIRE OUT-OF-STATE WINE SHIPPERS TO PAY SALES AND EXCISE TAXES ON WINE SHIPPED TO RESIDENTS OF THIS STATE BY JANUARY TWENTIETH OF EACH YEAR FOR THE PRECEDING YEAR; BY ADDING SECTION 33-14-420 SO AS TO FURTHER PROVIDE FOR CLAIMANTS AGAINST FUNDS OF A DISSOLVED CORPORATION; TO REPEAL SECTION 12-37-240, RELATING TO PAYMENTS IN LIEU OF TAXES BY EXEMPT NONPROFIT HOUSING CORPORATIONS AND SECTION 12-37-290, RELATING TO AN OBSOLETE HOMESTEAD EXEMPTION PROVISION.

The Senate proceeded to a consideration of the Bill, the question being the adoption of the amendment proposed by the Committee on Finance.

The Committee of Finance proposed the following amendment (3768R001.HKL), which was adopted:

Amend the bill, as and if amended, page 10, by striking lines 32 - 35 and inserting:

/ ~~(14)~~(16) Sections 2001 through 7655, 7801 through 7871, and 8001 through 9602, except for ~~Section 6015~~ Sections 6015 and 6701, and except for Sections 6654 and 6655 which are adopted as provided in Section 12-6-3910." /

Amend the bill further, as and if amended, page 11 by striking lines 15 - 20 and inserting:

/ "(2) The deduction for taxes permitted by Internal Revenue Code Section 164 is computed in the same manner as provided in Section 164 except there is no deduction for state and local income taxes, ~~or~~ state and local franchise taxes measured by net income, ~~or any~~ other income taxes, or ~~any~~ taxes measured ~~by or~~ with respect to net income. In addition, if a taxpayer elects, pursuant to Section 164, to deduct state and local sales taxes instead of state and local income taxes, the taxpayer may not deduct state and local sales and use taxes.

This modification is limited for individual taxpayers to the excess of itemized deductions over the standard deduction that would be allowed if the taxpayer had used the standard deduction for federal income tax purposes." /

Amend the bill further, as and if amended, page 18 by striking lines 3 - 4 and inserting:

/ (1) improvements to both public or private water and sewer systems; /

Amend the bill further, as and if amended, page 29, by adding appropriately numbered SECTIONS after line 28:

/ SECTION _____. Notwithstanding the ratification of another act during the 2004-2005 Session of the General Assembly affecting the sections of the 1976 Code, amended in Sections 7, 8, 9, and 10 of this act, the ratification of this act is deemed to be the last action of the General Assembly regarding those code sections.

SECTION _____. A.Section 12-6-1130 of the 1976 Code is amended by adding:

"(12) The deduction for charitable contributions allowed by Section 170 of the Internal Revenue code is determined in the same manner as provided in Section 170 of the Code except that no deduction is allowed unless, in addition to the requirements of Section 170 of the Internal Revenue Code, the contribution also meets the requirements of Section 12-6-5590."

B.Section 12-6-3515(B)(1) of the 1976 Code is amended to read:

"(B)(1)For purposes of this section:

(a) 'Qualified conservation contribution' and a 'qualified real property interest' are defined as provided in Internal Revenue Code Section 170(h);

(b) 'Gift of land for conservation' means a charitable contribution of fee simple title to real property conveyed for conservation purposes as defined in Internal Revenue Code Section 170(h)(4)(A) to a qualified conservation organization as described in Internal Revenue Code Section 170(h)(3)~~;~~ and

(c) No credit is allowed pursuant to this section unless the contribution meets the requirements of Section 170 of the Internal Revenue Code, this section, and Section 12-6-5590."

C. Subsections 12-43-232(3)(c) and 12-43-232(3)(d) of the 1976 Code are amended to read:

"(c) Real property idle under a federal or state land retirement program or property idle pursuant to accepted agricultural practices is agricultural real property if the property otherwise would have qualified as ~~such~~ agricultural real property subject to satisfactory proof to the assessor.

(d) Unimproved real property subject to a perpetual conservation easement as provided in Chapter 8 of Title 27 ~~must be classified as~~ is agricultural real property if the property otherwise would have qualified as agricultural real property subject to satisfactory proof to the assessor."

D. Article 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-5590. (A) No credit under Section 12-6-3515 or deduction under Section 170 of the Internal Revenue Code and Section 12-6-1130(12) shall be allowed for a contribution unless the donor has the donative intent required by Section 170 of the Internal Revenue Code and the regulations and cases interpreting Section 170 of the Internal Revenue Code.

(B) In addition to the donative intent required by Section 170 of the Internal Revenue Code, no credit under Section 12-6-3515 or deduction under Section 170 of the Internal Revenue Code and Section 1-6-1130(12) shall be allowed for any non-cash charitable contribution in the claimed amount of $100,000.00 or more unless the donor has the requisite donative intent required by this section.

(C) The requisite donative intent includes the requirement that the donor be motivated by detached and disinterested generosity benefiting a charitable purpose rather than expected economic benefit.

(D) A non-cash charitable contribution by a donor given to comply with any state or federal environmental or other regulatory requirement; for the purpose of obtaining road, water, or sewer services; or in conjunction with obtaining a grant, subdivision, building, zoning, environmental, mitigation, or similar permit or approval from any government, shall be deemed not to have the requisite donative intent absent extraordinary circumstances.

(E) A contribution of an otherwise 'qualified contribution contribution' as defined in Section 170(h) of the Internal Revenue Code shall be deemed not to have the requisite donative intent if the

underlying property is used for, or associated with, the playing of golf, or is planned to be so used or associated.

(F) The department shall examine the substance, rather than merely the form of the contribution and related and surrounding transactions, and may use the step transaction, economic reality, quid pro quo, personal benefit, and other judicially developed doctrines in determining whether the requisite donative intent is present."

SECTION _____. A. Section 12-44-30(7) of the 1976 Code is amended by adding:

"(e) that satisfies the requirements of Section 11-41-30(2)(a), and for which the Secretary of Commerce has delivered certification pursuant to Section 11-41-70(2)(a)."

B. Section 4-12-30(D)(4)(a) of the 1976 Code is amended by adding:

"(v) in the case of a project that satisfies the requirements of Section 11-41-30(2)(a), and for which the Secretary of Commerce has delivered certification pursuant to Section 11-41-70(2)(a)."

C. Section 4-29-67(D)(4)(a) of the 1976 Code is amended by adding:

"(v) in the case of a project that satisfies the requirements of Section 11-41-30(2)(a), and for which the Secretary of Commerce has delivered certification pursuant to Section 11-41-70(2)(a)."

SECTION ____. Article 1, Chapter 37, Title 12 of the 1976 Code is amended by adding:

"Section 12-37-135. A county governing body may require a business registration throughout the entire county area and may impose an administrative fee not to exceed fifteen dollars. The fee is an administrative fee and must not be based upon business income. The business registration authorized by this section must be administered and enforced in the same manner as the business-license tax described in Section 4-9-30(12), but must not be converted into a business-license tax as described in that provision. The business registration administrative fee may be billed on any property tax bill and is deemed to be property tax for the purposes of collection if so billed. This registration, if adopted, is in lieu of any business license which is authorized pursuant to Section 4-9-30(12)."

SECTION ____. Article 5, Chapter 37, Title 12 of the 1976 Code is amended by adding:

"Section 12-37-712. In addition to any other provisions of law subjecting boats and boat motors to property tax in this State:

(1) A boat, including its motor if separately taxed, used in interstate commerce having a tax situs in this State and at least one other state is subject to property tax in this State. The value of such a

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boat must be determined based on the fair market value of the boat multiplied by a fraction representing the number of days present in this State. The fraction is determined by dividing the number of days the boat was present in this State by three hundred and sixty-five days. A boat used in interstate commerce must be physically present in this State for thirty days in the aggregate in a property tax year to become subject to ad valorem taxation.

(2) A boat, including its motor if the motor is separately taxed, which is not currently taxed in this State and is not used exclusively in interstate commerce, is subject to property tax in this State if it is present within this State for sixty consecutive days or on ninety days in the aggregate in a property tax year. Upon written request by a tax official, the owner must provide documentation or logs relating to the whereabouts of the boat in question. Failure to produce requested documents creates a rebuttable presumption that the boat in question is taxable within this State."

SECTION ____. Chapter 45, Title 12 of the 1976 Code is amended by adding:

"Section 12-45-430. A county treasurer may not issue a tax receipt to a taxpayer unless the taxes, any applicable penalties and costs, and all other charges included on the tax bill have been paid in full."

SECTION ____. Section 12-37-2650 of the 1976 Code is amended to read:

"Section 12-37-2650. The auditor shall prepare a tax notice of all vehicles owned by the same person and licensed at the same time for each tax year within the two-year licensing period. A notice must describe the motor vehicle by name, model, and identification number. The notice must set forth the assessed value of the vehicle, the millage, the taxes due on each vehicle, and the license period or tax year. The notice must be delivered to the county treasurer who must collect or receive payment of the taxes. One copy of the notice must be in the form of a bill or statement for the taxes due on the motor vehicle and, when practical, the treasurer shall mail that copy to the owner or person having control of the vehicle. When the tax ~~is~~ and all other charges included on the tax bill have been paid, the treasurer shall issue the taxpayer ~~two copies of the~~ a paid receipt. ~~One~~ The receipt or a copy may be delivered by the taxpayer to the Department of Motor Vehicles with the application for the motor vehicle registration. A ~~copy~~ record of the payment of the tax must be retained by the treasurer. The auditor shall maintain a separate duplicate for motor vehicles. No registration may be issued by the Department of Motor Vehicles unless the

application is accompanied by the receipt, a copy of the notification required by Section 12-37-2610 or notice from the county treasurer, by other means satisfactory to the Department of Motor Vehicles, of payment of the tax. Motor vehicles registered under the International Registration Plan may pay ad valorem property taxes on a semiannual basis, and a proportional receipt must be issued by the treasurer subject to penalties in Section 12-37-2730. The treasurer, tax collector, or other official charged with the collection of ad valorem property taxes in each county may delegate the collection of motor vehicle taxes to banks or banking institutions, if each institution assigns, hypothecates, or pledges to the county, as security for the collection, federal funds or federal, state, or municipal securities in an amount adequate to prevent any loss to the county from any cause. Each institution shall remit the taxes collected daily to the county official charged with the collections. The receipt given to the taxpayer, in addition to the information required in this section and by Section 12-45-70, must contain the name and office of the treasurer or tax collector of the county and must also show the name of the banking institution to which payment was made.

The county official charged with the collection of taxes shall send a list of the institutions collecting the taxes to the Department of Motor Vehicles. Each institution shall certify to the Department of Motor Vehicles that the taxes have been paid, and the Department of Motor Vehicles is authorized to accept certification in lieu of the tax receipt given to the taxpayer if certification contains information required by this section.

Tax bills (notices) for county assessed personal property valued in accordance with applicable Department of Revenue regulations must include notification of the taxpayer's appeal rights, to include a minimum amount of information of how the taxpayer should file his appeal, to whom, and within what time period."

SECTION ____. Section 12-37-2730 of the 1976 Code is amended to read:

"Section 12-37-2730. (A) It is unlawful for ~~any~~ a person to use the treasurer's receipt to obtain a motor vehicle license ~~plates~~ plate unless all municipal personal property taxes due in the county of his residence on ~~any vehicles~~ a vehicle now or previously owned by the applicant have been paid. ~~Any~~ A person who knowingly violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars. Each day's violation constitutes a separate offense.

The above penalty is in addition to any other penalties prescribed by law for failure to pay municipal taxes.

~~The verbatim text of the first paragraph of this section must be printed or stamped upon the treasurer's receipt.~~ When a municipality contracts for the collection of its vehicle tax, a receipt for the payment of the taxes must not be issued unless both the county and municipal tax and all other charges included on the tax bill have been paid. The owner of ~~any~~ a motor vehicle registered under the International Reciprocity Plan who opts to pay semiannually and fails to pay semiannual payments as provided in this chapter is not permitted to relicense the vehicle until all taxes are paid and shall forfeit any further privilege to pay semiannually.

(B) To enforce the collection of personal property taxes and vehicle registration laws of this State, a code-enforcement officer may issue an ordinance summons to a person the officer believes has failed to remit property taxes to the appropriate taxing entity or a person he believes has failed to comply fully with the vehicle registration laws of this State. However, a code-enforcement officer may not stop a vehicle that is in motion to issue an ordinance summons pursuant to this section. A fine imposed pursuant to this section may not exceed the criminal jurisdiction of the magistrates' court. A magistrate shall dismiss an ordinance summons issued pursuant to this subsection upon a showing by the person summoned of proper registration and the payment of current and delinquent property taxes before the court hearing date set in the summons."

SECTION ____. Section 12-43-220(c) of the 1976 Code is amended by adding an appropriately numbered subitem at the end to read:

"( ) Notwithstanding any other provision of law, the owner-occupant of a legal residence is not disqualified from receiving the four percent assessment ratio allowed by this item if the taxpayer's residence meets the requirements of Internal Revenue Code Section 280A(g) as defined in Section 12-6-40(A) and the taxpayer otherwise is eligible to receive the four percent assessment ratio."

SECTION ____. Section 12-49-950 of the 1976 Code is amended to read:

"Section 12-49-950. If, on the sale of such personal property, there is no bid for as much as the tax and costs then due on the delinquent tax execution, ~~such~~ the personal property ~~shall~~ must be bid in by the Forfeited Land Commission of the county for the amount ~~of the delinquent tax and the accrued costs~~ equal to the amount of all unpaid

property taxes, assessments, and charges billed on the property tax bill, and all costs which may be incurred by a taxing entity as a result of the tax delinquency including taxes levied for the year in which the redemption period begins. An assessment for purposes of this section includes, but is not limited to, amounts owed a special taxing district created pursuant to Section 4-9-30, and a district created pursuant to Chapter 19 of this title and amounts owed pursuant to Chapter 15 of Title 6."

SECTION ____. Section 12-51-55 of the 1976 Code is amended to read:

"Section 12-51-55. The officer charged with the duty to sell real property and mobile or manufactured housing for nonpayment of ad valorem property taxes shall submit a bid on behalf of the Forfeited Land Commission equal to the amount of all unpaid property taxes, penalties, assessments, including, but not limited to, assessments owed to a special taxing district established pursuant to Section 4-9-30, Chapter 19 of Title 4, or an assessment district established pursuant to Chapter 15 of Title 6, and costs including taxes levied for the year in which the redemption period begins. The Forfeited Land Commission is not required to bid on property known or reasonably suspected to be contaminated. If the contamination becomes known after the bid or while the commission holds the title, the title is voidable at the election of the commission. If the property is not redeemed, the excess above the amount of taxes, penalties, assessments, charges, and costs for the year in which the property was sold must be applied first to the taxes becoming due during the redemption period."

SECTION ____. Section 12-51-130 of the 1976 Code is amended to read:

"Section 12-51-130. Upon failure of the defaulting taxpayer, a grantee from the owner, a mortgagee, a judgment creditor, or a lessee of the property to redeem realty within the time period allowed for redemption, the person officially charged with the collection of delinquent taxes, within thirty days or as soon after that as possible, shall make a tax title to the purchaser or the purchaser's assignee. Delivery of the tax title to the clerk of court or register of deeds is considered 'putting the purchaser, or assignee, in possession'. The tax title must include, among other things, the name of the defaulting taxpayer, the name of any grantee of record of the property, the date of execution, the date the realty was posted and by whom, and the dates each certified notice was mailed to the party or parties of interest, to whom mailed and whether or not received by the addressee. The

successful purchaser, or assignee, is responsible ~~in the amount of fifteen dollars~~ for the actual cost of preparing the tax title plus documentary stamps necessary to be affixed and recording fees. The successful purchaser, or assignee, shall pay the amounts to the person officially charged with the collection of delinquent taxes before delivery of the tax title to the clerk of court or register of deeds and, upon payment, the person officially charged with the collection of delinquent taxes is responsible for promptly transmitting the tax title to the clerk of court or register of deeds for recording and remitting the recording fee and documentary stamps cost. If the tax sale of an item produced more cash than the full amount due in taxes, assessments, penalties, and costs, the overage belongs to the owner of record immediately before the end of the redemption period to be claimed or assigned according to law. These sums are payable ninety days after execution of the deed unless a judicial action is instituted during that time by another claimant. If neither claimed nor assigned within five years of date of public auction tax sale, the overage shall escheat to the general fund of the governing body. Before the escheat date, unclaimed overages must be kept in a separate account and must be invested so as not to be idle and the governing body of the political subdivision is entitled to the earnings for keeping the overage. On escheat date the overage must be transferred to the general funds of the governing body."

SECTION ____. Section 12-54-25(C)(3) of the 1976 Code is amended to read:

"(3) Interest on an overpayment is not allowed pursuant to this subsection if it is refunded:

(a) within seventy-five days after the last day prescribed for filing the tax return, without regard to an extension of time for filing, or within seventy-five days after the last day prescribed for paying the tax if no return is required;

(b) within seventy-five days after the return is filed, in the case of a return filed after the last date; ~~or~~

(c) within seventy-five days after the taxpayer files a claim for a credit or refund for the overpayment of tax for the period between the filing of the claim to the payment of the refund; or

(d) within seventy-five days after the county has received notice from the Department of Revenue that the taxpayer is due a credit or refund for the overpayment of property taxes."

SECTION ____. Section 12-54-240(B)(12) of the 1976 Code is amended to read:

"(12) disclosure to ~~any~~ a state agency, county auditor, or county assessor of whether a resident or nonresident tax return was filed by ~~any~~ a particular taxpayer, whether the return is joint or individual, the name of any taxpayer filing jointly with the taxpayer, and what county code of residence is contained on the return."

Renumber sections to conform.

Amend title to conform.

Senator ALEXANDER explained the committee amendment.

The committee amendment was adopted.

Senator RICHARDSON proposed the following amendment (3768R003.SHR), which was adopted:

Amend the bill, as and if amended, page 29, line 28 by adding an appropriately numbered SECTION:

/ SECTION _____. Chapter 37, Title 12 of the 1976 Code is amended by adding:

"Section 12-37-712. A marina must provide immediate access to its business records and premises to city, county, and state tax authority employees for the purpose of making a property tax assessment. For the purposes of this section, 'marina' means a facility that provides mooring or dry storage for watercraft on a leased or rental basis./

Renumber sections to conform.

Amend title to conform.

Senator RICHARDSON explained the amendment.

The amendment was adopted.

On motion of Senator ALEXANDER, with unanimous consent, the Bill was carried over, as amended.

COMMITTEE AMENDMENT ADOPTED CARRIED OVER

H. 3325 -- Rep. Harrison: A BILL TO AMEND SECTION 61-4-1115, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO AN AGREEMENT BETWEEN AN IMPORTER AND A FOREIGN BREWER, SO AS TO CLARIFY THAT A FOREIGN BREWER INCLUDES ITS SUCCESSOR OR ASSIGNEE.

Exhibit 7

JOURNAL

OF THE

SENATE

OF THE

FIRST SESSION OF THE

116th GENERAL ASSEMBLY

OF THE

STATE OF SOUTH CAROLINA

BEING THE

REGULAR SESSION BEGINNING
TUESDAY, JANUARY 11, 2005

Volume III

~~Indicates Matter Stricken~~
Indicates New Matter

The Senate assembled at 10:00 A.M., the hour to which it stood adjourned, and was called to order by the PRESIDENT.

A quorum being present, the proceedings were opened with a devotion by the Chaplain as follows:

Beloved, St. Paul had a tough time in Corinth. Hear him! (II Cor.2:14):

"Now thanks be to God, which always causes us to triumph."

Let us pray.

Father, we do feel that our work, day by day, is a partnership with our Creator in the realization of Your purpose for a better world for the family of the children of mankind.

We know that on the battlefield, or in any of the areas of human life, victory is won by those who grasp the initiative, accepting the challenge with faith and courage.

Father, out of our reservoir of goodwill, desire and studied planning, help us so that we do things around here Your way!

Amen!

The PRESIDENT called for Petitions, Memorials, Presentments of Grand Juries and such like papers.

MESSAGE FROM THE GOVERNOR

State of South Carolina
Office of the Governor
P. O. Box 11369
Columbia, SC 29211
May 24, 2005

The Honorable André Bauer
President of the Senate
State House, 1st Floor, East Wing
Columbia, South Carolina 29202

Dear Mr. President and Members of the Senate:

I am hereby returning without my approval S. 573, R-82.

(R82, S573) -- Senators McConnell, Verdin, Rankin, Courson, Elliott and Ford: AN ACT TO AMEND SECTION 1-3-240, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO OFFICERS WHO MAY BE REMOVED BY THE GOVERNOR FOR CAUSE, SO AS TO DELETE THE COMMISSION OF THE DEPARTMENT OF REVENUE, TO ADD THE DIRECTORS OF THE SOUTH CAROLINA PUBLIC SERVICE AUTHORITY; TO ESTABLISH CONDITIONS UNDER WHICH DIRECTORS MAY BE REMOVED; TO AMEND SECTION 15-78-60, RELATING TO GOVERNMENTAL IMMUNITY, SO AS TO PROVIDE THAT THE PUBLIC SERVICE AUTHORITY IS NOT LIABLE FOR CERTAIN LOSSES RESULTING FROM CONDUCT OF A DIRECTOR OF THE AUTHORITY; TO AMEND SECTION 15-78-70, RELATING TO THE LIABILITY OF A GOVERNMENTAL EMPLOYEE, SO AS TO PROVIDE THAT A DIRECTOR OF THE PUBLIC SERVICE AUTHORITY IS NOT IMMUNE FROM LIABILITY FOR CERTAIN CONDUCT AND TO PROVIDE THAT THE INSURANCE RESERVE FUND IS PROHIBITED FROM PROVIDING INSURANCE COVERAGE FOR THAT INDIVIDUAL LIABILITY; TO AMEND SECTION 58-3-530, RELATING TO THE DUTIES AND FUNCTIONS OF THE STATE REGULATIONS OF PUBLIC UTILITIES REVIEW COMMITTEE, SO AS TO ADD THE DUTY TO SCREEN CANDIDATES FOR THE BOARD OF DIRECTORS OF THE PUBLIC SERVICE AUTHORITY; TO AMEND SECTION 58-31-20, RELATING TO THE BOARD OF DIRECTORS OF THE PUBLIC SERVICE AUTHORITY, SO AS TO SET FORTH QUALIFICATIONS AND REQUIREMENTS FOR DIRECTORS AND TO PROVIDE FOR THE SCREENING OF DIRECTORS; TO AMEND SECTION 58-31-30, AS AMENDED, RELATING TO THE POWERS OF THE PUBLIC SERVICE AUTHORITY, SO AS TO PROHIBIT THE AUTHORITY FROM DISPOSING OF CERTAIN PROPERTY WITHOUT PRIOR APPROVAL OF THE GENERAL ASSEMBLY OR FROM INQUIRING INTO THE FEASIBILITY OF DISPOSING OF ITS PROPERTY; BY ADDING SECTION 58-31-55 SO AS TO PROVIDE STANDARDS OF CONDUCT FOR DIRECTORS OF THE PUBLIC SERVICE AUTHORITY; BY ADDING SECTION 58-31-56 SO AS TO DEFINE CONFLICT OF INTEREST TRANSACTION; BY ADDING SECTION 58-31-57 SO AS TO PERMIT CUSTOMERS OF THE PUBLIC SERVICE AUTHORITY TO SUE DIRECTORS OF THE AUTHORITY FOR BREACH OF DUTY AND TO PROVIDE DAMAGES; TO AMEND

AMENDED, READ THE SECOND TIME

S. 839 -- Senators McConnell, Ford, Campsen and Grooms: A BILL TO AMEND SECTION 7-7-140, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DESIGNATION OF VOTING PRECINCTS IN CHARLESTON COUNTY, SO AS TO REVISE AND RENAME CERTAIN VOTING PRECINCTS OF CHARLESTON COUNTY AND REDESIGNATE A MAP NUMBER FOR THE MAP ON WHICH LINES OF THESE PRECINCTS ARE DELINEATED AND MAINTAINED BY THE OFFICE OF RESEARCH AND STATISTICS OF THE STATE BUDGET AND CONTROL BOARD, AND TO CORRECT ARCHAIC REFERENCES.

The Senate proceeded to a consideration of the Bill, the question being the second reading of the Bill.

Senator McCONNELL proposed the following amendment (BBM\10945MM05), which was adopted:

Amend the bill, as and if amended, Section 7-7-140(A) as found in SECTION 1, page 7, by inserting after line 19 the words / Mt. Pleasant 7 / and after line 35 the words / Mt. Pleasant 24 /.

Amend the bill further at page 8, by deleting line 8 in its entirety; by inserting after line 23 the words / North Charleston 16 /; and by deleting line 38 in its entirety.

Amend the bill further, page 9, by deleting line 34 in its entirety.

Renumber sections to conform.

Amend title to conform.

Senator McCONNELL explained the amendment.

The amendment was adopted.

There being no further amendments, the Bill was read the second time, passed and ordered to a third reading.

AMENDED, READ THE SECOND TIME

H. 3768 -- Rep. Kirsh: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-21-1085 SO AS TO PROVIDE FOR SALES AND USE TAXES ON BEER AND WINE; BY ADDING SECTION 12-28-1400 SO AS TO REQUIRE THE REPORTING THE DEPARTMENT OF REVENUE REQUIRES BY REGULATION FOR PURPOSES OF

THE USER FEE ON MOTOR FUELS AND PROVIDE AN ADDITIONAL CIVIL PENALTY FOR VIOLATORS; BY ADDING SECTION 12-54-123 SO AS TO PROTECT FROM LIABILITY A PERSON WHO SURRENDERS THE PROPERTY OF ANOTHER LEVIED ON BY THE DEPARTMENT OF REVENUE; BY ADDING CHAPTER 55 TO TITLE 12, ENACTING THE OVERDUE DEBT COLLECTION ACT AUTHORIZING THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO IMPOSE A COLLECTION ASSISTANCE FEE ON CERTAIN OVERDUE TAX DEBTS EQUAL TO TWENTY PERCENT OF THE OVERDUE AMOUNT AND TO ALLOW THE DEPARTMENT TO RETAIN A PORTION OF THE COLLECTION ASSISTANCE FEE FOR ITS OPERATION; BY ADDING SECTION 61-4-725 SO AS TO ALLOW A LICENSED WINERY TO SELL, DELIVER, AND PERMIT ON-PREMISES CONSUMPTION ON SUNDAYS IN JURISDICTIONS WHERE MINIBOTTLE SALES ARE ALLOWED ON SUNDAYS; TO AMEND SECTION 4-29-67, AS AMENDED, RELATING TO THE FEE IN LIEU OF PROPERTY TAX, SO AS TO DELETE THE NET PERCENT VALUE METHOD OF CALCULATING ANNUAL FEE PAYMENTS; TO AMEND SECTION 6-1-320, AS AMENDED, RELATING TO THE LIMITS ON ANNUAL INCREASES IN LOCAL GOVERNMENT AND SCHOOL DISTRICT PROPERTY TAX MILLAGE, SO AS TO CLARIFY THE METHOD OF CALCULATING THE ALLOWED CONSUMER PRICE INDEX INCREASE IN THE MILLAGE RATE; TO AMEND SECTIONS 12-6-40 AND 12-6-50, BOTH AS AMENDED, RELATING TO DEFINITIONS AND CONFORMITY PROVISIONS FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO UPDATE THE REFERENCE DATE BY WHICH THIS STATE ADOPTS VARIOUS PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 AND CLARIFY THOSE PROVISIONS NOT ADOPTED; TO AMEND SECTIONS 12-6-1110 AND 12-6-1130, RELATING TO CALCULATIONS OF INCOME, SO AS TO PROVIDE FOR CALCULATIONS WITHOUT SOME OF THE DEDUCTIONS ALLOWED BY THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO DEDUCTIONS FROM SOUTH CAROLINA INDIVIDUAL TAXABLE INCOME FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO DELETE AN OBSOLETE DEDUCTION RELATING TO MEDICAL INSURANCE PREMIUMS; TO AMEND SECTION 12-6-2220, RELATING TO

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ALLOCATION AND APPORTIONMENT FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO PROVIDE FOR THE ALLOCATION OF DIVIDENDS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE TARGETED JOBS TAX CREDIT, SO AS TO REVISE THE DEFINITION OF "NEW JOB"; TO AMEND SECTION 12-6-3365, AS AMENDED, RELATING TO THE CORPORATE INCOME TAX MORATORIUM FOR JOB CREATION, SO AS TO CLARIFY THE APPLICATION OF THE MORATORIUM TO INSURANCE PREMIUM TAXES; TO AMEND SECTION 12-6-3480, RELATING TO TAX CREDITS, SO AS TO FURTHER PROVIDE THE MANNER IN WHICH CREDITS ARE ALLOWED AND MAY BE CLAIMED; TO AMEND SECTION 12-6-4910, AS AMENDED, RELATING TO THOSE REQUIRED TO FILE INCOME TAX RETURNS, SO AS TO PROVIDE FOR THOSE NONRESIDENTS REQUIRED TO FILE IN THIS STATE; TO AMEND SECTIONS 12-6-5020, AS AMENDED, AND 12-6-5030, RELATING TO THE FILING OF CONSOLIDATED CORPORATE INCOME TAX RETURNS AND COMPOSITE INDIVIDUAL INCOME TAX RETURNS, SO AS TO REQUIRE THE DETERMINATION OF CREDITS ON A CONSOLIDATED BASIS AND FURTHER PROVIDE FOR COMPOSITE RETURNS; TO AMEND SECTION 12-8-520 RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE FOR THE WITHHOLDING OF PARTNERSHIP AND SUBCHAPTER "S" CORPORATION INCOME OF NONRESIDENTS; TO AMEND SECTION 12-8-1520, RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS FOR WITHHOLDING AGENTS; TO AMEND SECTION 12-10-105, RELATING TO ANNUAL FEES FOR JOB DEVELOPMENT CREDITS FOR PURPOSES OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO EXTEND THESE FEES TO JOB RETRAINING CREDITS IN EXCESS OF TEN THOUSAND DOLLARS AND PROVIDE FOR THE COLLECTION OF THESE FEES; TO AMEND SECTION 12-20-105, AS AMENDED, RELATING TO TAX CREDITS FOR PURPOSES OF THE CORPORATE LICENSE TAX, SO AS TO CLARIFY THE APPLICATION OF THESE CREDITS; TO AMEND SECTION 12-28-740, RELATING TO EXEMPTIONS FROM THE MOTOR FUELS USER FEE, SO AS TO DELETE A REFERENCE TO A CREDIT; TO AMEND SECTIONS 12-21-1090 AND 12-21-6550, RELATING TO LICENSE TAXES, SO AS TO PROVIDE FOR THE PERMISSIVE PROMULGATION OF

REGULATIONS AND FURTHER PROVIDE FOR THE APPLICATIONS REQUIRED PURSUANT TO THE TOURISM INFRASTRUCTURE ADMISSIONS TAX ACT; TO AMEND SECTION 12-28-1730, AS AMENDED, RELATING TO PENALTIES FOR PURPOSES OF THE MOTOR FUELS TAX, SO AS TO DELETE A CIVIL PENALTY; TO AMEND SECTION 12-36-530, RELATING TO THE REQUIREMENT FOR THE RETURN OF A RETAIL LICENSE WHEN A BUSINESS CLOSES OR IS SOLD, SO AS TO ELIMINATE THE REQUIREMENT THAT THE TAX IS DUE AT THE TIME OF SALE AND CONSTITUTES A LIEN ON THE PROPERTY IN THE HANDS OF THE PURCHASER; TO AMEND SECTION 12-36-1310, AS AMENDED, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO FURTHER PROVIDE FOR THE APPLICATION OF SALES TAX TO TELECOMMUNICATIONS SERVICES; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES AND USE TAX EXEMPTIONS, SO AS TO EXEMPT PRESCRIPTIONS AND OVER-THE-COUNTER MEDICINES AND MEDICAL SUPPLIES SOLD TO A FREE CLINIC; TO AMEND SECTION 12-36-2510, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO PROVIDE FURTHER FOR THE ISSUE OF CERTIFICATES BY THE DEPARTMENT OF REVENUE FOR DIRECT PAY AND EXEMPTIONS AND PROVIDE FOR MORE EFFICIENT ADMINISTRATION OF SALES TAXES AND SALES TAX EXEMPTIONS; TO AMEND SECTION 12-37-220, AS AMENDED, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO DELETE OBSOLETE REFERENCES IN EXISTING EXEMPTIONS; TO AMEND SECTION 12-37-230, RELATING TO SERVICE CONTRACTS WITH NONPROFIT HOUSING CORPORATIONS, SO AS TO ALLOW A COUNTY OR MUNICIPALITY TO CHARGE REASONABLE FEES FOR SERVICES NOT TO EXCEED TAXES THAT WOULD OTHERWISE BE DUE ON THE PROPERTY; TO AMEND SECTION 12-44-50, AS AMENDED, RELATING TO THE "FEE IN LIEU OF TAX SIMPLIFICATION ACT OF 1997", SO AS TO REVISE THE ELIGIBILITY TO USE THE NET PERCENT VALUE METHOD OF CALCULATING THE ANNUAL FEE PAYMENT; TO AMEND SECTIONS 12-54-42 AND 12-54-43, AS AMENDED, RELATING TO THE UNIFORM METHOD OF COLLECTION AND ENFORCEMENT OF STATE LEVIED TAXES, SO AS TO CLARIFY THE APPLICATION OF PENALTIES FOR FAILING TO

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PROVIDE WITHHOLDING STATEMENTS, AND CLARIFY AND REVISE THE APPLICATION OF CIVIL PENALTIES FOR FILING GROUNDLESS RETURNS OR FOR MISUSE OF A SALES TAX CERTIFICATE; TO AMEND SECTION 12-54-90, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO REFUSE TO ISSUE A LICENSE TO A TAXPAYER IN VIOLATION; TO AMEND SECTIONS 12-54-210 AND 12-54-240, AS AMENDED, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO INCREASE THE PENALTY FOR FAILURE TO KEEP RECORDS, FILE RETURNS, AND COMPLY WITH REGULATIONS, UPDATE REFERENCES RELATING TO THE CONFIDENTIALITY OF RETURNS, AND DELETE AN EXEMPTION TO THE CONFIDENTIALITY REQUIREMENTS FOR RECORDS SUBPOENAED BY A FEDERAL GRAND JURY; TO AMEND SECTION 12-58-185, AS AMENDED, RELATING TO THE TAXPAYERS' BILL OF RIGHTS, SO AS TO CLARIFY AND EXTEND THE APPLICATION OF HARDSHIP EXTENSIONS TO PAY; TO AMEND SECTIONS 12-60-420 AND 12-60-490, BOTH AS AMENDED, RELATING TO THE REVENUES PROCEDURE ACT, SO AS TO PROVIDE THAT THE APPLICATION OF A DIVISION DECISION OR A DETERMINATION OF DEFICIENCY APPLIES TO LOCAL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE AND REQUIRE THE NOTICE TO PROVIDE THAT FAILURE TO FILE A PROTEST RESULTS IN A DECISION BECOMING FINAL AND TO PROVIDE, FURTHER, FOR SETOFFS AGAINST TAX REFUNDS; TO AMEND SECTION 61-4-747, RELATING TO REGULATION OF WINE, SO AS TO REQUIRE OUT-OF-STATE WINE SHIPPERS TO PAY SALES AND EXCISE TAXES ON WINE SHIPPED TO RESIDENTS OF THIS STATE BY JANUARY TWENTIETH OF EACH YEAR FOR THE PRECEDING YEAR; BY ADDING SECTION 33-14-420 SO AS TO FURTHER PROVIDE FOR CLAIMANTS AGAINST FUNDS OF A DISSOLVED CORPORATION; TO REPEAL SECTION 12-37-240, RELATING TO PAYMENTS IN LIEU OF TAXES BY EXEMPT NONPROFIT HOUSING CORPORATIONS AND SECTION 12-37-290, RELATING TO AN OBSOLETE HOMESTEAD EXEMPTION PROVISION.

The Senate proceeded to a consideration of the Bill, the question being the second reading of the Bill.

Senator CROMER proposed the following amendment (3768R005.RWC), which was adopted:

Amend the bill, as and if amended, page 38 by inserting an appropriately numbered SECTION on line 13:

/ SECTION ____. Notwithstanding the provisions of Section 12-43-217 of the 1976 Code, a county which conducted a countywide property tax equalization and reassessment program after 2000 which has not yet been implemented, may by ordinance postpone the implementation for one additional year. /

Renumber sections to conform.

Amend title to conform.

Senator CROMER explained the amendment.

The amendment was adopted.

Senator LEATHERMAN proposed the following amendment (3768R004.HKL), which was adopted:

Amend the bill, as and if amended, page 18, by striking lines 5 through 8 and inserting:

/ (2) improvements to both public or private electric, natural gas, and telecommunications systems including, but not limited to, ones owned or leased by an electric cooperative, electric utility, or electric supplier, as defined in Chapter 27, Title 58; /

Renumber sections to conform.

Amend title to conform.

Senator ALEXANDER explained the amendment.

The amendment was adopted.

Senator HAYES proposed the following amendment (BBM\10944MM05), which was adopted:

Amend the bill, as and if amended, by adding an appropriately numbered SECTION to read:

/ SECTION __. Section 12-36-2120(57)(a)(v) of the 1976 Code, as added by Act 387 of 2000, is amended to read:

"(v) computers, printers and printer supplies, and computer software; (vi) bath wash clothes, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases." /

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Renumber sections to conform.
Amend title to conform.

Senator HAYES explained the amendment.

The amendment was adopted.

Senator LEATHERMAN proposed the following amendment (3768R006.HKL), which was adopted:

Amend the bill, as and if amended, page 38, line 25 by inserting an appropriately numbered SECTION:

/ SECTION _____. A. SECTION 1. Chapter 45, Title 12 of the 1976 Code is amended by adding:

"Section 12-45-185. Notwithstanding the provisions of Section 12-45-180, the county treasurer may waive the penalties imposed pursuant to that section if the taxpayer provides clear and convincing evidence to the county treasurer that the taxpayer delivered the timely payment to the United States mail or that the taxpayer otherwise timely delivered or caused to be delivered the payment. The request for waiver must be in the form of an application in writing to the county treasurer that includes documentation sufficient for the treasurer to conclude that the taxpayer made timely payment of the taxes. Waiving penalties is within the sole discretion of the county treasurer and the treasurer's denial of a waiver is not subject to appeal."

B. This SECTION takes effect upon approval by the Governor and applies for property taxes due for tax years beginning after 2004.

SECTION _____. A. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-3575. (A) An individual taxpayer meeting the eligibility requirements of subsection (B) of this section may claim as a nonrefundable credit against the income tax imposed pursuant to 12-6-510 an amount equal to fifty percent of the premium costs the individual paid during the taxable year for health insurance coverage as defined in Section 38-74-10(5), that offers coverage to the individual, his spouse, or a person he was eligible to claim as a dependent on his federal income tax return, or any combination of these people, for the taxable year. The credit allowed by this section may not exceed three thousand dollars for each qualifying individual covered by a policy for which a credit is claimed. A nonresident who claims the credit allowed by this section shall reduce the amount of the credit in the same manner as nonresident individuals reduce personal exemptions and applicable

standard deduction or itemized deductions pursuant to Section 12-6-1720(2).

(B) The credit allowed by this section is available only to an individual taxpayer who held a policy of health insurance covering the taxpayer, the taxpayer's spouse, or a person the taxpayer was eligible to claim as a dependent on his federal income tax return, or any combination of these people from an insurance company which has withdrawn from writing health insurance policies in this State and the taxpayer, in replacing the insurance with a policy having substantially the same coverage, has been assigned to the South Carolina Health Insurance Pool established pursuant to Chapter 74 of Title 38 with a higher premium than the former policy.

(C) A credit is not allowed for premium payments that are deducted or excluded from the taxpayer's income for the taxable year, whether the deduction or exclusion was due to a South Carolina modification pursuant to Article 9 of this chapter or was due to an exclusion or deduction, which resulted in a reduction of the taxpayer's federal taxable income.

(D) A taxpayer who claims the credit allowed by this section shall provide information required by the department to demonstrate that the taxpayer is eligible for the credit and that the amount paid for premiums for which the credit is claimed was not excluded from the taxpayer's gross income for the taxable year."

B. Upon approval by the Governor, this act is effective for taxable years beginning after 2004. /

Renumber sections to conform.
Amend title to conform.

Senator ALEXANDER explained the amendment.

The amendment was adopted.

There being no further amendments, the Bill was read the second time, passed and ordered to a third reading.

COMMITTEE AMENDMENT ADOPTED
READ THE SECOND TIME

H. 3883 -- Reps. Duncan, Cato, Scarborough, Tripp, Mahaffey and Thompson: A BILL TO AMEND SECTION 40-29-200, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MANUFACTURED HOUSING LICENSE, SO

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Exhibit 8

JOURNAL

OF THE

SENATE

OF THE

FIRST SESSION OF THE

116th GENERAL ASSEMBLY

OF THE

STATE OF SOUTH CAROLINA

BEING THE

REGULAR SESSION BEGINNING
TUESDAY, JANUARY 11, 2005

Volume IV

~~Indicates Matter Stricken~~
Indicates New Matter

The Senate assembled at 11:00 A.M., the hour to which it stood adjourned, and was called to order by the PRESIDENT.

A quorum being present, the proceedings were opened with a devotion by the Chaplain as follows:

Beloved, the Psalmist said, (Psalm 27:14):

"Wait on the Lord: be of good courage and He shall strengthen thine heart; wait, I say, on the Lord."

Let us pray.

Our Father, we remember that the sculptor said that he did not do anything to the rock. The statue, the masterpiece, was always there. He merely cut away the pieces so that people could see the angel or the warrior or the statesman that was always there.

So, dear Lord, by the genius of Your Spirit, cut away the selfish and unworthy motives of our hearts that we may be the worthy public servant that is in Your mind that each of us shall become.

Amen!

The PRESIDENT called for Petitions, Memorials, Presentments of Grand Juries and such like papers.

Presentation of Service Pins

In commemoration of continuous service with the State of South Carolina, Senator McCONNELL, PRESIDENT *Pro Tempore* of the Senate, presented certificates and awarded service pins to the following Senate staff for their respective years of state service:

10 Year Pins
Ms. Debra Cooper
Mr. Jeff Gossett
Mr. Phil Lenski

20 Year Pins
Vanessa Collier
Kenneth Tisdale
Agnes Walker
Mary Nell Kreps

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30 Year Pins
David Jordan

40 Year Pins
Jane Fallaw

Senators McCONNELL and DRUMMOND also presented certificates and service pins to the following Senator for his years of service:

10 Year Pin
Senator KENT WILLIAMS

All were highly commended for their years of devoted and loyal service.

Leave of Absence

At 2:17 P.M., Senator O'DELL requested a leave of absence until Tuesday, May 31, 2005, at Noon.

Leave of Absence

At 2:17 P.M., Senator MESCHER requested a leave of absence until Tuesday, May 31, 2005, at Noon.

Leave of Absence

At 2:17 P.M., Senator RANKIN requested a leave of absence until Tuesday, May 31, 2005, at Noon.

Leave of Absence

At 3:40 P.M., Senator PATTERSON requested a leave of absence from 8:00 - 10:00 P.M. tonight.

Leave of Absence

At 7:00 P.M., Senator RYBERG requested a leave of absence until Tuesday at 8:00 A.M.

Leave of Absence

At 7:00 P.M., Senator KNOTTS requested a leave of absence until Tuesday at Noon.

59-101-440 SO AS TO PROVIDE THAT INSTITUTIONS OF HIGHER LEARNING MAY EMPLOY INSIDE OR OUTSIDE COUNSEL TO ADVISE IT OR REPRESENT IT IN ANY MATTER EXCEPT A LITIGATION MATTER WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL; BY ADDING SECTION 59-150-356 SO AS TO PROVIDE THAT THE COMMISSION ON HIGHER EDUCATION IN DEVELOPING THE APPLICATION AND REVIEW PROCESS FOR TECHNOLOGY GRANTS FROM THE EDUCATION LOTTERY ACCOUNT FOR FOUR-YEAR PUBLIC INSTITUTIONS SHALL DEVELOP A FORMULA FOR THE ALLOCATION OF THESE GRANTS WHICH IS NOT COMPETITIVELY BASED IN ORDER TO PERMIT MULTI-YEAR INVESTMENT APPROACHES; AND TO REPEAL ARTICLE 3, CHAPTER 101, TITLE 59 OF THE 1976 CODE RELATING TO HIGHER EDUCATION REGULATORY, PROCEDURAL, AND FINANCIAL MATTERS.

Senator COURSON explained the Bill.

H. 3883 -- Reps. Duncan, Cato, Scarborough, Tripp, Mahaffey and Thompson: A BILL TO AMEND SECTION 40-29-200, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE MANUFACTURED HOUSING LICENSE, SO AS TO EXEMPT FROM THIS LICENSING REQUIREMENT A LICENSED REAL ESTATE SALESMAN OR LICENSED REAL ESTATE BROKER WHO NEGOTIATES OR ATTEMPTS TO NEGOTIATE THE SALE OR OTHER DISPOSITION OF A USED MANUFACTURED OR MOBILE HOME IN CONJUNCTION WITH THE SALE OR OTHER DISPOSITION OF THE UNDERLYING REAL ESTATE.

H. 3840 -- Reps. Sandifer and Cato: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 58-9-295 SO AS TO PROVIDE THAT NO COMMUNICATIONS SERVICE PROVIDER OR PARENT, SUBSIDIARY, OR AFFILIATE OF SUCH A PROVIDER MAY ENTER INTO ANY CONTRACT OR AGREEMENT THAT REQUIRES ANOTHER PERSON TO RESTRICT OR LIMIT THE ABILITY OF ANY OTHER COMMUNICATIONS SERVICE PROVIDER FROM OBTAINING EASEMENTS OR RIGHTS-OF-WAY FOR THE INSTALLATION OF FACILITIES OR EQUIPMENT TO PROVIDE COMMUNICATIONS SERVICES IN

THIS STATE OR OTHERWISE DENY OR RESTRICT ACCESS TO THE REAL PROPERTY BY ANY OTHER COMMUNICATIONS SERVICE PROVIDER; OR OFFERS OR GRANTS INCENTIVES OR REWARDS TO AN OWNER OF REAL PROPERTY OR THE OWNER'S AGENT THAT ARE CONTINGENT UPON THE PROVISION OF COMMUNICATIONS SERVICE ON THE PREMISES BY A SINGLE COMMUNICATIONS SERVICE PROVIDER, TO PROVIDE EXCEPTIONS, TO DEFINE THE TERM "COMMUNICATIONS SERVICE PROVIDER" FOR THIS PURPOSE, AND TO PROVIDE CIVIL PENALTIES FOR VIOLATION.

AMENDED, READ THE THIRD TIME
RETURNED TO THE HOUSE

H. 3768 -- Rep. Kirsh: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-21-1085 SO AS TO PROVIDE FOR SALES AND USE TAXES ON BEER AND WINE; BY ADDING SECTION 12-28-1400 SO AS TO REQUIRE THE REPORTING THE DEPARTMENT OF REVENUE REQUIRES BY REGULATION FOR PURPOSES OF THE USER FEE ON MOTOR FUELS AND PROVIDE AN ADDITIONAL CIVIL PENALTY FOR VIOLATORS; BY ADDING SECTION 12-54-123 SO AS TO PROTECT FROM LIABILITY A PERSON WHO SURRENDERS THE PROPERTY OF ANOTHER LEVIED ON BY THE DEPARTMENT OF REVENUE; BY ADDING CHAPTER 55 TO TITLE 12, ENACTING THE OVERDUE DEBT COLLECTION ACT AUTHORIZING THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO IMPOSE A COLLECTION ASSISTANCE FEE ON CERTAIN OVERDUE TAX DEBTS EQUAL TO TWENTY PERCENT OF THE OVERDUE AMOUNT AND TO ALLOW THE DEPARTMENT TO RETAIN A PORTION OF THE COLLECTION ASSISTANCE FEE FOR ITS OPERATION; BY ADDING SECTION 61-4-725 SO AS TO ALLOW A LICENSED WINERY TO SELL, DELIVER, AND PERMIT ON-PREMISES CONSUMPTION ON SUNDAYS IN JURISDICTIONS WHERE MINIBOTTLE SALES ARE ALLOWED ON SUNDAYS; TO AMEND SECTION 4-29-67, AS AMENDED, RELATING TO THE FEE IN LIEU OF PROPERTY TAX, SO AS TO DELETE THE NET PERCENT VALUE METHOD OF CALCULATING ANNUAL FEE PAYMENTS; TO AMEND SECTION 6-1-320, AS AMENDED, RELATING TO THE LIMITS ON ANNUAL INCREASES IN

LOCAL GOVERNMENT AND SCHOOL DISTRICT PROPERTY TAX MILLAGE, SO AS TO CLARIFY THE METHOD OF CALCULATING THE ALLOWED CONSUMER PRICE INDEX INCREASE IN THE MILLAGE RATE; TO AMEND SECTIONS 12-6-40 AND 12-6-50, BOTH AS AMENDED, RELATING TO DEFINITIONS AND CONFORMITY PROVISIONS FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO UPDATE THE REFERENCE DATE BY WHICH THIS STATE ADOPTS VARIOUS PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 AND CLARIFY THOSE PROVISIONS NOT ADOPTED; TO AMEND SECTIONS 12-6-1110 AND 12-6-1130, RELATING TO CALCULATIONS OF INCOME, SO AS TO PROVIDE FOR CALCULATIONS WITHOUT SOME OF THE DEDUCTIONS ALLOWED BY THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO DEDUCTIONS FROM SOUTH CAROLINA INDIVIDUAL TAXABLE INCOME FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO DELETE AN OBSOLETE DEDUCTION RELATING TO MEDICAL INSURANCE PREMIUMS; TO AMEND SECTION 12-6-2220, RELATING TO ALLOCATION AND APPORTIONMENT FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO PROVIDE FOR THE ALLOCATION OF DIVIDENDS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE TARGETED JOBS TAX CREDIT, SO AS TO REVISE THE DEFINITION OF "NEW JOB"; TO AMEND SECTION 12-6-3365, AS AMENDED, RELATING TO THE CORPORATE INCOME TAX MORATORIUM FOR JOB CREATION, SO AS TO CLARIFY THE APPLICATION OF THE MORATORIUM TO INSURANCE PREMIUM TAXES; TO AMEND SECTION 12-6-3480, RELATING TO TAX CREDITS, SO AS TO FURTHER PROVIDE THE MANNER IN WHICH CREDITS ARE ALLOWED AND MAY BE CLAIMED; TO AMEND SECTION 12-6-4910, AS AMENDED, RELATING TO THOSE REQUIRED TO FILE INCOME TAX RETURNS, SO AS TO PROVIDE FOR THOSE NONRESIDENTS REQUIRED TO FILE IN THIS STATE; TO AMEND SECTIONS 12-6-5020, AS AMENDED, AND 12-6-5030, RELATING TO THE FILING OF CONSOLIDATED CORPORATE INCOME TAX RETURNS AND COMPOSITE INDIVIDUAL INCOME TAX RETURNS, SO AS TO REQUIRE THE DETERMINATION OF CREDITS ON A CONSOLIDATED BASIS AND FURTHER PROVIDE FOR COMPOSITE RETURNS; TO

AMEND SECTION 12-8-520 RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE FOR THE WITHHOLDING OF PARTNERSHIP AND SUBCHAPTER "S" CORPORATION INCOME OF NONRESIDENTS; TO AMEND SECTION 12-8-1520, RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS FOR WITHHOLDING AGENTS; TO AMEND SECTION 12-10-105, RELATING TO ANNUAL FEES FOR JOB DEVELOPMENT CREDITS FOR PURPOSES OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO EXTEND THESE FEES TO JOB RETRAINING CREDITS IN EXCESS OF TEN THOUSAND DOLLARS AND PROVIDE FOR THE COLLECTION OF THESE FEES; TO AMEND SECTION 12-20-105, AS AMENDED, RELATING TO TAX CREDITS FOR PURPOSES OF THE CORPORATE LICENSE TAX, SO AS TO CLARIFY THE APPLICATION OF THESE CREDITS; TO AMEND SECTION 12-28-740, RELATING TO EXEMPTIONS FROM THE MOTOR FUELS USER FEE, SO AS TO DELETE A REFERENCE TO A CREDIT; TO AMEND SECTIONS 12-21-1090 AND 12-21-6550, RELATING TO LICENSE TAXES, SO AS TO PROVIDE FOR THE PERMISSIVE PROMULGATION OF REGULATIONS AND FURTHER PROVIDE FOR THE APPLICATIONS REQUIRED PURSUANT TO THE TOURISM INFRASTRUCTURE ADMISSIONS TAX ACT; TO AMEND SECTION 12-28-1730, AS AMENDED, RELATING TO PENALTIES FOR PURPOSES OF THE MOTOR FUELS TAX, SO AS TO DELETE A CIVIL PENALTY; TO AMEND SECTION 12-36-530, RELATING TO THE REQUIREMENT FOR THE RETURN OF A RETAIL LICENSE WHEN A BUSINESS CLOSES OR IS SOLD, SO AS TO ELIMINATE THE REQUIREMENT THAT THE TAX IS DUE AT THE TIME OF SALE AND CONSTITUTES A LIEN ON THE PROPERTY IN THE HANDS OF THE PURCHASER; TO AMEND SECTION 12-36-1310, AS AMENDED, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO FURTHER PROVIDE FOR THE APPLICATION OF SALES TAX TO TELECOMMUNICATIONS SERVICES; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES AND USE TAX EXEMPTIONS, SO AS TO EXEMPT PRESCRIPTIONS AND OVER-THE-COUNTER MEDICINES AND MEDICAL SUPPLIES SOLD TO A FREE CLINIC; TO AMEND SECTION 12-36-2510, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO PROVIDE FURTHER FOR

THE ISSUE OF CERTIFICATES BY THE DEPARTMENT OF REVENUE FOR DIRECT PAY AND EXEMPTIONS AND PROVIDE FOR MORE EFFICIENT ADMINISTRATION OF SALES TAXES AND SALES TAX EXEMPTIONS; TO AMEND SECTION 12-37-220, AS AMENDED, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO DELETE OBSOLETE REFERENCES IN EXISTING EXEMPTIONS; TO AMEND SECTION 12-37-230, RELATING TO SERVICE CONTRACTS WITH NONPROFIT HOUSING CORPORATIONS, SO AS TO ALLOW A COUNTY OR MUNICIPALITY TO CHARGE REASONABLE FEES FOR SERVICES NOT TO EXCEED TAXES THAT WOULD OTHERWISE BE DUE ON THE PROPERTY; TO AMEND SECTION 12-44-50, AS AMENDED, RELATING TO THE "FEE IN LIEU OF TAX SIMPLIFICATION ACT OF 1997", SO AS TO REVISE THE ELIGIBILITY TO USE THE NET PERCENT VALUE METHOD OF CALCULATING THE ANNUAL FEE PAYMENT; TO AMEND SECTIONS 12-54-42 AND 12-54-43, AS AMENDED, RELATING TO THE UNIFORM METHOD OF COLLECTION AND ENFORCEMENT OF STATE LEVIED TAXES, SO AS TO CLARIFY THE APPLICATION OF PENALTIES FOR FAILING TO PROVIDE WITHHOLDING STATEMENTS, AND CLARIFY AND REVISE THE APPLICATION OF CIVIL PENALTIES FOR FILING GROUNDLESS RETURNS OR FOR MISUSE OF A SALES TAX CERTIFICATE; TO AMEND SECTION 12-54-90, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO REFUSE TO ISSUE A LICENSE TO A TAXPAYER IN VIOLATION; TO AMEND SECTIONS 12-54-210 AND 12-54-240, AS AMENDED, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO INCREASE THE PENALTY FOR FAILURE TO KEEP RECORDS, FILE RETURNS, AND COMPLY WITH REGULATIONS, UPDATE REFERENCES RELATING TO THE CONFIDENTIALITY OF RETURNS, AND DELETE AN EXEMPTION TO THE CONFIDENTIALITY REQUIREMENTS FOR RECORDS SUBPOENAED BY A FEDERAL GRAND JURY; TO AMEND SECTION 12-58-185, AS AMENDED, RELATING TO THE TAXPAYERS' BILL OF RIGHTS, SO AS TO CLARIFY AND EXTEND THE APPLICATION OF HARDSHIP EXTENSIONS TO PAY; TO AMEND SECTIONS 12-60-420 AND 12-60-490, BOTH AS AMENDED, RELATING TO THE REVENUES PROCEDURE ACT, SO AS TO PROVIDE THAT THE APPLICATION OF A

DIVISION DECISION OR A DETERMINATION OF DEFICIENCY APPLIES TO LOCAL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE AND REQUIRE THE NOTICE TO PROVIDE THAT FAILURE TO FILE A PROTEST RESULTS IN A DECISION BECOMING FINAL AND TO PROVIDE, FURTHER, FOR SETOFFS AGAINST TAX REFUNDS; TO AMEND SECTION 61-4-747, RELATING TO REGULATION OF WINE, SO AS TO REQUIRE OUT-OF-STATE WINE SHIPPERS TO PAY SALES AND EXCISE TAXES ON WINE SHIPPED TO RESIDENTS OF THIS STATE BY JANUARY TWENTIETH OF EACH YEAR FOR THE PRECEDING YEAR; BY ADDING SECTION 33-14-420 SO AS TO FURTHER PROVIDE FOR CLAIMANTS AGAINST FUNDS OF A DISSOLVED CORPORATION; TO REPEAL SECTION 12-37-240, RELATING TO PAYMENTS IN LIEU OF TAXES BY EXEMPT NONPROFIT HOUSING CORPORATIONS AND SECTION 12-37-290, RELATING TO AN OBSOLETE HOMESTEAD EXEMPTION PROVISION.

Senator HAYES asked unanimous consent to take up an additional amendment on third reading.

There was no objection.

Senator RICHARDSON proposed the following amendment (3768R007.SHR), which was adopted:

Amend the bill, as and if amended, page 32 by striking lines 12 through 36.

Renumber sections to conform.

Amend title to conform.

Senator RICHARDSON explained the amendment.

The amendment was adopted.

There being no further amendments, the Bill was read the third time and ordered returned to the House of Representatives with amendments.

HOUSE AMENDMENTS AMENDED RETURNED TO THE HOUSE WITH AMENDMENTS

H. 3906 -- Reps. Harrell, Bales and Neilson: A BILL TO AMEND SECTION 59-104-20, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE PALMETTO FELLOWS

APP 000202

Exhibit 9

JOURNAL

OF THE

SENATE

OF THE

FIRST SESSION OF THE

116th GENERAL ASSEMBLY

OF THE

STATE OF SOUTH CAROLINA

BEING THE

REGULAR SESSION BEGINNING
TUESDAY, JANUARY 11, 2005

Volume IV

FRIDAY, MAY 27, 2005

ADJOURNMENT

At 11:45 A.M., on motion of Senator COURSON, the Senate adjourned to meet next Tuesday, May 31, 2005, at 12:00 Noon.

* * *

~~Indicates Matter Stricken~~
Indicates New Matter

The Senate assembled at 12:00 Noon, the hour to which it stood adjourned, and was called to order by the PRESIDENT.

A quorum being present, the proceedings were opened with a devotion by the Chaplain as follows:

Beloved, as another Memorial Day slides into history, hear words from the Epistle to the Hebrews (12:1):

"Wherefore, seeing we also are compassed about with so great a cloud of witnesses... let us run with patience the race that is set before us."

Let us pray.

God of our fathers, we've come through yet another Memorial Day, yet our brave soldiers make such great sacrifices - yes, even until death after death.

We do not want to forget the past, but Heavenly Father, help us bring this killing to an end and restore some kind of peace in the world.

GOD HAVE MERCY upon our fighting sons and daughters and their families.

Amen!

The PRESIDENT called for Petitions, Memorials, Presentments of Grand Juries and such like papers.

Doctor of the Day

Senator CAMPSEN introduced Dr. Del Schutte, of Charleston, S.C., Doctor of the Day.

Leave of Absence

On motion of Senator SETZLER, at 3:00 P.M., Senator MOORE was granted a leave of absence until 10:30 A.M. Wednesday, June 1, 2005.

Motion to Ratify Adopted

At 4:48 P.M., Senator McCONNELL asked unanimous consent to make a motion to invite the House of Representatives to attend the Senate Chamber for the purpose of ratifying Acts at 11:00 A.M. on Wednesday, June 1, 2005.

COMMUNITY MENTAL HEALTH CENTER AND THAT IF AN IN-PATIENT EVALUATION IS RECOMMENDED, THE COURT MAY COMMIT THE CHILD TO A DESIGNATED HOSPITAL FOR UP TO FIFTEEN DAYS FOR SUCH AN EVALUATION; AND TO AMEND SECTION 44-52-50, RELATING TO PROCEDURES FOR EMERGENCY ADMISSIONS FOR ALCOHOL AND DRUG TREATMENT, SO AS TO CLARIFY THAT IF A COURT ISSUES AN ORDER TO TAKE A PERSON IN NEED OF SUCH TREATMENT INTO PROTECTIVE CUSTODY, THE ORDER IS VALID ONLY FOR SEVENTY-TWO HOURS.

and has ordered the Bill enrolled for Ratification.

Very respectfully,

Speaker of the House

Received as information.

Message from the House

Columbia, S.C., May 31, 2005

Mr. President and Senators:

The House respectfully informs your Honorable Body that it concurs in the amendments proposed by the Senate to:

H. 3768 -- Rep. Kirsh: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-21-1085 SO AS TO PROVIDE FOR SALES AND USE TAXES ON BEER AND WINE; BY ADDING SECTION 12-28-1400 SO AS TO REQUIRE THE REPORTING THE DEPARTMENT OF REVENUE REQUIRES BY REGULATION FOR PURPOSES OF THE USER FEE ON MOTOR FUELS AND PROVIDE AN ADDITIONAL CIVIL PENALTY FOR VIOLATORS; BY ADDING SECTION 12-54-123 SO AS TO PROTECT FROM LIABILITY A PERSON WHO SURRENDERS THE PROPERTY OF ANOTHER LEVIED ON BY THE DEPARTMENT OF REVENUE; BY ADDING CHAPTER 55 TO TITLE 12, ENACTING THE OVERDUE DEBT COLLECTION ACT AUTHORIZING THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO IMPOSE A COLLECTION ASSISTANCE FEE ON CERTAIN OVERDUE TAX DEBTS EQUAL TO TWENTY PERCENT OF THE OVERDUE AMOUNT AND TO ALLOW THE DEPARTMENT TO RETAIN A PORTION OF THE COLLECTION ASSISTANCE FEE FOR ITS OPERATION; BY ADDING SECTION 61-4-725 SO AS TO ALLOW A LICENSED WINERY TO SELL, DELIVER, AND PERMIT ON-PREMISES

CONSUMPTION ON SUNDAYS IN JURISDICTIONS WHERE MINIBOTTLE SALES ARE ALLOWED ON SUNDAYS; TO AMEND SECTION 4-29-67, AS AMENDED, RELATING TO THE FEE IN LIEU OF PROPERTY TAX, SO AS TO DELETE THE NET PERCENT VALUE METHOD OF CALCULATING ANNUAL FEE PAYMENTS; TO AMEND SECTION 6-1-320, AS AMENDED, RELATING TO THE LIMITS ON ANNUAL INCREASES IN LOCAL GOVERNMENT AND SCHOOL DISTRICT PROPERTY TAX MILLAGE, SO AS TO CLARIFY THE METHOD OF CALCULATING THE ALLOWED CONSUMER PRICE INDEX INCREASE IN THE MILLAGE RATE; TO AMEND SECTIONS 12-6-40 AND 12-6-50, BOTH AS AMENDED, RELATING TO DEFINITIONS AND CONFORMITY PROVISIONS FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO UPDATE THE REFERENCE DATE BY WHICH THIS STATE ADOPTS VARIOUS PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 AND CLARIFY THOSE PROVISIONS NOT ADOPTED; TO AMEND SECTIONS 12-6-1110 AND 12-6-1130, RELATING TO CALCULATIONS OF INCOME, SO AS TO PROVIDE FOR CALCULATIONS WITHOUT SOME OF THE DEDUCTIONS ALLOWED BY THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO DEDUCTIONS FROM SOUTH CAROLINA INDIVIDUAL TAXABLE INCOME FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO DELETE AN OBSOLETE DEDUCTION RELATING TO MEDICAL INSURANCE PREMIUMS; TO AMEND SECTION 12-6-2220, RELATING TO ALLOCATION AND APPORTIONMENT FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO PROVIDE FOR THE ALLOCATION OF DIVIDENDS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE TARGETED JOBS TAX CREDIT, SO AS TO REVISE THE DEFINITION OF "NEW JOB"; TO AMEND SECTION 12-6-3365, AS AMENDED, RELATING TO THE CORPORATE INCOME TAX MORATORIUM FOR JOB CREATION, SO AS TO CLARIFY THE APPLICATION OF THE MORATORIUM TO INSURANCE PREMIUM TAXES; TO AMEND SECTION 12-6-3480, RELATING TO TAX CREDITS, SO AS TO FURTHER PROVIDE THE MANNER IN WHICH CREDITS ARE ALLOWED AND MAY BE CLAIMED; TO AMEND SECTION 12-6-4910, AS AMENDED, RELATING TO THOSE REQUIRED TO FILE INCOME TAX RETURNS, SO AS TO PROVIDE FOR THOSE

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NONRESIDENTS REQUIRED TO FILE IN THIS STATE; TO
AMEND SECTIONS 12-6-5020, AS AMENDED, AND 12-6-505
RELATING TO THE FILING OF CONSOLIDATED CORPORATE
INCOME TAX RETURNS AND COMPOSITE INDIVIDUAL
INCOME TAX RETURNS, SO AS TO REQUIRE THE
DETERMINATION OF CREDITS ON A CONSOLIDATED BASIS
AND FURTHER PROVIDE FOR COMPOSITE RETURNS; TO
AMEND SECTION 12-8-520 RELATING TO STATE INCOME TAX
WITHHOLDING, SO AS TO PROVIDE FOR THE WITHHOLDING
OF PARTNERSHIP AND SUBCHAPTER "S" CORPORATION
INCOME OF NONRESIDENTS; TO AMEND SECTION 12-8-1520
RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO
PROVIDE ADDITIONAL REQUIREMENTS FOR WITHHOLDING
AGENTS; TO AMEND SECTION 12-10-105, RELATING TO
ANNUAL FEES FOR JOB DEVELOPMENT CREDITS FOR
PURPOSES OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO
EXTEND THESE FEES TO JOB RETRAINING CREDITS, TO
EXCESS OF TEN THOUSAND DOLLARS AND PROVIDE FOR
THE COLLECTION OF THESE FEES; TO AMEND SECTION
12-20-105, AS AMENDED, RELATING TO TAX CREDITS FOR
PURPOSES OF THE CORPORATE LICENSE TAX, SO AS TO
CLARIFY THE APPLICATION OF THESE CREDITS; TO AMEND
SECTION 12-28-740, RELATING TO EXEMPTIONS FROM THE
MOTOR FUELS USER FEE, SO AS TO DELETE A REFERENCE
TO A CREDIT; TO AMEND SECTIONS 12-21-1090 AND
12-21-6550, RELATING TO LICENSE TAXES, SO AS TO
PROVIDE FOR THE PERMISSIVE PROMULGATION OF
REGULATIONS AND FURTHER PROVIDE FOR THE
APPLICATIONS REQUIRED PURSUANT TO THE TOURISM
INFRASTRUCTURE ADMISSIONS TAX ACT; TO AMEND
SECTION 12-28-1730, AS AMENDED, RELATING TO
PENALTIES FOR PURPOSES OF THE MOTOR FUELS TAX, SO
AS TO DELETE A CIVIL PENALTY; TO AMEND SECTION
12-36-530, RELATING TO THE REQUIREMENT FOR THE
RETURN OF A RETAIL LICENSE WHEN A BUSINESS CLOSES
OR IS SOLD, SO AS TO ELIMINATE THE REQUIREMENT THAT
THE TAX IS DUE AT THE TIME OF SALE AND CONSTITUTES
A LIEN ON THE PROPERTY IN THE HANDS OF THE
PURCHASER; TO AMEND SECTION 12-36-1310, AS AMENDED,
RELATING TO THE SOUTH CAROLINA SALES AND USE TAX
ACT, SO AS TO FURTHER PROVIDE FOR THE APPLICATION

OF SALES TAX TO TELECOMMUNICATIONS SERVICES; TO
AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO
SALES AND USE TAX EXEMPTIONS, SO AS TO EXEMPT
PRESCRIPTIONS AND OVER-THE-COUNTER MEDICINES AND
MEDICAL SUPPLIES SOLD TO A FREE CLINIC; TO AMEND
SECTION 12-36-2510, RELATING TO THE SOUTH CAROLINA
SALES AND USE TAX ACT, SO AS TO PROVIDE FURTHER FOR
THE ISSUE OF CERTIFICATES BY THE DEPARTMENT OF
REVENUE FOR DIRECT PAY AND EXEMPTIONS AND
PROVIDE FOR MORE EFFICIENT ADMINISTRATION OF SALES
TAXES AND SALES TAX EXEMPTIONS; TO AMEND SECTION
12-37-220, AS AMENDED, RELATING TO PROPERTY TAX
EXEMPTIONS, SO AS TO DELETE OBSOLETE REFERENCES IN
EXISTING EXEMPTIONS; TO AMEND SECTION 12-37-230,
RELATING TO SERVICE CONTRACTS WITH NONPROFIT
HOUSING CORPORATIONS, SO AS TO ALLOW A COUNTY OR
MUNICIPALITY TO CHARGE REASONABLE FEES FOR
SERVICES NOT TO EXCEED TAXES THAT WOULD
OTHERWISE BE DUE ON THE PROPERTY; TO AMEND
SECTION 12-44-50, AS AMENDED, RELATING TO THE "FEE IN
LIEU OF TAX SIMPLIFICATION ACT OF 1997", SO AS TO
REVISE THE ELIGIBILITY TO USE THE NET PERCENT VALUE
METHOD OF CALCULATING THE ANNUAL FEE PAYMENT;
TO AMEND SECTIONS 12-54-42 AND 12-54-43, AS AMENDED,
RELATING TO THE UNIFORM METHOD OF COLLECTION AND
ENFORCEMENT OF STATE LEVIED TAXES, SO AS TO
CLARIFY THE APPLICATION OF PENALTIES FOR FAILING TO
PROVIDE WITHHOLDING STATEMENTS, AND CLARIFY AND
REVISE THE APPLICATION OF CIVIL PENALTIES FOR FILING
GROUNDLESS RETURNS OR FOR MISUSE OF A SALES TAX
CERTIFICATE; TO AMEND SECTION 12-54-90, RELATING TO
THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO
AS TO ALLOW THE DEPARTMENT OF REVENUE TO REFUSE
TO ISSUE A LICENSE TO A TAXPAYER IN VIOLATION; TO
AMEND SECTIONS 12-54-210 AND 12-54-240, AS AMENDED,
RELATING TO THE COLLECTION AND ENFORCEMENT OF
STATE TAXES, SO AS TO INCREASE THE PENALTY FOR
FAILURE TO KEEP RECORDS, FILE RETURNS, AND COMPLY
WITH REGULATIONS, UPDATE REFERENCES RELATING TO
THE CONFIDENTIALITY OF RETURNS, AND DELETE AN
EXEMPTION TO THE CONFIDENTIALITY REQUIREMENTS

FOR RECORDS SUBPOENAED BY A FEDERAL GRAND JURY; TO AMEND SECTION 12-58-185, AS AMENDED, RELATING TO THE TAXPAYERS' BILL OF RIGHTS, SO AS TO CLARIFY AND EXTEND THE APPLICATION OF HARDSHIP EXTENSIONS TO PAY; TO AMEND SECTIONS 12-60-420 AND 12-60-490, BOTH AS AMENDED, RELATING TO THE REVENUES PROCEDURE ACT, SO AS TO PROVIDE THAT THE APPLICATION OF A DIVISION DECISION OR A DETERMINATION OF DEFICIENCY APPLIES TO LOCAL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE AND REQUIRE THE NOTICE TO PROVIDE THAT FAILURE TO FILE A PROTEST RESULTS IN A DECISION BECOMING FINAL AND TO PROVIDE, FURTHER, FOR SETOFFS AGAINST TAX REFUNDS; TO AMEND SECTION 61-4-747, RELATING TO REGULATION OF WINE, SO AS TO REQUIRE OUT-OF-STATE WINE SHIPPERS TO PAY SALES AND EXCISE TAXES ON WINE SHIPPED TO RESIDENTS OF THIS STATE BY JANUARY TWENTIETH OF EACH YEAR FOR THE PRECEDING YEAR; BY ADDING SECTION 33-14-420 SO AS TO FURTHER PROVIDE FOR CLAIMANTS AGAINST FUNDS OF A DISSOLVED CORPORATION; TO REPEAL SECTION 12-37-240, RELATING TO PAYMENTS IN LIEU OF TAXES BY EXEMPT NONPROFIT HOUSING CORPORATIONS AND SECTION 12-37-290, RELATING TO AN OBSOLETE HOMESTEAD EXEMPTION PROVISION.

and has ordered the Bill enrolled for Ratification.

Very respectfully,

Speaker of the House

Received as information.

Message from the House

Columbia, S.C., May 31, 2005

Mr. President and Senators:

The House respectfully informs your Honorable Body that it concurs in the amendments proposed by the Senate to:

H. 3832 -- Reps. J.E. Smith, Cotty, Scott, Haskins, Cato, Davenport, Altman, Anthony, Battle, Brady, Branham, Breeland, J. Brown, R. Brown, Cobb-Hunter, Coleman, Cooper, Dantzler, Edge, Funderburk, Hagood, Harrison, Hayes, J. Hines, Howard, Huggins, Jefferson, Jennings, Kirsh, Lee, Limehouse, Martin, McLeod, Merrill, Miller, J.M. Neal, Ott, Parks, Perry, Pinson, Rivers, D.C. Smith,

Thompson, Townsend, Vick, Weeks and Witherspoon: A BILL TO ENACT THE LEWIS BLACKMAN HOSPITAL PATIENT SAFETY ACT BY ADDING ARTICLE 27, CHAPTER 7, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO REQUIRE ALL HOSPITAL CLINICAL STAFF AND TRAINEES TO WEAR BADGES CONTAINING CERTAIN IDENTIFYING INFORMATION, TO REQUIRE CERTAIN INFORMATION TO BE PROVIDED BY HOSPITALS TO PATIENTS PRIOR TO OR ON ADMISSION CONCERNING THE PATIENT'S HOSPITAL CARE, INCLUDING, AMONG OTHER THINGS, THE GENERAL ROLE OF MEDICAL STUDENTS, INTERNS, AND RESIDENT PHYSICIANS IN PATIENT CARE, THAT THE PATIENT'S ATTENDING PHYSICIAN IS THE DOCTOR IN CHARGE OF THE PATIENT'S CARE, THAT THE PATIENT'S ATTENDING PHYSICIAN MAY CHANGE, WHETHER ANY RESIDENT PHYSICIAN OR MEDICAL STUDENTS MAY BE PARTICIPATING IN THE PATIENT'S CARE, INCLUDING SURGERY, REQUIRING NURSES TO PLACE A CALL FOR OR TO ASSIST A PATIENT IN CALLING THEIR ATTENDING PHYSICIANS, REQUIRING HOSPITALS TO PROVIDE A MECHANISM THAT IS AVAILABLE AT ALL TIMES WHEREBY PATIENTS CAN RECEIVE ASSISTANCE FOR RESOLUTION OF URGENT PATIENT CARE CONCERNS, AND TO PROVIDE THAT THIS ARTICLE DOES NOT CREATE A CIVIL CAUSE OF ACTION.

and has ordered the Bill enrolled for Ratification.

Very respectfully,

Speaker of the House

Received as information.

Message from the House

Columbia, S.C., May 31, 2005

Mr. President and Senators:

The House respectfully informs your Honorable Body that it concurs in the amendments proposed by the Senate to:

H. 3885 -- Reps. Hagood, Scarborough, Limehouse, Anderson, Dantzler, Cotty, Brady, Taylor, Perry, R. Brown, Cobb-Hunter, Harrell and Chellis: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-3375 SO AS TO PROVIDE EITHER AN ADDITIONAL JOBS TAX CREDIT

Exhibit 10

JOURNAL

OF THE

HOUSE OF REPRESENTATIVES

OF THE

FIRST SESSION OF THE

116TH GENERAL ASSEMBLY

OF THE

STATE OF SOUTH CAROLINA

BEING THE

REGULAR SESSION BEGINNING
TUESDAY, JANUARY 11, 2005

Volume IV

~~Indicates Matter Stricken~~
Indicates New Matter

The House assembled at 12:00 noon.

Deliberations were opened with prayer by Rev. Charles E. Seastrunk, Jr. as follows:

Our thought for today is from Proverbs 16:3: "Commit to the Lord whatever you do and your plans will succeed."

Let us pray. Almighty God, help us to be humble servants and leaders of the people. Strengthen these Representatives and staff in the work You have called them to do. Open their lives to the call of serving the people of this State. Look in favor upon our Nation, President, State and her leaders. Thank You for the service and sacrifice of men and women who have served our Country and State and those who now serve as defenders of freedom. Keep them safe. O Lord, hear our prayer. Amen.

Pursuant to Rule 6.3, the House of Representatives was led in the Pledge of Allegiance to the Flag of the United States of America by the SPEAKER *PRO TEMPORE*.

After corrections to the Journal of the proceedings of Friday, the SPEAKER *PRO TEMPORE* ordered it confirmed.

MOTION ADOPTED

Rep. HOSEY moved that when the House adjourns, it adjourn in memory of former Representative Joseph Bowers Wilder of Barnwell, which was agreed to.

MESSAGE FROM THE SENATE

The following was received:

Columbia, S.C., May 26, 2005
Mr. Speaker and Members of the House:
The Senate respectfully informs your Honorable Body that it has overridden the veto by the Governor on R. 73, H. 3716 by a vote of 43 to 1:

Veto 4. Part IA, Section 5D, page 32, Clemson University, Education & General, Unrestricted, Engineering Research Centers, $791,272.

Very respectfully,
President
Received as information.

MESSAGE FROM THE SENATE

The following was received:

Columbia, S.C., May 26, 2005
Mr. Speaker and Members of the House:
The Senate respectfully informs your Honorable Body that it has overridden the veto by the Governor on R. 73, H. 3716 by a vote of 42 to 2:

Veto 5. Part IA, Section 5E, page 35, University of Charleston, Education & General, Business – Economic Partnership Initiative, $591,550.

Very respectfully,
President
Received as information.

MESSAGE FROM THE SENATE

The following was received:

Columbia, S.C., May 26, 2005
Mr. Speaker and Members of the House:
The Senate respectfully informs your Honorable Body that it has overridden the veto by the Governor on R. 73, H. 3716 by a vote of 41 to 3:

Veto 6. Part IA; Section 5E; page 35; University of Charleston; Education & General; Education – Effective Teaching and Learning; $501,800.

Very respectfully,
President
Received as information.

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H. 3768--SENATE AMENDMENTS CONCURRED IN AND BILL ENROLLED

The Senate amendments to the following Bill were taken up for consideration:

H. 3768 -- Rep. Kirsh: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-21-1085 SO AS TO PROVIDE FOR SALES AND USE TAXES ON BEER AND WINE; BY ADDING SECTION 12-28-1400 SO AS TO REQUIRE THE REPORTING THE DEPARTMENT OF REVENUE REQUIRES BY REGULATION FOR PURPOSES OF THE USER FEE ON MOTOR FUELS AND PROVIDE AN ADDITIONAL CIVIL PENALTY FOR VIOLATORS; BY ADDING SECTION 12-54-123 SO AS TO PROTECT FROM LIABILITY A PERSON WHO SURRENDERS THE PROPERTY OF ANOTHER LEVIED ON BY THE DEPARTMENT OF REVENUE; BY ADDING CHAPTER 55 TO TITLE 12, ENACTING THE OVERDUE DEBT COLLECTION ACT AUTHORIZING THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO IMPOSE A COLLECTION ASSISTANCE FEE ON CERTAIN OVERDUE TAX DEBTS EQUAL TO TWENTY PERCENT OF THE OVERDUE AMOUNT AND TO ALLOW THE DEPARTMENT TO RETAIN A PORTION OF THE COLLECTION ASSISTANCE FEE FOR ITS OPERATION; BY ADDING SECTION 61-4-725 SO AS TO ALLOW A LICENSED WINERY TO SELL, DELIVER, AND PERMIT ON-PREMISES CONSUMPTION ON SUNDAYS IN JURISDICTIONS WHERE MINIBOTTLE SALES ARE ALLOWED ON SUNDAYS; TO AMEND SECTION 4-29-67, AS AMENDED, RELATING TO THE FEE IN LIEU OF PROPERTY TAX, SO AS TO DELETE THE NET PERCENT VALUE METHOD OF CALCULATING ANNUAL FEE PAYMENTS; TO AMEND SECTION 6-1-320, AS AMENDED, RELATING TO THE LIMITS ON ANNUAL INCREASES IN LOCAL GOVERNMENT AND SCHOOL DISTRICT PROPERTY TAX MILLAGE, SO AS TO CLARIFY THE METHOD OF CALCULATING THE ALLOWED CONSUMER PRICE INDEX INCREASE IN THE MILLAGE RATE; TO AMEND SECTIONS 12-6-40 AND 12-6-50, BOTH AS AMENDED, RELATING TO DEFINITIONS AND CONFORMITY PROVISIONS FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO UPDATE THE REFERENCE DATE BY WHICH THIS STATE ADOPTS VARIOUS PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 AND CLARIFY

THOSE PROVISIONS NOT ADOPTED; TO AMEND SECTIONS 12-6-1110 AND 12-6-1130, RELATING TO CALCULATIONS OF INCOME, SO AS TO PROVIDE FOR CALCULATIONS WITHOUT SOME OF THE DEDUCTIONS ALLOWED BY THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO DEDUCTIONS FROM SOUTH CAROLINA INDIVIDUAL TAXABLE INCOME FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO DELETE AN OBSOLETE DEDUCTION RELATING TO MEDICAL INSURANCE PREMIUMS; TO AMEND SECTION 12-6-2220, RELATING TO ALLOCATION AND APPORTIONMENT FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO PROVIDE FOR THE ALLOCATION OF DIVIDENDS; TO AMEND SECTION 12-6-3360, AS AMENDED, RELATING TO THE TARGETED JOBS TAX CREDIT, SO AS TO REVISE THE DEFINITION OF "NEW JOB"; TO AMEND SECTION 12-6-3365, AS AMENDED, RELATING TO THE CORPORATE INCOME TAX MORATORIUM FOR JOB CREATION, SO AS TO CLARIFY THE APPLICATION OF THE MORATORIUM TO INSURANCE PREMIUM TAXES; TO AMEND SECTION 12-6-3480, RELATING TO TAX CREDITS, SO AS TO FURTHER PROVIDE THE MANNER IN WHICH CREDITS ARE ALLOWED AND MAY BE CLAIMED; TO AMEND SECTION 12-6-4910, AS AMENDED, RELATING TO THOSE REQUIRED TO FILE INCOME TAX RETURNS, SO AS TO PROVIDE FOR THOSE NONRESIDENTS REQUIRED TO FILE IN THIS STATE; TO AMEND SECTIONS 12-6-5020, AS AMENDED, AND 12-6-5030, RELATING TO THE FILING OF CONSOLIDATED CORPORATE INCOME TAX RETURNS AND COMPOSITE INDIVIDUAL INCOME TAX RETURNS, SO AS TO REQUIRE THE DETERMINATION OF CREDITS ON A CONSOLIDATED BASIS AND FURTHER PROVIDE FOR COMPOSITE RETURNS; TO AMEND SECTION 12-8-520 RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE FOR THE WITHHOLDING OF PARTNERSHIP AND SUBCHAPTER "S" CORPORATION INCOME OF NONRESIDENTS; TO AMEND SECTION 12-8-1520, RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS FOR WITHHOLDING AGENTS; TO AMEND SECTION 12-10-105, RELATING TO ANNUAL FEES FOR JOB DEVELOPMENT CREDITS FOR PURPOSES OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO EXTEND THESE

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FEES TO JOB RETRAINING CREDITS IN EXCESS OF TEN THOUSAND DOLLARS AND PROVIDE FOR THE COLLECTION OF THESE FEES; TO AMEND SECTION 12-20-105, AS AMENDED, RELATING TO TAX CREDITS FOR PURPOSES OF THE CORPORATE LICENSE TAX, SO AS TO CLARIFY THE APPLICATION OF THESE CREDITS; TO AMEND SECTION 12-28-740, RELATING TO EXEMPTIONS FROM THE MOTOR FUELS USER FEE, SO AS TO DELETE A REFERENCE TO A CREDIT; TO AMEND SECTIONS 12-21-1090 AND 12-21-6550, RELATING TO LICENSE TAXES, SO AS TO PROVIDE FOR THE PERMISSIVE PROMULGATION OF REGULATIONS AND FURTHER PROVIDE FOR THE APPLICATIONS REQUIRED PURSUANT TO THE TOURISM INFRASTRUCTURE ADMISSIONS TAX ACT; TO AMEND SECTION 12-28-1730, AS AMENDED, RELATING TO PENALTIES FOR PURPOSES OF THE MOTOR FUELS TAX, SO AS TO DELETE A CIVIL PENALTY; TO AMEND SECTION 12-36-530, RELATING TO THE REQUIREMENT FOR THE RETURN OF A RETAIL LICENSE WHEN A BUSINESS CLOSES OR IS SOLD, SO AS TO ELIMINATE THE REQUIREMENT THAT THE TAX IS DUE AT THE TIME OF SALE AND CONSTITUTES A LIEN ON THE PROPERTY IN THE HANDS OF THE PURCHASER; TO AMEND SECTION 12-36-1310, AS AMENDED, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO FURTHER PROVIDE FOR THE APPLICATION OF SALES TAX TO TELECOMMUNICATIONS SERVICES; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES AND USE TAX EXEMPTIONS, SO AS TO EXEMPT PRESCRIPTIONS AND OVER-THE-COUNTER MEDICINES AND MEDICAL SUPPLIES SOLD TO A FREE CLINIC; TO AMEND SECTION 12-36-2510, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO PROVIDE FURTHER FOR THE ISSUE OF CERTIFICATES BY THE DEPARTMENT OF REVENUE FOR DIRECT PAY AND EXEMPTIONS AND PROVIDE FOR MORE EFFICIENT ADMINISTRATION OF SALES TAXES AND SALES TAX EXEMPTIONS; TO AMEND SECTION 12-37-220, AS AMENDED, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO DELETE OBSOLETE REFERENCES IN EXISTING EXEMPTIONS; TO AMEND SECTION 12-37-230, RELATING TO SERVICE CONTRACTS WITH NONPROFIT HOUSING CORPORATIONS, SO AS TO ALLOW A COUNTY OR

MUNICIPALITY TO CHARGE REASONABLE FEES FOR SERVICES NOT TO EXCEED TAXES THAT WOULD OTHERWISE BE DUE ON THE PROPERTY; TO AMEND SECTION 12-44-50, AS AMENDED, RELATING TO THE "FEE IN LIEU OF TAX SIMPLIFICATION ACT OF 1997", SO AS TO REVISE THE ELIGIBILITY TO USE THE NET PERCENT VALUE METHOD OF CALCULATING THE ANNUAL FEE PAYMENT; TO AMEND SECTIONS 12-54-42 AND 12-54-43, AS AMENDED, RELATING TO THE UNIFORM METHOD OF COLLECTION AND ENFORCEMENT OF STATE LEVIED TAXES, SO AS TO CLARIFY THE APPLICATION OF PENALTIES FOR FAILING TO PROVIDE WITHHOLDING STATEMENTS, AND CLARIFY AND REVISE THE APPLICATION OF CIVIL PENALTIES FOR FILING GROUNDLESS RETURNS OR FOR MISUSE OF A SALES TAX CERTIFICATE; TO AMEND SECTION 12-54-90, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO REFUSE TO ISSUE A LICENSE TO A TAXPAYER IN VIOLATION; TO AMEND SECTIONS 12-54-210 AND 12-54-240, AS AMENDED, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO INCREASE THE PENALTY FOR FAILURE TO KEEP RECORDS, FILE RETURNS, AND COMPLY WITH REGULATIONS, UPDATE REFERENCES RELATING TO THE CONFIDENTIALITY OF RETURNS, AND DELETE AN EXEMPTION TO THE CONFIDENTIALITY REQUIREMENTS FOR RECORDS SUBPOENAED BY A FEDERAL GRAND JURY; TO AMEND SECTION 12-58-185, AS AMENDED, RELATING TO THE TAXPAYERS' BILL OF RIGHTS, SO AS TO CLARIFY AND EXTEND THE APPLICATION OF HARDSHIP EXTENSIONS TO PAY; TO AMEND SECTIONS 12-60-420 AND 12-60-490, BOTH AS AMENDED, RELATING TO THE REVENUES PROCEDURE ACT, SO AS TO PROVIDE THAT THE APPLICATION OF A DIVISION DECISION OR A DETERMINATION OF DEFICIENCY APPLIES TO LOCAL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE AND REQUIRE THE NOTICE TO PROVIDE THAT FAILURE TO FILE A PROTEST RESULTS IN A DECISION BECOMING FINAL AND TO PROVIDE, FURTHER, FOR SETOFFS AGAINST TAX REFUNDS; TO AMEND SECTION 61-4-747, RELATING TO REGULATION OF WINE, SO AS TO REQUIRE OUT-OF-STATE WINE SHIPPERS TO PAY SALES AND EXCISE TAXES ON WINE SHIPPED TO RESIDENTS OF

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THIS STATE BY JANUARY TWENTIETH OF EACH YEAR FOR THE PRECEDING YEAR; BY ADDING SECTION 33-14-420 SO AS TO FURTHER PROVIDE FOR CLAIMANTS AGAINST FUNDS OF A DISSOLVED CORPORATION; TO REPEAL SECTION 12-37-240, RELATING TO PAYMENTS IN LIEU OF TAXES BY EXEMPT NONPROFIT HOUSING CORPORATIONS AND SECTION 12-37-290, RELATING TO AN OBSOLETE HOMESTEAD EXEMPTION PROVISION.

Rep. COOPER explained the Senate Amendments.

The Senate amendments were agreed to, and the Bill having received three readings in both Houses, it was ordered that the title be changed to that of an Act, and that it be enrolled for ratification.

S. 1--NONCONCURRENCE IN SENATE AMENDMENTS

The Senate amendments to the following Bill were taken up for consideration:

S. 1 -- Senators Ryberg, Hutto, Lourie, Drummond, Land, Moore, Matthews, McGill, O'Dell, Reese, Hayes, Gregory, Jackson, Martin, Rankin, Short, Richardson, Ritchie, Cromer, J. V. Smith, Leatherman, Fair and Patterson: A BILL TO AMEND SECTION 56-5-6450, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CHILD PASSENGER RESTRAINT SYSTEM REQUIREMENTS, SO AS TO PROVIDE THAT A FINE FOR A VIOLATION OF THE LAW MUST NOT BE WAIVED; TO AMEND SECTION 56-5-6530, RELATING TO EXCEPTIONS TO THE MANDATORY USE OF SAFETY BELTS AND CHILD RESTRAINT SYSTEM REQUIREMENTS, SO AS TO PROVIDE THAT OCCUPANTS OF THE BACK SEAT OF A MOTOR VEHICLE ARE NOT EXEMPT FROM THE SAFETY BELT REQUIREMENT; TO AMEND SECTION 56-5-6540, RELATING TO PENALTIES FOR VIOLATIONS OF THE SAFETY BELT LAW AND CHILD RESTRAINT SYSTEM REQUIREMENTS, SO AS TO PROVIDE THAT ALL FUNDS COLLECTED PURSUANT TO THIS SECTION MUST BE DEPOSITED IN THE STATE GENERAL FUND, A LAW ENFORCEMENT OFFICER MAY NOT SEARCH A VEHICLE STOPPED SOLELY FOR A PRIMARY SAFETY BELT VIOLATION, A LAW ENFORCEMENT OFFICER MAY STOP A DRIVER OF A MOTOR VEHICLE FOR ANY PRIMARY

VIOLATION OF A PROVISION THAT REQUIRES A DRIVER OR PASSENGER TO WEAR A SAFETY BELT OR A CHILD RESTRAINT SYSTEM, A PERSON MUST NOT BE CONVICTED FOR A PRIMARY SAFETY BELT VIOLATION EXCEPT UPON PROOF BEYOND A REASONABLE DOUBT. A VIOLATION OF THE MANDATORY SAFETY BELT LAW MAY BE TRIED BEFORE EITHER A JUDGE OR A JURY, AND A CONVICTION FOR A VIOLATION OF THE STATE'S MANDATORY SAFETY BELT LAW IS APPEALABLE TO THE COURT OF COMMON PLEAS.

The House refused to agree to the Senate amendments and a message was ordered sent accordingly.

H. 3885--SENATE AMENDMENTS CONCURRED IN AND BILL ENROLLED

The Senate amendments to the following Bill were taken up for consideration:

H. 3885 -- Reps. Hagood, Scarborough, Limehouse, Anderson, Dantzler, Cotty, Brady, Taylor, Perry, R. Brown, Cobb-Hunter, Harrell and Chellis: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-3375 SO AS TO PROVIDE EITHER AN ADDITIONAL JOBS TAX CREDIT OR AN ADDITIONAL INVESTMENT TAX CREDIT FOR COMPANIES USING STATE PORTS AUTHORITY FACILITIES WHICH INCREASE THEIR BASE PORT CARGO VOLUME AT THESE FACILITIES BY A MINIMUM OF FIVE PERCENT OVER 2005 TOTALS AND TO PROVIDE PROCEDURES NECESSARY TO IMPLEMENT THESE TAX CREDITS.

Rep. COOPER explained the Senate Amendments.

The Senate amendments were agreed to, and the Bill having received three readings in both Houses, it was ordered that the title be changed to that of an Act, and that it be enrolled for ratification.

Exhibit 11

JOURNAL

OF THE

SENATE

OF THE

FIRST SESSION OF THE

116th GENERAL ASSEMBLY

OF THE

STATE OF SOUTH CAROLINA

BEING THE

REGULAR SESSION BEGINNING
TUESDAY, JANUARY 11, 2005

Volume IV

~~Indicates Matter Stricken~~
Indicates New Matter

The Senate assembled at 10:30 A.M., the hour to which it stood adjourned, and was called to order by the PRESIDENT.

A quorum being present, the proceedings were opened with a devotion by the Chaplain as follows:

Beloved, what a time to read these words from the Book called Hebrews (10:22):

"Let us draw near to God with a true heart in full assurance of faith."

Let us pray.

Father, You are the God of Grace! You are the God of Glory!

Blessed Lord, Blessed Lord, we have just two days to go... just two days to make the decisions most needed by our people. We bring our burdens to You. Help us to link our needs to Your will!

We claim the promise of the Psalmist when he proclaimed to the ages, "Cast your burden on the Lord and He will sustain you."

Amen!

The PRESIDENT called for Petitions, Memorials, Presentments of Grand Juries and such like papers.

Leave of Absence

At 10:50 A.M., Senator FORD requested a leave of absence beginning at 7:00 P.M. and lasting until 10:00 A.M. Thursday morning.

Leave of Absence

At 11:10 A.M., Senator RANKIN requested a leave of absence beginning at 4:30 P.M. and lasting until 9:00 A.M. Thursday morning.

RECALLED AND READ THE SECOND TIME

H. 4044 -- Rep. Ott: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 50-11-32 SO AS TO PROVIDE THAT IT IS UNLAWFUL TO HUNT WATERFOWL IN CALHOUN COUNTY ON CERTAIN PORTIONS OF LAKE MARION WITHIN TWO HUNDRED YARDS OF A RESIDENCE WITHOUT WRITTEN PERMISSION OF THE OWNER AND OCCUPANT AND TO PROVIDE PENALTIES FOR VIOLATIONS.

Senator LAND asked unanimous consent to make a motion to recall the Bill from the Committee on Fish, Game and Forestry.

There was no objection.

The Bill was recalled from the Committee on Fish, Game and Forestry.

On motion of Senator LAND, with unanimous consent, the Bill was taken up for immediate consideration.

On motion of Senator LAND, with unanimous consent, the Bill was read the second time, passed and ordered to a third reading.

H. 4044--Ordered to a Third Reading

On motion of Senator LAND, with unanimous consent, H. 4044 was ordered to receive a third reading on Thursday, June 2, 2005.

INTRODUCTION OF BILLS AND RESOLUTIONS

The following were introduced:

S. 906 -- Senators McConnell, Alexander, Anderson, Bryant, Campsen, Cleary, Courson, Cromer, Drummond, Elliott, Fair, Ford, Gregory, Grooms, Hawkins, Hayes, Hutto, Jackson, Knotts, Land, Leatherman, Leventis, Lourie, Malloy, Martin, Matthews, McGill, Mescher, Moore, O'Dell, Patterson, Peeler, Pinckney, Rankin, Reese, Richardson, Ritchie, Ryberg, Scott, Setzler, Sheheen, Short, J. Verne Smith, Thomas, Verdin and Williams: A SENATE RESOLUTION TO COMMEND THE HONORABLE DAVID HORTON WILKINS OF GREENVILLE FOR HIS DISTINGUISHED SERVICE AS SPEAKER OF THE SOUTH CAROLINA HOUSE OF REPRESENTATIVES SINCE 1994 AND TO CONGRATULATE HIM UPON THE OCCASION OF HIS APPOINTMENT AS THE AMBASSADOR OF THE UNITED STATES TO CANADA.

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Whereas, the members of the South Carolina Senate have learned with deep and sincere regret that one of the longest serving House Speakers in the country, the Honorable David Horton Wilkins, will retire this year from the House of Representatives to embark on a new venture as the Ambassador of the United States to Canada; and

DEFINED IN FEDERAL LAW, AND AGREES TO THE DISTRIBUTION OF THIS PAYMENT TO THE STATE FOR COURT COSTS.
L:\COUNCIL\ACTS\3614AC05.DOC

(R148, H. 3646) -- Reps. Parks, J.H. Neal, Allen, Davenport, Frye, Jefferson, Lee, Limehouse, Mack, Pinson, M.A. Pitts and F.N. Smith: AN ACT TO AMEND SECTION 40-33-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITIONS USED IN THE LICENSURE AND REGULATION OF NURSES, SO AS TO REVISE THE DEFINITIONS OF "ATTENDANT CARE SERVICES" AND "HEALTH MAINTENANCE ACTIVITIES"; AND TO AMEND SECTION 40-33-30, AS AMENDED, RELATING TO CIRCUMSTANCES TO WHICH THE CHAPTER DOES NOT APPLY, SO AS TO PROVIDE THAT THE CHAPTER MAY NOT BE CONSTRUED TO PROHIBIT AN UNLICENSED PERSON FROM PROVIDING ATTENDANT CARE SERVICES, WHICH ENABLE A PERSON TO REMAIN AT HOME AND WHICH ENABLE A PERSON TO CARRY OUT FUNCTIONS OF DAILY LIVING.
L:\COUNCIL\ACTS\3646AC05.DOC

(R149, H. 3650) -- Reps. W.D. Smith, Hagood and McLeod: AN ACT TO AMEND SECTION 44-56-750, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE BROWNFIELDS VOLUNTARY CLEANUP PROGRAM AND CONTRACT REQUIREMENTS ENTERED INTO BY OR ON BEHALF OF A NONRESPONSIBLE PARTY, SO AS TO PROVIDE THAT A NONRESPONSIBLE PARTY IS NOT LIABLE FOR THIRD PARTY CLAIMS AND TO FURTHER SPECIFY TO WHOM THIS LIMITATION OF LIABILITY APPLIES.
L:\COUNCIL\ACTS\3650AC05.DOC

(R150, H. 3768) -- Rep. Kirsh: AN ACT TO AMEND SECTIONS 12-36-140 AND 12-36-2120, CODE OF LAWS OF SOUTH CAROLINA, 1976, BOTH RELATING TO THE SALES AND USE TAX, SO AS TO EXEMPT CERTAIN PROMOTIONAL ADVERTISING DISTRIBUTIONS BY CHAMBERS OF COMMERCE AND VISITORS BUREAUS; BY ADDING SECTION 12-28-1400 SO AS TO REQUIRE THE REPORTING THE DEPARTMENT OF REVENUE REQUIRES BY REGULATION

FOR PURPOSES OF THE USER FEE ON MOTOR FUELS AND PROVIDE AN ADDITIONAL CIVIL PENALTY FOR VIOLATORS; BY ADDING SECTION 12-54-123 SO AS TO PROTECT FROM LIABILITY A PERSON WHO SURRENDERS THE PROPERTY OF ANOTHER LEVIED ON BY THE DEPARTMENT OF REVENUE; BY ADDING CHAPTER 55 TO TITLE 12, ENACTING THE OVERDUE DEBT COLLECTION ACT AUTHORIZING THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO IMPOSE A COLLECTION ASSISTANCE FEE ON CERTAIN OVERDUE TAX DEBTS EQUAL TO TWENTY PERCENT OF THE OVERDUE AMOUNT AND TO ALLOW THE DEPARTMENT TO RETAIN A PORTION OF THE COLLECTION ASSISTANCE FEE FOR ITS OPERATION; BY ADDING SECTION 61-4-725 SO AS TO ALLOW A LICENSED WINERY TO SELL, DELIVER, AND PERMIT ON-PREMISES CONSUMPTION ON SUNDAYS IN JURISDICTIONS WHERE MINIBOTTLE SALES ARE ALLOWED ON SUNDAYS; TO AMEND SECTION 6-1-320, RELATING TO THE LIMITS ON ANNUAL INCREASES IN LOCAL GOVERNMENT AND SCHOOL DISTRICT PROPERTY TAX MILLAGE, SO AS TO CLARIFY THE METHOD OF CALCULATING THE ALLOWED CONSUMER PRICE INDEX INCREASE IN THE MILLAGE RATE; TO AMEND SECTIONS 12-6-40 AND 12-6-50, BOTH AS AMENDED, RELATING TO DEFINITIONS AND CONFORMITY PROVISIONS FOR PURPOSES OF THE SOUTH CAROLINA INCOME TAX ACT, SO AS TO UPDATE THE REFERENCE DATE BY WHICH THIS STATE ADOPTS VARIOUS PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986 AND CLARIFY THOSE PROVISIONS NOT ADOPTED; TO AMEND SECTIONS 12-6-1110 AND 12-6-1130, RELATING TO CALCULATIONS OF INCOME, SO AS TO PROVIDE FOR CALCULATIONS WITHOUT SOME OF THE DEDUCTIONS ALLOWED BY THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1140, AS AMENDED, RELATING TO DEDUCTIONS FROM SOUTH CAROLINA INDIVIDUAL TAXABLE INCOME FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO DELETE AN OBSOLETE DEDUCTION RELATING TO MEDICAL INSURANCE PREMIUMS; TO AMEND SECTION 12-6-2220, RELATING TO ALLOCATION AND APPORTIONMENT FOR PURPOSES OF THE STATE INCOME TAX, SO AS TO PROVIDE FOR THE ALLOCATION OF DIVIDENDS; TO AMEND SECTION 12-6-3360,

AS AMENDED, RELATING TO THE TARGETED JOBS TAX CREDIT, SO AS TO REVISE THE DEFINITION OF "NEW JOB"; TO AMEND SECTION 12-6-3365, AS AMENDED, RELATING TO THE CORPORATE INCOME TAX MORATORIUM FOR JOB CREATION, SO AS TO CLARIFY THE APPLICATION OF THE MORATORIUM TO INSURANCE PREMIUM TAXES; TO AMEND SECTION 12-6-3480, RELATING TO TAX CREDITS, SO AS TO FURTHER PROVIDE THE MANNER IN WHICH CREDITS ARE ALLOWED AND MAY BE CLAIMED; TO AMEND SECTION 12-6-4910, AS AMENDED, RELATING TO THOSE REQUIRED TO FILE INCOME TAX RETURNS, SO AS TO PROVIDE FOR THOSE NONRESIDENTS REQUIRED TO FILE IN THIS STATE; TO AMEND SECTIONS 12-6-5020, AS AMENDED, AND 12-6-5030, BOTH RELATING TO THE FILING OF CONSOLIDATED CORPORATE INCOME TAX RETURNS AND COMPOSITE INDIVIDUAL INCOME TAX RETURNS, BOTH SO AS TO REQUIRE THE DETERMINATION OF CREDITS ON A CONSOLIDATED BASIS AND FURTHER PROVIDE FOR COMPOSITE RETURNS; TO AMEND SECTION 12-8-520 RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE FOR THE WITHHOLDING OF PARTNERSHIP AND SUBCHAPTER "S" CORPORATION INCOME OF NONRESIDENTS; TO AMEND SECTION 12-8-1520, RELATING TO STATE INCOME TAX WITHHOLDING, SO AS TO PROVIDE ADDITIONAL REQUIREMENTS FOR WITHHOLDING AGENTS; TO AMEND SECTION 12-10-105, RELATING TO ANNUAL FEES FOR JOB DEVELOPMENT CREDITS FOR PURPOSES OF THE ENTERPRISE ZONE ACT OF 1995, SO AS TO EXTEND THESE FEES TO JOB RETRAINING CREDITS IN EXCESS OF TEN THOUSAND DOLLARS AND PROVIDE FOR THE COLLECTION OF THESE FEES; TO AMEND SECTION 12-20-105, AS AMENDED, RELATING TO TAX CREDITS FOR PURPOSES OF THE CORPORATE LICENSE TAX, SO AS TO CLARIFY THE APPLICATION OF THESE CREDITS; TO AMEND SECTIONS 12-21-1090 AND 12-21-6550, BOTH RELATING TO LICENSE TAXES, BOTH SO AS TO PROVIDE FOR THE PERMISSIVE PROMULGATION OF REGULATIONS AND FURTHER PROVIDE FOR THE APPLICATIONS REQUIRED PURSUANT TO THE TOURISM INFRASTRUCTURE ADMISSIONS TAX ACT; TO AMEND SECTION 12-28-740, RELATING TO EXEMPTIONS FROM THE MOTOR FUELS USER FEE, SO AS TO DELETE A

REFERENCE TO A CREDIT; TO AMEND SECTION 12-28-1730, AS AMENDED, RELATING TO PENALTIES FOR PURPOSES OF THE MOTOR FUELS TAX, SO AS TO DELETE A CIVIL PENALTY; TO AMEND SECTION 12-36-530, RELATING TO THE REQUIREMENT FOR THE RETURN OF A RETAIL LICENSE WHEN A BUSINESS CLOSES OR IS SOLD, SO AS TO ELIMINATE THE REQUIREMENT THAT THE TAX IS DUE AT THE TIME OF SALE AND CONSTITUTES A LIEN ON THE PROPERTY IN THE HANDS OF THE PURCHASER; TO AMEND SECTION 12-36-1310, AS AMENDED, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO FURTHER PROVIDE FOR THE APPLICATION OF SALES TAX TO TELECOMMUNICATIONS SERVICES; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO SALES AND USE TAX EXEMPTIONS, SO AS TO EXEMPT PRESCRIPTIONS AND OVER-THE-COUNTER MEDICINES AND MEDICAL SUPPLIES SOLD TO A FREE CLINIC; TO AMEND SECTION 12-36-2510, RELATING TO THE SOUTH CAROLINA SALES AND USE TAX ACT, SO AS TO PROVIDE FURTHER FOR THE ISSUE OF CERTIFICATES BY THE DEPARTMENT OF REVENUE FOR DIRECT PAY AND EXEMPTIONS AND PROVIDE FOR MORE EFFICIENT ADMINISTRATION OF SALES TAXES AND SALES TAX EXEMPTIONS; TO AMEND SECTION 12-37-220, AS AMENDED, RELATING TO PROPERTY TAX EXEMPTIONS, SO AS TO DELETE OBSOLETE REFERENCES IN EXISTING EXEMPTIONS; TO AMEND SECTIONS 12-54-42 AND 12-54-43, AS AMENDED, BOTH RELATING TO THE UNIFORM METHOD OF COLLECTION AND ENFORCEMENT OF STATE LEVIED TAXES, BOTH SO AS TO CLARIFY THE APPLICATION OF PENALTIES FOR FAILING TO PROVIDE WITHHOLDING STATEMENTS, AND CLARIFY AND REVISE THE APPLICATION OF CIVIL PENALTIES FOR FILING GROUNDLESS RETURNS OR FOR MISUSE OF A SALES TAX CERTIFICATE; TO AMEND SECTION 12-54-90, RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, SO AS TO ALLOW THE DEPARTMENT OF REVENUE TO REFUSE TO ISSUE A LICENSE TO A TAXPAYER IN VIOLATION; TO AMEND SECTIONS 12-54-210 AND 12-54-240, AS AMENDED, BOTH RELATING TO THE COLLECTION AND ENFORCEMENT OF STATE TAXES, BOTH SO AS TO INCREASE THE PENALTY FOR FAILURE TO KEEP RECORDS, FILE RETURNS, AND

COMPLY WITH REGULATIONS, UPDATE REFERENCES RELATING TO THE CONFIDENTIALITY OF RETURNS, AND DELETE AN EXEMPTION TO THE CONFIDENTIALITY REQUIREMENTS FOR RECORDS SUBPOENAED BY A FEDERAL GRAND JURY; TO AMEND SECTION 12-58-185, AS AMENDED, RELATING TO THE TAXPAYERS' BILL OF RIGHTS, SO AS TO CLARIFY AND EXTEND THE APPLICATION OF HARDSHIP EXTENSIONS TO PAY; TO AMEND SECTIONS 12-60-420 AND 12-60-490, BOTH AS AMENDED, BOTH RELATING TO THE REVENUES PROCEDURE ACT, BOTH SO AS TO PROVIDE THAT THE APPLICATION OF A DIVISION DECISION OR A DETERMINATION OF DEFICIENCY APPLIES TO LOCAL TAXES ADMINISTERED BY THE DEPARTMENT OF REVENUE AND REQUIRE THE NOTICE TO PROVIDE THAT FAILURE TO FILE A PROTEST RESULTS IN A DECISION BECOMING FINAL AND TO PROVIDE, FURTHER, FOR SETOFFS AGAINST TAX REFUNDS; TO AMEND SECTION 61-4-747, RELATING TO REGULATION OF WINE, SO AS TO REQUIRE OUT-OF-STATE WINE SHIPPERS TO PAY SALES AND EXCISE TAXES ON WINE SHIPPED TO RESIDENTS OF THIS STATE BY JANUARY TWENTIETH OF EACH YEAR FOR THE PRECEDING YEAR; BY ADDING SECTION 33-14-420 SO AS TO FURTHER PROVIDE FOR CLAIMANTS AGAINST FUNDS OF A DISSOLVED CORPORATION; TO PROVIDE THAT THIS ACT IS THE MOST RECENT ACTION OF THE GENERAL ASSEMBLY RELATING TO ADOPTION OF AND CONFORMITY WITH PROVISIONS OF THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-6-1130, AS AMENDED, RELATING TO DEDUCTIONS FROM INCOME TAX, SO AS TO PROVIDE THAT THE DEDUCTION FOR CHARITABLE CONTRIBUTIONS BE DETERMINED AS IN THE INTERNAL REVENUE CODE; TO AMEND SECTIONS 12-6-3515, RELATING TO CHARITABLE CONTRIBUTIONS FOR CONSERVATION, SO AS TO PROVIDE THAT THE DETERMINATION MUST BE LIKE SECTION 170 OF THE INTERNAL REVENUE CODE; TO AMEND SECTION 12-43-232, RELATING TO QUALIFICATION FOR AGRICULTURAL USE FOR PURPOSES OF ASSESSMENT, SO AS TO PROVIDE THAT A PERPETUAL CONSERVATION EASEMENT IS AGRICULTURAL REAL PROPERTY; BY ADDING SECTION 12-6-5590 SO AS TO FURTHER PROVIDE GUIDELINES FOR ALLOWING A DEDUCTION FOR A

CHARITABLE CONTRIBUTION; TO AMEND SECTIONS 12-44-30, 4-12-30, AND 4-29-67, ALL RELATING TO A FEE IN LIEU OF TAXES, SO AS TO PROVIDE FOR QUALIFICATION OF A CERTIFIED ECONOMIC DEVELOPMENT PROJECT; BY ADDING SECTION 12-37-135 SO AS TO ALLOW A COUNTYWIDE BUSINESS REGISTRATION AND FEE; BY ADDING SECTION 12-45-430 AND TO AMEND SECTION 12-37-2650, AS AMENDED, RELATING TO RECEIPTS FOR PAYMENT OF TAXES, BOTH SO AS TO PROVIDE THAT A RECEIPT MUST NOT BE ISSUED UNLESS ALL TAXES AND OTHER CHARGES HAVE BEEN PAID; TO AMEND SECTION 12-37-2730, RELATING TO USE OF A TREASURER'S TAX RECEIPT TO OBTAIN A LICENSE PLATE, SO AS TO PROVIDE THAT BOTH MUNICIPAL AND COUNTY TAXES AND OTHER CHARGES MUST BE PAID BEFORE ISSUANCE OF A RECEIPT WHEN A MUNICIPALITY CONTRACTS WITH THE COUNTY FOR THE COLLECTION OF ITS VEHICLE AND TO PROVIDE FOR THE ISSUANCE OF A SUMMONS BY A CODE ENFORCEMENT OFFICER TO ENFORCE COLLECTION OF VEHICLE PROPERTY TAX AND VEHICLE REGISTRATION LAWS; TO AMEND SECTION 12-43-220, AS AMENDED, RELATING TO QUALIFICATION FOR THE FOUR PERCENT ASSESSMENT RATIO, SO AS TO PROVIDE A FURTHER PROVISION FOR QUALIFICATION; TO AMEND SECTIONS 12-49-950, 12-51-55, AS AMENDED, AND 12-51-130, AS AMENDED, ALL RELATING TO THE SALE OF PROPERTY FOR NONPAYMENT OF TAXES, SO AS TO PROVIDE THAT ALL UNPAID TAXES, ASSESSMENT, CHARGES, AND ACTUAL COSTS OF THE DELINQUENCY BE INCLUDED IN A BID AND TO PROVIDE THAT AN ASSESSMENT INCLUDES AMOUNTS OWED TO A SPECIAL TAXING DISTRICT; TO AMEND SECTION 12-54-25, AS AMENDED, RELATING TO REFUND OF AN OVERPAYMENT OF TAXES, SO AS TO PROVIDE THAT NO INTEREST IS DUE IF THE REFUND IS MADE WITHIN SEVENTY-FIVE DAYS; AND TO AMEND SECTION 12-54-240, RELATING TO CONFIDENTIALITY OF TAX RETURN INFORMATION, SO AS TO ALLOW DISCLOSURE TO A STATE OR COUNTY AGENT OF COUNTY CODE AND CERTAIN JOINT FILING INFORMATION; BY ADDING SECTION 12-37-712 SO AS TO PROVIDE THAT A MARINA PROVIDE ACCESS TO TAXING AUTHORITIES FOR PROPERTY TAX ASSESSMENT; TO

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PROVIDE FOR A POSTPONEMENT FOR ONE YEAR OF IMPLEMENTATION OF A TAX EQUALIZATION AND REASSESSMENT PROGRAM; TO AMEND SECTION 12-36-2120, AS AMENDED, RELATING TO EXEMPTIONS FROM SALES TAX, SO AS TO ADD TO THE "HOLIDAY" FOR SCHOOL SUPPLIES CERTAIN BEDDING AND BATH LINENS; BY ADDING SECTION 12-45-185 SO AS TO PROVIDE FOR THE WAIVER OF PENALTY FOR LATE TAX PAYMENT UPON PROOF OF TIMELY DELIVERY; AND BY ADDING SECTION 12-6-3575 SO AS TO PROVIDE FOR A NONREFUNDABLE CREDIT AGAINST INCOME TAX FOR FIFTY PERCENT OF THE PREMIUM COSTS FOR HEALTH INSURANCE UNDER CERTAIN CONDITIONS AND WITH CERTAIN LIMITATIONS.
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(R151, H. 3832) -- Reps. J.E. Smith, Cotty, Scott, Haskins, Cato, Davenport, Altman, Anthony, Battle, Brady, Branham, Breeland, J. Brown, R. Brown, Cobb-Hunter, Coleman, Cooper, Dantzler, Edge, Funderburk, Hagood, Harrison, Hayes, J. Hines, Howard, Huggins, Jefferson, Jennings, Kirsh, Lee, Limehouse, Martin, McLeod, Merrill, Miller, J.M. Neal, Ott, Parks, Perry, Pinson, Rivers, D.C. Smith, Thompson, Townsend, Vick, Weeks and Witherspoon: AN ACT TO ENACT THE "LEWIS BLACKMAN HOSPITAL PATIENT SAFETY ACT" BY ADDING ARTICLE 27, CHAPTER 7, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO REQUIRE ALL HOSPITAL CLINICAL STAFF AND TRAINEES TO WEAR BADGES CONTAINING CERTAIN IDENTIFYING INFORMATION; TO REQUIRE CERTAIN INFORMATION TO BE PROVIDED BY HOSPITALS TO PATIENTS PRIOR TO OR ON ADMISSION CONCERNING THE PATIENT'S HOSPITAL CARE, INCLUDING, AMONG OTHER THINGS, THE GENERAL ROLE OF MEDICAL STUDENTS, INTERNS, AND RESIDENT PHYSICIANS IN PATIENT CARE, THAT THE PATIENT'S ATTENDING PHYSICIAN IS THE DOCTOR RESPONSIBLE FOR THE PATIENT'S CARE, THAT THE PATIENT'S ATTENDING PHYSICIAN MAY CHANGE, AND WHETHER ANY RESIDENT PHYSICIAN OR MEDICAL STUDENTS MAY BE PARTICIPATING IN THE PATIENT'S CARE, INCLUDING PARTICIPATING IN SURGERY; REQUIRING NURSES TO PLACE A CALL FOR OR TO ASSIST PATIENTS IN CALLING THEIR ATTENDING PHYSICIANS; REQUIRING HOSPITALS TO

PROVIDE A MECHANISM THAT IS AVAILABLE AT ALL TIMES, WHEREBY PATIENTS CAN ACCESS PROMPT ASSISTANCE FOR RESOLUTION OF THE PATIENT'S PERSONAL MEDICAL CARE CONCERNS; TO PROVIDE THAT THIS ARTICLE DOES NOT APPLY TO HOSPITALS OWNED OR OPERATED BY THE DEPARTMENT OF MENTAL HEALTH AND DOES NOT CREATE A CIVIL CAUSE OF ACTION; AND TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL SHALL ADMINISTER AND ENFORCE THIS ARTICLE.
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(R152, H. 3885) -- Reps. Hagood, Scarborough, Limehouse, Anderson, Dantzler, Cotty, Brady, Taylor, Perry, R. Brown, Cobb-Hunter, Harrell and Chellis: AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-3375 SO AS TO PROVIDE EITHER AN ADDITIONAL JOBS TAX CREDIT OR AN ADDITIONAL INVESTMENT TAX CREDIT FOR COMPANIES USING PORT FACILITIES LOCATED IN THIS STATE WHICH INCREASE THEIR BASE PORT CARGO VOLUME AT THESE FACILITIES BY A MINIMUM OF FIVE PERCENT OVER 2005 TOTALS AND TO PROVIDE PROCEDURES NECESSARY TO IMPLEMENT AND ALLOCATE THESE TAX CREDITS AND TO RECALCULATE BASE PORT CARGO VOLUME.
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(R153, H. 3892) -- Education and Public Works Committee: A JOINT RESOLUTION TO APPROVE REGULATIONS OF THE BOARD OF EDUCATION, RELATING TO UTILIZATION OF GENERIC TEACHER CERTIFICATION, DESIGNATED AS REGULATION DOCUMENT NUMBER 2964, PURSUANT TO THE PROVISIONS OF ARTICLE 1, CHAPTER 23, TITLE 1 OF THE 1976 CODE.
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(R154, H. 3940) -- Medical, Military, Public and Municipal Affairs Committee: A JOINT RESOLUTION TO APPROVE REGULATIONS OF THE BUDGET AND CONTROL BOARD, RELATING TO DATA REPORTING REQUIREMENTS PERTAINING TO SOUTH CAROLINA HOSPITALS; DATA

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Frank R. Mead, III, Petitioner, vs. Beaufort County Assessor, Respondent.	Docket No. 13-ALJ-17-0585-CC CERTIFICATE OF SERVICE

I, Burnet R. Maybank, III, do hereby certify and affirm that on this day I have served the person listed below with a copy of the documents specified below by mailing a copy of the same by First Class United States Mail, postage prepaid, to the following address:

Addressed To: Stephen P. Hughes
Post Office Box 40
Beaufort, South Carolina 29901-0040

Enclosures: Petitioner's Memorandum of Law in Opposition to Beaufort County's Motion for Summary Judgment

Columbia, South Carolina
Dated: June 19, 2014

Respectfully submitted,

Burnet R. Maybank, III
Nexsen Pruet, LLC
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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Frank R. Mead, III, Petitioner, vs. Beaufort County Assessor, Respondent.	)	Docket No. 13-ALJ-17-0585-CC ORDER

STATEMENT OF THE CASE

Petitioner's Motion and Respondent's cross-motion for Summary Judgment involves whether Petitioner is eligible for the homestead exemption available under S.C. Constitution Art. X, § 3(i) and S.C. Code Ann. §§ 12-37-220(9), 12-37-250, and 12-37-252(A) (collectively, the "Homestead Exemption") for his property located at 89 Dune Lane, Hilton Head Island, South Carolina (hereinafter the "Subject Property") for the 2011 Tax Year and thereafter. In January 2011, Respondent Beaufort County Assessor determined that Petitioner was no longer eligible for the Homestead Exemption because he rented out the Subject Property for more than fourteen days in the prior year, and is thus not eligible for primary residence status under different code sections.

Petitioner and Respondent agree that the sole legal issue is whether "The homestead exemption under section 12-37-250 is only available to property that also qualifies for the preferential residential assessment ratio made available by section 12-43-220(c)." (Respondent's Memorandum of Law at pg. 2.)

Respondent argues that qualifying for the homestead exemption under the Constitutional (Art. X, § 3(i)) and statutory provisions (principally §§ 12-37-220(A)(9), 12-37-250, 12-37-252(A) and 12-37-290) relating to the homestead exemption is not sufficient. Respondent argues Petitioner must also meet the primary residence constitutional (Art. X, § 1(3)) and statutory provisions (§ 12-43-220(c)) as well. Petitioner contends that meeting the qualifications contained in the Homestead exemption constitutional provision and statutes suffices.

FINDINGS OF FACT

Having carefully considered all testimony, exhibits, and arguments present at the hearing of this matter, and taking into account the credibility and accuracy of the evidence, I make the following findings of fact by a preponderance of evidence:

1. This Court has procedural and subject matter jurisdiction over this case.

2. The parties have exhausted their pre-hearing remedies. Furthermore, notice of the date, time, place and subject matter of the hearing was timely given to all parties.

3. Petitioner is the owner of a home on Hilton Head Island in Beaufort, South Caroline and is a resident of and is domiciled in Beaufort County. The home is his legal residence and has been since he purchased it in 1976. The ownership of the home has remained unchanged since 1976. Before 2011, Petitioner's residence was assessed at the 4% ratio applicable to both primary residences and Homestead exemption.

4. Petitioner was born in 1939. He has been over 65 years of age since 2004.

5. Petitioner qualified for the Homestead Exemption in 2005 and received the Homestead Exemption on his property from 2005 through 2010.

6. In 2011 Petition rented his house for more than 14 days and, as a result was no longer eligible for the primary residence 4% ratio.

7. The Beaufort County Auditor's revoked the Homestead exemption for 2011 on the grounds that because Petitioner had lost his primary residence 4% assessment ratio by virtue of renting his property for more than fourteen days, his property also no longer qualified for the Homestead Exemption. In other words, she stated that a property owner has to qualify for primary residence status in order to qualify for the Homestead Exemption.

8. Mead appealed and the revocation was upheld by the County Board, and this appeal followed.

CONCLUSIONS OF LAW

Rule 68, SCALC, allows this Court to use the South Carolina Rules of Civil Procedure when there is no corresponding Court Rule. Therefore, Motions for Summary Judgment are governed by Rule 56 of the South Carolina Rules of Civil Procedure. Rule 56(c), SCRCP, provides that summary judgment shall be granted if it is shown "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Summary judgment should be granted "when plain, palpable and undisputed facts exist on which reasonable minds cannot differ." *Bayle v. S.C. Dep't of Transp.*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *NHC Homecare – South Carolina, LLC v. S.C. Dep't of Health & Envtl. Control*, 2013 WL 1804102 (S.C. Admin. Law Ct. 2013) (citing *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005)).

I. General

The South Carolina Constitution and statutes provide a host of property tax exemptions and special rules for farmers, manufacturers, individuals and others. The major exemptions or

incentives for individuals are (1) agricultural use; (2) primary residence; and (3) Homestead Exemption. Each has its own separate requirements and each provides different incentives. For example, the agricultural use incentive requires an individual to own at least 5 acres of timber, and the incentive is a special fair market valuation which is usually well below the true fair market value of the property.

II. Homestead Exemption

Article X, § 3(i) of the South Carolina Constitution establishes a "homestead exemption" for persons sixty-five years of age and older, totally and permanently disabled or blind. Article X, § 3 provides nine exemptions, only two of which are for individuals. (The other is for household goods.) There is no exemption or other tax incentive provided in this Constitutional provision for primary residences.

S.C. Const. Art. X, §3(j) further provides that "[h]omestead exemptions from ad valorem taxation not specifically provided for in this section may be provided for by the General Assembly by general law." With authority granted by this Article of the Constitution, the General Assembly codified the Homestead Exemption principally in S.C. Code Ann. §§ 12-37-220(A)(9), 12-37-250, and 12-37-290. Under these three code sections, a person's dwelling place qualifies for the Homestead exemption when he or she (1) has been a resident of this State for at least one year and has reached the age of sixty-five years on or before December thirty-first; (2) has been classified as totally and permanently disabled by a state or federal agency having the function of classifying persons; or (3) is legally blind preceding the tax year in which the exemption is claimed.

Under § 12-37-250(A)(4)(a), "[t]he application for the exemption must be made to the auditor of the county and to the governing body of the municipality in which the dwelling place is located upon forms provided by the county and municipality and approved by the department."

Once the initial application for the Homestead Exemption has been approved, the exemption "continues to be effective for successive years in which *the ownership of the homestead...remain unchanged.*" S.C. Code Ann. § 12-37-252(A) (emphasis added). As stated above, the appellant was granted the Homestead exemption in 2005 on the basis of his age. Ownership of the residence has remained unchanged.

The Homestead Exemption provides two incentives. Section 12-37-250(A)(1) exempts the first $50,000 of the fair market value of the "dwelling place." "Dwelling place" is defined in subsection (5) as "the permanent home and legal residence of the applicant." The second benefit is found in § 12-37-252(A) which provides: "*Notwithstanding any other provision of law*, property that qualifies for the homestead exemption *pursuant to section 12-37-250* is classified and taxed as residential on an assessment equal to four percent on the property's fair market value." (Emphasis added). This section was added in 1980

It is clear that Petitioner meets the requirements for the Homestead Exemption contained in § 12-37-250. He has been a resident of South Carolina for at least one year and is over sixty-five years of age. He applied for and was granted the Homestead Exemption in 2005, and he has done nothing since then that could be considered "a change affecting eligibility, and "the ownership of the homestead . . . [has] remain[ed] unchanged." *Id.*

Furthermore, [t]he exemption includes the dwelling place when...owned in complete fee simple...." The Subject Property, Petitioner's primary and permanent residence, is his dwelling place. Although there is no express definition for "dwelling place", whether property is considered a "dwelling place" is determined based on the facts. Petitioner has resided at the subject property since 1976. Every time the property is rented out, Petitioner temporarily rents an apartment to live in, always intending to return to the subject property once the rental period

is over. The subject property is listed as Petitioner's address on his driver's license, and is where he receives his bills. He does not hold out any other property to be his primary residence, nor has he applied for the 4% legal residence assessment ratio for any other property.

III. Homestead Exemption vs. Primary Residence

Respondent's position is that Petitioner is not entitled to the Homestead Exemption because he no longer qualifies for the 4% primary residence classification. Stated another way, Beaufort County contends that in order to be eligible for the Homestead exemption, the property owner has to meet all of the qualifications for both the primary residence statute as well as the Homestead exemption statute. Simply put, as stated below, the Homestead Exemption and the primary residence classification are two ships in the night. The following summarizes the differences between the two.

A. Different Constitutional Provision and Statutes

The Homestead Exemption is created in the S.C. Constitution Article X, § 3 and is primarily codified in §§ 12-37-220(A)(9), 12-37-250, 12-37-252(A), and 12-37-290.

The primary residence preferential assessment ratio is found in a different constitutional provision, Article X, § 1. It is codified in a different Chapter of Title 12. (The Homestead exemption is in Chapter 37; primary residence is in Chapter 43.) It is codified in § 12-43-220(c). The "Fourteen Day Rental" rule is found in § 12-43-220(c)(7).

B. Different Requirements

The requirements for the incentives are different. The Homestead Exemption requires a person who is 65 or older, permanently disabled or blind who owns the dwelling place, see §§ 12-37-220(9), 12-37-250(A)(1) and 12-37-290. The primary residence statute requires a legal "primary" residence and not more than 5 contiguous acres owned by a person who does not claim legal residence in another state or the 4% assessment ratio on another residence in South

Carolina and who does not rent the primary residence for more than fourteen days, see § 12-43-220(c).

C. Different Incentives

The actual incentives conferred on property owners are also different. Article X, § 3 provides a $10,000 homestead exemption, section 12-37-290 exempts the first $10,000 of fair market value and § 12-37-250 (A)(1) provides a $50,000 exemption. In addition, § 12-37-252(A) provides a 4% assessment ratio for homestead exemptions.

Section 12-43-220(c)(1) provides a 4% assessment ratio for primary legal residences. Other statutes, e.g. Local Option Sales Taxes, provide other credits for primary residences.

The fallacy of Beaufort County's argument is found in Respondent's brief in page 3: "Petitioner has argued further that one who satisfies the limited criteria set forth within those [Homestead exemption] statutes is qualified for the homestead exemption *as well as the 4% residential assessment ratio authorized by section 12-43-220(c).*" (Emp. added.) Petitioner has not argued that he is entitled to the 4% ratio authorized by § 12-43-220(c). The 4% assessment ratio which Petitioner is qualified for is found in an entirely different Code section and in a different Chapter of Title 12. The 4% assessment ratio for homestead exemption residences is found in § 12-37-252(A) – not § 12-43-220(c). This section states that "*[n]otwithstanding any other provision of law*, property that qualifies for the homestead exemption pursuant to Section 12-37-250 is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." (Emp. added.)

In enacting the 4% assessment ratio for persons entitled to the Homestead exemption in 1996, the General Assembly recognized that a person might meet the requirements for the Homestead Exemption but not the primary residence statute. Section 12-37-252(A) plainly states: "*Notwithstanding any other provision of law, property that qualifies for the homestead*

exemption pursuant to section 12-37-250 is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." (Emphasis added).

If Respondent is correct – if a person has to meet the primary residence statutory requirements found in § 12-43-220(c) in order to be entitled to the 4% assessment ratio – then why would the General Assembly have enacted § 12-37-252(A)? (Stated another way, under Respondent's argument by definition a person would have already qualified for the 4% assessment ratio under § 12-43-220(c).) In construing statutes, courts must assume that the legislature intended to accomplish something through enactment of a statute and did not instead engage in futile or worthless action. *See Centex Intern., Inc. v. S.C. Dep't of Rev.*, 406 S.C. 132, 145-46, 750 S.E.2d 65, 72 (2013) *and Florence County Democratic Party v. Florence County Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). *See also Home Health Services, Inc. v. S.C. Dep't of Rev. & Taxation*, 333 S.C. 691, 511 S.E.2d 404 (Ct. App. 1999); *Purvis v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 283, 403 S.E.2d 662 (Ct. App. 1991) (*citing Charleston Television, Inc. v. S.C. Budget & Control Board*, 296 S.C. 444, 458, 373 S.E.2d 892, 900 (Ct. App. 1988), *rev'd on other grounds*, 301 S.C. 468, 392 S.E.2d 671 (1990)).

The Department of Revenue recognized this. In S.C. Rev. Rul. #97-18, the Department held that "the ownership and occupancy requirements for the Homestead exemption and for the 4% legal residence assessment ratio are the same." But then, in DOR Information Letter 99-4, the Department recanted and stated "SC Revenue Ruling #97-18 is hereby withdrawn."

D. Different Qualifying Properties

Section 12-43-220(c)(1) includes the legal residence and not more than five acres contiguous thereto. The Homestead exemption, section 12-37-250 is limited to $50,000 but has no acreage limitation.

Subsection 12-43-220(c)(1) includes property "owned totally or in part in fee or by life estate." The Homestead exemption, 12-37-250(j) contains similar language.

The primary resident subsection includes "additional dwellings located on the same property and occupied by immediate family members of the owner of the interest." The Homestead exemption contains no similar language.

Subsection 12-43-220(c)(2)(v) qualifies members of the armed services who are residents of other states but who have a permanent duty station in this state for primary residence. The Homestead exemption contains no such qualifier.

Subsection 12-43-220(c)(6) qualifies purchasers of property subject to time share vacation rentals for no longer the 90 days the primary residence status. The Homestead exemption contains no similar qualifier.

Subsection 12-43-220(c)(8) allows a prorated primary residence assessment for persons who own less of 50% of the legal residence. The Homestead exemption contains no similar language.

III. Fourteen-Day Rental Rule Does not Apply to Homestead Exemption

A. General

Lastly, even if the requirements for primary residence and Homestead Exemption are largely the same, the fourteen-day rental rule still would not apply to the Homestead Exemption. The fourteen-day rule is contained in Chapter 43 at § 12-43-220(c)(7) (the primary residence statute). This section states: "Notwithstanding any other provision of law, the owner–occupant of a *legal residence* is not disqualified from receiving the four percent assessment ratio *allowed by this item*" (emphasis added) if the taxpayer meets the requirements of Section § 280A(g) of the Internal Revenue Code ("IRC") and is otherwise eligible to receive the 4% assessment ratio.

(To repeat, the subsection references "this item," not "this Chapter" or "Title 12." Even if it said "this chapter" it would not apply, as Homestead exemption is in a different chapter.)

In this case, the Homestead Exemption is not dependent upon legal residence, nor does its 4% assessment ratio derive from "this item," i.e. § 12-43-220(C). The Homestead 4% ratio derives from § 12-37-252(A) which states that "[n]otwithstanding any other provision of law, property that qualifies for the homestead exemption *pursuant to section 12-37-250*" is entitled to a 4% assessment ratio (emphasis added). There is no such similar cross-reference in any of the homestead exemption statutes to IRC § 280A(g).

In addition, both *Tolpa v. Beaufort County Assessor*, 08-ALJ-17-0088-CC and *Ford v. Beaufort County Assessor, supra* make clear that the purpose of the fourteen day rule contained in (c)(7) is to modify (or provide limited relief) to the no "rented . . . residences" sentence contained in § 12-43-220(c)(1). This sentence states:

> *If this property has located on it any* rented mobile homes or *residences which are rented* or any business for profit, this four percent value does not apply to those businesses or rental properties. (emp. added).

As the Court noted in *Tolpa, supra*, "Section 12-43-220(c)(7), *supra*, was added as an amendment in 2005 after the parent subsection was enacted in 2002. The obvious intent of the amendment was to prevent the strict disqualification by rental in (c)(1) . . . the 4% assessment to taxpayers who may have occasion to rent their legal residences for 14 days or less in the tax year in question." By contrast none of the multiple Homestead Exemption statutes contain this no "rented . . . residences" language. In summary, § 12-43-220(c)(1) relates exclusively to primary residences (for persons under the age of 65). It has no application to the Homestead exemption.

The DOR publication, South Carolina Property Tax (2013 ed.) discusses legal residences in section 217. The publication discusses Homestead Exemption in section 619. Section 217

notes that "a residence rented for more than 14 days during the tax year is disqualified." (*Id.* At pg. 8) Section 619 makes no reference to the 14 day rule or to section 12-43-220(c)(7)

In addition, the requirements for the Homestead exemption are uniquely repeated in four separate places Art. X, § 3(i); § 12-37-220(9); § 12-37-250; and § 12-37-290. (I say "uniquely" in that there is no other state tax incentive or exemption which lists or repeats the same qualifications in four separate places in Title 12.) None of these statutes or the Constitutional provision contain a fourteen day rule nor do they cross-reference the rule.

S.C. Code Ann. § 12-37-252(B) does refer to § 12-43-220(c) in two places, but neither reference hinges the applicability of the homestead exemption on whether the taxpayer qualifies for the primary residence ratio. In fact, the section relates only to the availability of a refund claim—not to eligibility for the exemption. According to that section:

> (B) When a person qualifies for a refund pursuant to Sections 12-60-2560 and 12-43-220(c) for prior years' eligibility for the four percent owner-occupied residential assessment ratio, the person also may be certified for a homestead tax exemption pursuant to Section 12-37-250. The refund does not extend beyond the immediate preceding tax year....
>
> ...
>
> (C) Notwithstanding any other provision of law, if a deceased taxpayer failed to claim the assessment ratio allowed pursuant to Section 12-43-220(c) or the exemption allowed pursuant to Section 12-57-250, or both, before the date of the taxpayer's death, then the personal representative of the deceased taxpayer's estate is deemed the agent of the deceased taxpayer for purposes of the applications required pursuant to these sections and any claim for refund arising pursuant to resulting overpayments.

Moreover, if the General Assembly had sought to require that homestead exemptions meet the requirements contained in section 12-43-220(c), then it would have used the mechanism it has used elsewhere. For example, in Chapter 6 of Title 12, when the General Assembly seeks to limit the use of credits to legal residences that qualify under the primary residence statute (i.e., 12-43-220(c)), it uses the term "legal residence pursuant to Section 12-43-220(c)" or "legal

residence that qualifies under Section 12-43-220(C)." *See, e.g.*, 12-6-3660(A) (limiting a credit for retrofitting taxpayer's legal residence to owners properties that qualify under 12-43-220(C)); 12-6-3665(A) (limiting credit for state sales tax paid on purchases used to retrofit taxpayer's legal residence to owners of properties that qualify under 12-43-220(C)); 12-6-3670 (limiting credit for property insurance premium payments to owners of properties that qualify under 12-43-220(C)).

It makes no more sense to require a person otherwise eligible for the Homestead exemption to also qualify for the primary residence statute than it does to say a person cannot qualify for the primary residence statute unless he or she also qualifies for the Homestead exemption (age 65 or older).

B. Section 12-43-220(c)(2)(i)

The remainder of Respondent's argument is based upon a reading of the anti-December 31st no proration statute, § 12-43-220(c)(2)(i). By way of background, property taxes are generally not prorated in South Carolina. *See* South Carolina Property Tax Manual, Part IV, § 310.1 ("Numerous opinions of the South Carolina Attorney General have stated that there is no proration when more than one person owns the property during the year.") The DOR or the assessor takes a "snapshot" of the property on December 31st of the prior year and taxes are imposed on the value and usage of the property on that date for the entire following year regardless of subsequent change of usage or value, *e.g.*, *Benson Investments, LP v. Lexington County Assessor*, 11-ALJ-17-0518 (2012) ("The taxable status of real property for a given year is to be determined as on December 31 of the proceeding tax year, S.C. Code § 12-337-900; *Atkinson Dredging Co. v. Thomas*, 226 S.C. 361, 223 S.E. 2d 592 (1976).") The Supreme Court described the issue in *Atkinson Dredging Co. v. Thomas*, 266 S.C. 361, 369-70, 223 S.E.2d 592, 596 (1976) as follows:

> If a Charleston taxpayer had bought an automobile on Christmas Day, 1974, and that automobile had been totally destroyed on New Year's Day, he would, none the less, be liable to pay property tax for the entire year 1975. On the other hand, if he had bought an automobile on January 2, 1975, he would owe no personal property tax on that for the year 1975. In an ideal state, it would probably be well to levy the personal property on a daily basis. However, this would be an administrative impossibility. Under our taxing system, there have always been inequalities and inequities resulting from the fact that the tax for an entire year is contingent . . . on the 31st day of December next preceding the tax year in question.

So, a $600,000 commercial building which is owned by a law firm on December 31, 2012 is taxed at a 6% assessment ratio on a value of $600,000 for all of 2013 notwithstanding that the YMCA or other exempt entity purchases it on July 1, 2013. In such a case, the exemption would not start until 2014.

This exact issue was very recently before the Court in *Hampton Friends of the Arts v. Department of Revenue*, 401 S.C. 372, 737 S.E.2d 628 (2013). Hampton Friends of the Arts purchased taxable property in March 2008. "It is undisputed that prior to Appellant's purchase, the property was subject to property taxes on December 31, 2007." *Id.* at 374, 737 S.E.2d at 629. The Appellant was granted an exemption for the property from the DOR for 2009 property taxes and subsequent years. The DOR denied the exemption for 2008, and Hampton appealed the 2008 determination. The Supreme Court upheld the ALC's determination that the property was not exempt in 2008, stating: "...[Hampton] avers that, because it acquired the property prior to the tax levy for the 2008 tax year, the property became exempt and no tax is owed. We disagree, for the law is clear that property tax liability is determined as of December 31st of the preceding tax year, regardless of the subsequent transfer to an exempt corporation or when the tax is actually levied." *Id.* at 375, 737 S.E.2d at 629. The Supreme Court concluded:

> Pursuant to settled law, the 2008 tax status of the Hampton County property was determined on December 31, 2007. Because the property was subject to property taxes as of December 31, 2007, the property is subject to 2008 property taxes.

Id. at 376, 737 S.E.2d at 630.

All § 12-43-220(c)(2)(i) does is reverse this December 31st no proration rule where property is purchased by someone entitled to the primary residence or Homestead exemption. It states:

> To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address *for some period* during the applicable tax year. A residence which has been qualified as a legal residence *for any part of the year* is entitled to the four percent assessment ratio provided in this item *for the entire year*, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 *for the entire year*, and for the homestead exemption under Section 12-37-250, if otherwise eligible, *for the entire year*. (Emp. added.)

This section merely authorizes the 4% assessment ratio for primary residences as well as the homestead exemption "for the entire year" in order to overrule the normal December 31st no-proration rule. Stated another way, a person over the age of 65 who buys a residence which was taxed as a second home (*i.e.*, 6%) on July 1, 2013 is entitled under the statute to the 4% for all of 2013. This subsection (c)(2)(i) was added by the General Assembly in 1999 in Action 100 (H.B. 3696). The Act Title makes this clear: "To amend Section 12-43-220, as amended, relating to classification and the applicable assessment ratio of property for purposes of the property tax, *so as to provide that owner-occupied residential property receiving the four percent assessment ratio retains that assessment ratio*, the residential exemption from school operating millage, *and the Homestead exemption, if applicable, for the entire year in which the ownership or use of such property changes* and to make conforming amendments." (Emp. added.)

Respondent vigorously argues that § 12-43-220(c)(2)(i) imposes the 14 day rule contained in § 12-43-220(c)(7) on homestead exemptions because of the cross-reference to Homestead exemptions contained in it. But that is not what the section states. It first states that "[a] residence which has been qualified as a legal residence for any part of the year is entitled to the 4% assessment ratio *provided in this item* for the entire year . . . ." "This item" refers to § 12-43-220(c). The 4% assessment ratio for homestead exemptions is found in § 12-37-252(A).

Section 12-43-220(c)(i) goes on to cross-reference the homestead exemption as follows: "and for the homestead exemption *under § 12-37-250*, if otherwise eligible, for the entire year." As previously stated the 4% assessment ratio is not found in § 12-37-250 – but rather in § 12-37-252(A). Section 12-37-250 provides the requirements to qualify for the Homestead Exemption.

Alternatively and notwithstanding that the plain language of the homestead exemption compels the conclusion that Petitioner is entitled to the exemption, the ambiguity of the statutory regime should be resolved in favor of the taxpayer. As the Supreme Court recently stated in *Media General Communications, Inc. v. Department of Revenue*, 388 S.C. 138, 694 S.E.2d 525 (2010):

> "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." "The determination of legislative intent is a matter of law." "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." The best evidence of intent is in the statute itself: "What legislature says in the text of the statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature."

388 S.C. at 147-48, 694 S.E.2d at 529-30 (citations omitted).

In the context of a tax statute, it is a settled rule that ambiguities are resolved "against the government and in favor of the taxpayer." *See Hadden v. S.C. Tax Comm'n*, 183 S.C. 38, 46-47,

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

Admittedly, the general rule is that tax credits and exemptions are a matter of legislative grace and are strictly construed against the taxpayer. *M. Lowenstein & Sons, Inc. v. S.C. Tax Comm'n*, 277 S.C. 561, 290 S.E.2d 812 (1982). However, as the Supreme Court recently stated in *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011):

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

395 S.C. at 74-5, 716 S.E.2d at 881 (*citing State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008)). There is no absurd result with respect to the literal application of the statute's plain language and use of the statutorily defined terms utilized within the homestead exemption.

IV. Constitutional Limitation on Change of Assessment Ratios

One other major roadblock lies in the County's way to impose the 14 day rule so as override the 4% assessment ratio contained in § 12-37-252(A). Subsection (7) was added to § 12-43-220(c) in 2005 Act No. 145. The Act's legislative history can be seen in the House and Senate Journals for 2005. According to the legislative history, Act 145 did not receive a two-

thirds readings in either House. Art. X, section 2(d) provides that the General Assembly may change the assessment ratios set forth in Section 1, but only with the approval of at least two-thirds of the membership of each house. Consequently Act No. 145 may not serve to provide Beaufort County with the authority to impose a 6% assessment ratio on Homestead exemptions which otherwise quality.

ORDER

Accordingly, based on the foregoing reasons, I find that the Beaufort County's application of the 6% tax assessment ratio to Petitioner's legal residence for the tax year of 2011 and subsequent years is hereby **DENIED.**

AND IT IS SO ORDERED.

John D. McLeod, Judge
Administrative Law Court

August __, 2014
Columbia, SC

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Frank R. Mead, III, Petitioner, vs. Beaufort County Assessor, Respondent.	)	Docket No. 13-ALJ-17-0585-CC PROOF OF SERVICE

I, Mary Ann James, do hereby certify and affirm that on this day I have served the person listed below with a copy of the documents specified below by mailing a copy of the same by First Class United States Mail, postage prepaid, to the following address:

Addressed To: Stephen P. Hughes
Post Office Box 40
Beaufort, South Carolina 29901-0040

Enclosures: Proposed Order

Columbia, South Carolina
Dated: July 14, 2014

Respectfully submitted,

Mary Ann James
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
P.O. Drawer 2426
Columbia, SC 29202
Telephone: (803) 771-8900
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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

FRANK R. MEAD, III, Petitioner, vs. BEAUFORT COUNTY ASSESSOR, Respondent.	)	DOCKET NO: 13-ALJ-17-0585-CC ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF THE RESPONDENT, BEAUFORT COUNTY ASSESSOR

APPEARANCES: For the Petitioner: Burnet Maybank, Esq.
For the Respondent: Stephen P. Hughes, Esq.

STATEMENT OF THE CASE

By his demand for a contested case hearing, the taxpayer petitioner, Frank R. Mead, III, has challenged the denial, by respondent, Beaufort County Assessor, of the homestead exemption, for the year 2011, on petitioner's property on Hilton Head Island [redacted] The Assessor, in denying the relief sought by petitioner, determined the subject property failed to satisfy the legislatively-imposed criteria governing the availability of the homestead exemption.

This matter now is before the South Carolina Administrative Law Court prior to a contested case hearing pursuant to S.C. Code Ann. §12-60-2540, on cross Motions for Summary Judgment.

This Court held a hearing on the cross motions on June 25, 2014, at the Administrative Law Court.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion, this Court makes the following findings of fact by a preponderance of the evidence:

Taxpayer owns a home on Hilton Head Island in Beaufort County. This property is the Taxpayer's residence and domicile. Taxpayer has lived in South Carolina for at least a year and is over the age of sixty-five. For the tax year 2011, taxpayer rented his home for no fewer than 138 days, and during that period rented and lived in another home.

CONCLUSIONS OF LAW

Pursuant to Rule 68, SCALC, this Court may allow use of the South Carolina Rules of Civil Procedure to resolve issues not addressed by the rules of the Administrative Law Court (ALC). Under Rule 56, SCRCP, judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.

ISSUE

The sole legal issue before the Court is whether the subject property satisfies the legislatively imposed criteria necessary to qualify for the homestead exemption for the tax year 2011.

Therefore, the question is one of statutory interpretation.

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. Chem-Nuclear Systems, LLC v. S.C. Bd. of Health

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

A statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. Duvall v. S.C. Budget and Control Bd., 377 S.C. 36, 659 S.E.2d 125 (2008). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of particular words." Floyd vs. Nationwide Mut.Ins. Co., 367 SC 253, 626 S.E. 2d 6 (2006). Additionally, statutes in apparent conflict should, if possible, be construed to allow both to stand and to give effect to each. National Adver.Co., Inc. vs. Mt. Pleasant Bd. of Adjustment, 312 S.C. 397, 440 S.E.2d 875 (1994). Equally importantly, all statutes are presumed constitutional and will, if possible, be construed so as to render them valid. Burriss vs. Anderson County Board of Education, 369 S.C. 443, 633 S.E. 2d 482 (2006).

The preceding rules must inform this Court in the resolution of this matter.

Article X §1 of the South Carolina Constitution authorizes the general assembly to provide for the ad valorem taxation, by the State or any of its subdivisions, of all real and personal property. Article X §1 then sets forth

various classifications of real and personal property, and mandates that "...the assessment of all property shall be equal and uniform..." in those classifications. Article X §1(3) requires that "the legal residence and not more than 5 acres contiguous thereto shall be taxed on an assessment equal to 4% of the fair market value of such property." Article X §1(5) requires that "all other real property not herein provided for shall be taxed on an assessment equal to 6% of the fair market value of such property".

Article X, §3(i) of the South Carolina Constitution establishes "...a homestead exemption for persons 65 years of age and older, for persons permanently and totally disabled, and for blind persons...under conditions prescribed by the General Assembly by general law...."

However, Article X, §3(i) is not a blanket grant, but rather authorizes the homestead exemption only under such "conditions" as may be "prescribed" by the General Assembly. Moreover, S.C. Code Ann. §12-37-220(A)(9) (Supp.2013), in initially recognizing the homestead exemption, mirrors the language of the Constitution, and grants the exemption only "under conditions prescribed" by the General Assembly.

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

homestead exemption, must not only be the **legal residence** of the taxpayer, but must also satisfy all other requirements imposed by relevant statutes.

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

The taxpayer has argued that the availability of the homestead exemption is governed exclusively by the provisions of §12-37-220, §12-37-250, and §12-37-252. The taxpayer has argued further that one who purports to satisfy the limited criteria set forth within those statutes is then qualified for the homestead exemption, as well as a 4% residential assessment ratio.

Contrary to the taxpayer's position, however, Chapter 37 is not the sole determinant of the availability of the homestead exemption. The exemption is addressed not only within the referenced statutes in Chapter 37 of the code, but is also addressed, and additional requirements imposed, by the specific provisions of §12-43-220(c), in Chapter 43 of the code. Both chapters constitute parts of an overall statutory scheme encompassing taxation of real property, and both set forth specific provisions governing the availability of the homestead exemption. Any determination, therefore, of the eligibility of the subject property for the requested homestead exemption is necessarily dependent upon an appropriate interpretation of the relevant provisions of each of these chapters.

It is well settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together if possible to produce a single harmonious result. Joyner ex rel. Rivas vs. Rivas, 342 S.C. 102, 536 S.E. 2d

372 (2000). Thus any analysis of the availability of the homestead exemption does not end with consideration merely of §12-37-220, §12-37-250, and §12-37-252. Equal consideration must also be given to §12-43-220(c), which specifically imposes additional conditions and restrictions upon taxpayers seeking eligibility for the homestead exemption.

§12-43-220(c)(2)(i) provides:

> To **qualify** for the special property tax assessment ratio allowed by this item, [the preferential 4% residential assessment ratio available under section 12-43-220(c)(1)] the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. **A residence which has been qualified as a legal residence for any part of the year is entitled to the 4% assessment ratio provided in this item for the entire year**, the exemption from property taxes levied for school operations pursuant to §12-37-251 for the entire year, **and for the homestead exemption under §12-37-250, if otherwise eligible, for the entire year.**

(emphasis added).

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

Thus, by the specific language of §12-43-220(c)(2)(i), **qualification** for the preferential residential assessment ratio provided by §12-43-220(c) is a prerequisite to eligibility for the homestead exemption under §12-37-250.

The question, therefore, becomes, initially, whether or not the Petitioner's real property, rented for no fewer than 138 days during the relevant tax year, satisfies the statutory criteria for eligibility for the 4% residential assessment ratio.

The South Carolina Court of Appeals, in Ford vs. Beaufort County Assessor, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012) (*cert. denied*) specifically agreed that, in the absence of any statutory exemption, rental of an owner-occupied residence during the tax year would **disqualify** the residence for the preferential 4% residential assessment authorized by §12-43-220(c). The Court further agreed that the sole statutory exception to the rental disqualification is the limited 14 day rental allowed by §12-43-220(c)(7). Thus, an owner-occupied residence, rented for more than 14 days during the relevant year (as is the case with the taxpayer's property here) is not **qualified** for the "preferred assessment ratio" allowed by §12-43-220(c).

As demonstrated hereinabove, per the specific provisions of §12-43-220(c)(2)(i), property does not **qualify** for the homestead exemption unless and until the property is first **qualified as a legal residence** under §12-43-220(c)1). The taxpayer's subject property here, which was rented for more than 14 days during the relevant tax year, does not come within the limited exception (under §12-43-220(c)(7)), which would otherwise allow the residential assessment notwithstanding rental of the property. Thus, the taxpayer's property (1) fails to satisfy the requirements for residential assessment as imposed by §12-43-

220(c), (2) fails to satisfy the requirements for the homestead exemption, as imposed by §12-43-220(c)(2)(i), and, therefore, (3) simply does not qualify for either the homestead exemption or the residential assessment.

The taxpayer has argued that the homestead exemption, addressed at §12-37-220, §12-37-250, and §12-37-252, is wholly separate and distinct from the residential assessment ratio addressed within §12-43-220(c). He has further argued that a "dwelling place", which satisfies the limited requirements set forth in §12-37-250, is rendered qualified for the homestead exemption, independent of any requirements imposed by other provisions of Title 12 (specifically including the requirements as set forth within §12-43-220(c)(2)(i)). The taxpayer has then argued that property which satisfies only the criteria imposed by §12-37-250 is entitled, under §12-37-252, to the 4% residential assessment without regard to the requirements established in section 12-43-220(c). The taxpayer's arguments, however, are premised upon an erroneous reading and application of the statutes, and must be rejected by this Court.

As noted hereinabove, chapters 37 and 43 are parts of a broader statutory scheme relating to taxation of real property, and must, consequently, be read as a whole. In applying the rules of statutory construction-including the mandates (1) that statutes be considered as a whole, (2) that statutes in apparent conflict should be construed to allow both to stand and to give effect to each, and (3) that statutes be construed, if possible, so as to render them valid – this court must conclude that the requirements for eligibility for the homestead exemption include not only those set forth within §12-37-250, but also those specifically set forth within §12-43-220(c)(2)(i).

The taxpayer contends that the homestead exemption, addressed primarily in Chapter 37, and the preferential residential assessment, addressed primarily in Chapter 43, are "...two ships in the night", and that each is thus interpreted independently of the other. The Court notes, however, that both the homestead exemption, addressed primarily in §12-37-250, and the residential assessment ratio, addressed primarily in §12-43-220(c), are available exclusively to the "**legal residence**" of the taxpayer. Moreover, notwithstanding the arguments of the taxpayer, Chapter 37 contains numerous references to the provisions of Chapter 43, including specific references, within §12-37-252(B) and (C), to §12-43-220(c). Similarly, Chapter 43 contains multiple references to the provisions of Chapter 37, including, most tellingly, §12-43-220(c)(2)(i), which specifically references the homestead exemption statute, §12-37-250, at issue here. Moreover, as emphasized hereinabove, §12-43-220(c)(2)(1), by specific reference to §12-37-250, imposes additional requirements for eligibility for the homestead exemption. Inasmuch as both chapters are parts of an overall statutory scheme addressing assessment and taxation of real property, and in further view of the specific reference within §12-43-220(c)(2)(i) to the homestead exemption under §12-37-250, it is clear that the statutes must be interpreted in tandem, in furtherance of the legislative ends.

As interpreted by the taxpayer, §12-37-252 would allow residential assessment of any "legal residence" which satisfies the limited criteria imposed by §12-37-250. Such an interpretation does not, however, withstand appropriate scrutiny.

Section 12-37-252, by its specific provisions, authorizes the 4% residential assessment ratio **only** for a legal residence which in fact "**qualifies**" for the homestead exemption pursuant to §12-37-250. As demonstrated hereinabove, a legal residence does **not** in fact **qualify** for the homestead exemption under §12-37-250 unless and until that property satisfies all legislatively imposed criteria, including the requirements set forth in §12-43-220(c)(2)(i). A residence which has, during the relevant tax year, been rented for a period in excess of 14 days (and which thus is not within the limited exception to the rental disqualification), simply does not satisfy the requirements imposed by §12-43-220(c)(2)(i). Correspondingly, inasmuch as the requirements of §12-43-220(c)(2)(i) are specifically applicable to eligibility under §12-37-250, the subject property (rented for a period in excess of 138 during the relevant tax year), simply **does not** "**qualify**" for the homestead exemption under §12-37-250, and is thus not eligible for either that exemption, or for the preferential residential assessment.

The taxpayer has further argued that the Assessor's contention (that the homestead exemption is available only to those properties which also satisfy the statutory criteria for residential assessment, as set forth by §12-43-220), would render the provisions of §12-37-252(A) meaningless because property qualifying for the homestead exemption would, by definition, qualify for the 4% residential assessment, making unnecessary any further legislative statement.

Notwithstanding the contentions of the taxpayer, the Court finds that the Assessor's arguments are completely consistent with §12-37-252(A).

The Court agrees that, under the arguments asserted by the Assessor, property, to qualify for the homestead exemption available under §12-37-250,

must first satisfy the criteria for the 4% residential assessment under §12-43-220(c)(1). The provisions of §12-37-252(A), however, when correctly interpreted, simply preclude any tax authority from requiring a taxpayer to elect between the homestead exemption and the residential assessment ratio, and guarantee that the taxpayer, who satisfies all statutory criteria for the homestead exemption (including those criteria imposed under §12-37-250 **and** under §12-43-220(c)(2)(1), and who, therefore, by definition, satisfies the requirements for the residential assessment ratio) will, in fact, receive the benefits of **both** the homestead exemption and the preferential residential assessment ratio. Section 12-37-252(A) thus serves as a definitive legislative statement that property, which in fact qualifies for both the homestead exemption and the residential assessment ratio, will be entitled to the benefit of both.

The taxpayer argues further that the 4% assessment ratio purportedly granted by §12-37-252(A) is not the residential assessment ratio authorized by §12-43-220(c), but instead is a separate assessment ratio that applies specifically to homestead exemption residences. This conclusion is erroneous. As noted hereinabove, the Constitution sets forth the classifications for ad valorem taxation and specifically enumerates a legal residence classification and accompanying four percent assessment ratio. See Art. X §1(3). The Constitution also provides that all other real property, not specifically provided, for should be taxed at an assessment equal to six percent. Article X §1(5). Contrary to the assertion of the taxpayer, there is no separate four percent assessment ratio authorized by the Constitution or by enactment of the General Assembly. The only four percent assessment ratio available to real property

originates in Article X §1 of the Constitution and is further enumerated by enactment of the General Assembly in Section 12-43-220(c). There is no basis, either under the Constitution or under Title 12 to support the taxpayer's contention that section 12-37-252 provides a different four percent residential assessment to properties that qualify for the homestead exemption solely under section 12-37-250.

The Constitution and accompanying legislative enactments make clear that there is only one four percent residential assessment ratio for legal residences. Accordingly, because there is only one four percent assessment available to legal residences, logic, coupled with the rules of statutory construction and the obvious intent of the legislature, dictates that the rules specifically created by the General Assembly for obtaining the four percent residential assessment ratio under section 12-43-220 also apply to a taxpayer seeking the four percent that accompanies the homestead exemption. This conclusion is further bolstered by constitutional language providing that the assessment of all property "shall be equal and uniform" to the enumerated classifications. Article X §1(1). Allowing a taxpayer a four percent residential assessment by simply meeting the requirements of section 12-37-250 without regard to the statutory confines of the residential assessment would fly in the face of the constitutional mandate that property assessment be equal and uniform. Therefore, as discussed above, it is abundantly clear that not only are the homestead exemption and the four percent assessment linked, but in order to **qualify** for the homestead exemption, one must first meet the requirements of

both 12-37-250 and 12-43-220(c), which as noted hereinabove includes an explicit prohibition against rental, subject to the fourteen day rental exception.

The arguments of the taxpayer, which would grant the 4% residential assessment to property which fails to satisfy the legislatively imposed criteria for eligibility, would render §12-37-252(A) violative of the provisions of Article X §1(5), because, under those arguments, the general assembly would have created a separate classification not provided for and thus contrary to the enumerated classifications in the Constitution and the constitutional mandate that property assessments be equal and uniform.

In addition, the taxpayer's arguments, if taken to their logical conclusion, would allow a homeowner (upon satisfaction of the limited criteria set forth in §12-37-250) to rent his residence for 364 days each year, without regard to the requirements of the 4% residential assessment ratio in section 12-43-220(c). By contrast, a taxpayer failing to meet the requirements under §12-37-250 (as interpreted by the taxpayer), although the owner of an identical residence, would not be eligible for the 4% residential assessment ratio, if his residence were in fact rented for a period in excess of 14 days. Such circumstances, which are the logical conclusion of the taxpayer's arguments, border on the absurd, are contrary to the enumerations of the Constitution, are inconsistent with the specific terms of the relevant statutes, and are incompatible with the policy goals which appear, to the Court, to be inherent in the referenced statutes.

Consistent with the above-cited rules of construction, the Court finds taxpayer's arguments without merit and declines to adopt such an interpretation, which would render the statute invalid.

The Court acknowledges taxpayer's contention that §12-43-220(c)(2)(i) operates as an exception to the general rule against pro-rating tax assessments. However, this Court finds that section 12-43-220(c)(2)(i) also encompasses a broader purpose. When Chapters 37 and 43 are read together, the homestead exemption and the four percent assessment are clearly and inextricably linked by direct statutory references to one another. As noted, section 12-43-220(c)(2)(i) expressly provides that a residence which has been "qualified as a legal residence" is entitled to the four percent assessment ratio and the homestead exemption under §12-37-250, if otherwise eligible. This section imposes the requirement that in order to receive the homestead exemption, a property must first **qualify** as a legal residence pursuant to §12-43-220(c)(2)(i). This conclusion is supported not only by the clear language of §12-43-220(c), but also the qualifying language for the homestead exemption in Chapter 37 and the clear language of the Constitution.

The Court also recognizes that the arguments of the Assessor are supported by substantial public policy considerations. A requirement that a taxpayer, seeking the homestead exemption for his real property, must first satisfy the criteria for eligibility for the 4% residential assessment ratio under §12-43-220(c), is not only consistent with the specific provisions of the statutes, but also encourages owner occupancy of homes. It appears to the Court that such owner occupancy contributes to a sense of community, maintenance of home values, and an overall enhancement of the general welfare.

Furthermore, the South Carolina appellate courts have provided specific rules for construction of statutes granting exemptions and/or deductions from

taxation. Those rules, which require strict construction of such statutes against the taxpayer, are plainly applicable to the exemption provided by section 12-37-250, and equally applicable to section 12-43-220, which the South Carolina Supreme Court has recently addressed as an exemption statute. CFRE, LLC, 395 S.C. 67, 716 S.E. 2nd 877.

These statutory provisions at issue here clearly impose specific requirements for eligibility for the homestead exemption, including the requirement that such property must also satisfy those criteria for eligibility for the preferential residential assessment ratio under section 12-43-220(c). However, even in the absence of such legislative clarity, the provisions set forth within the legislative scheme are, at the very least, ambiguous. Under established rules of construction, ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer. The Supreme Court, in State vs. Life Ins. Co. of Georgia, 254 S.C. 286, 175 S.E.2d 203 (1970), recited the "...well settled rule that constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming exemption; he must clearly bring himself within the constitutional or statutory language upon which he relies." (Internal quotes omitted).

Inasmuch as the Supreme Court requires ambiguities within statutes affording benefits as a matter of legislative grace be strictly construed against the taxpayer, any purported ambiguity found within the provisions of these statutes must be resolved against the taxpayer, and in favor of the Assessor.

CONCLUSION

Therefore, the Court finds as a matter of law that a property seeking to obtain the homestead exemption must satisfy not only the requirements set forth in §12-37-250, but also these requirements as specified in §12-43-220(c)(2)(i). Section 12-43-220(c)(2)(i) unambiguously requires that only those properties qualified as legal residences under §12-43-220(c)(1) are further eligible for the homestead exemption. This additional criterion precludes a taxpayer from receiving the homestead exemption unless the property first qualifies as a legal residence by meeting the requirements for the 4% preferential assessment ratio, which, as discussed in Ford, includes the prohibition rental (subject to the limited 14 day rental exception set forth in §12-43-220(c)(7)).

By:_____
John D. McLeod
Judge, Administrative Law Court

Columbia, South Carolina

August _____, 2014.

Homestead Exemption

'he Constitution authorizes the Homestead Exemption:

.C. Constitution, Article X §3(i) –

There shall be exempt from ad valorem taxation...(i) a homestead exemption for ersons 65 years of age and older, for persons permanently and totally disabled and for blind ersons in the amount of $10,000.00 of the fair market value of the homestead under onditions prescribed by the general assembly by general law, provided, that the amount may e increased by the general assembly by general law, passed by a majority vote by both ouses;..."

.C Code Ann. §12-37-220(A)(9) –

"Pursuant to the provisions of §3, Article X of the South Carolina Constitution and ubject to the provisions of §12-4-720, there is exempt from ad valorem taxation...(9) a omestead exemption for persons 65 years of age and older, for persons permanently and otally disabled for blind persons in an amount to be determined by the general assembly of ie fair market value of the homestead under conditions prescribed by the general assembly y general law;"

.C. Code Ann. §12-37-250 –

A)(1) "the first $50,000.00 of the fair market value of the dwelling of a person is xempt from county, municipal, school, and special assessment real estate property axes when the person:

Has been a resident of this State for at least one (1) year and has reached the age of 65 years on or before December 31st;

ii) has been classified as totally and permanently disabled by a state or Federal gency having the function of classifying persons; or

iii) is legally blind as defined in §43-25-20, preceding the tax year in which the xemption is claimed and holds complete fee simply title or a life estate to the welling place..."

A)(5) "'dwelling place' means the permanent home and legal resident of the applicant."

.C. Code Ann. §12-37-252(A) –

Notwithstanding any other provision of law, property that qualifies for the homestead xemption pursuant to §12-37-250 is classified and taxed as residential on an assessment qual to 4% of the property's fair market value. Any agriculturally classified lands that are art of the homestead must be taxed on an assessment equal to 4% of the land's value for gricultural purposes. The county auditor shall notify the county assessor of the property so ualifying and no further application is required for such classification and taxation."

4% Residential Assessment

The Constitution authorizes a 4% residential assessment ratio:

S.C. Constitution, Article X §1 –

"The general assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property. The assessment of all property shall be equal in uniform in the following classifications:

(3) The legal residence and not more than 5 acres contiguous thereto shall be taxed on an assessment equal to 4% of the fair market value of such property.

(5) All other real property not herein provided for shall be taxed on an assessment equal to 6% of the fair market value of such property."

S.C. Code Ann. § 12-43-220(c)(1)-

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

If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties. For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

S.C. Code Ann. §12-43-220(c)(2)(i) –

To qualify for the special property tax assessment ratio allowed by this item, the owner – occupant must have actually owned and occupied the residence as his legal residence and been domiciled with that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the 4% assessment ratio provided in this item for the entire year...and for the homestead exemption under §12-37-250, if otherwise eligible, for the entire year."

Ford vs. Beaufort County Assessor, 398, S.C. 508, 730 S.E. 2d 335 (Ct. App. 2012) (Cert. denied).

The Homestead Exemption authorized by the Constitution and provided for in § 12-37-250 is only authorized for a dwelling place or legal residence.

§ 12-43-220(c)(1) defines legal residence and § 12-43-220(c)(2)(i) states that a legal residence is entitled to the 4% assessment ratio *and* the Homestead Exemption, if otherwise eligible, by qualifying for the 4% assessment by meeting the requirements and conditions for the 4% ratio in § 12-43-220(c)

§ 12-37-252 provides that property that *qualifies* for the homestead exemption is taxed on an assessment equal to 4%.

The Constitution, under Article X §1, authorizes only one 4% residential assessment ratio and provides that properties without a specific exemption must be taxed at 6%

S.C. Code Ann. § 12-43-220(c) is the only statutory embodiment of the 4% residential assessment ratio. Therefore, in order for any property to be eligible for the 4% ratio, the requirements under this section must be met. Accordingly, under §12-37-252, the requirements for eligibility for the 4% ratio apply to the Homestead Exemption and are a prerequisite to edibility for the Homestead Exemption.

§ 12-43-220(c)(2)(i) provides that property does not qualify for the Homestead Exemption until the property is first qualified as a legal residence under the requirements of § 12-43-220(c).

§ 12-43-220(c)(1) and (c)(7) as interpreted by Ford vs. Beaufort County Assessor, provides that one cannot receive the 4% residential assessment if the property is rented for more than fifteen days. Therefore, taxpayer's property is ineligible for both the Homestead Exemption and the 4% ratio.

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

FRANK R. MEAD, III, Petitioner, vs. BEAUFORT COUNTY ASSESSOR, Respondent.	)	DOCKET NO: 13-ALJ-17-0585-CC CERTIFICATE OF MAILING

The undersigned counsel hereby certifies that he has served the foregoing proposed Order Granting Summary Judgment in Favor of the Respondent, Beaufort County Assessor and Flow Reference Table and Flow Chart upon all counsel of record by affixing same with proper postage and placing same with the United States Postal Service on the 14th day of August, 2014 addressed to the following:

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STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

COPY

FRANK R. MEAD, III, Petitioner, vs. BEAUFORT COUNTY ASSESSOR, Respondent.	)	DOCKET NO: 13-ALJ-17-0585-CC MOTION FOR RECONSIDERATION

Respondent Beaufort County Assessor hereby moves this Honorable Court pursuant to Rule 29(D), RPALC and Rule 59, SCRCP to reconsider and alter or amend its Final Order and Decision ("Order") filed on August 19, 2014.

INTRODUCTION

The Court determined the four percent residential assessment ratio and the Homestead Exemption are wholly divorced from one another and are "two ships in the night." However, the Court has neglected the rules of statutory construction that require that statutes be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect. Duvall v. S.C. Budget and Control Bd., 377 S.C. 36, 659 S.E.2d 125 (2008). Respondent respectfully submits that the Homestead Exemption in Chapter 37 and the Four Percent Residential Assessment ratio are not "two ships in the night," but are part of the same general statutory law dealing with taxation of real property that **must** be construed together.

FILED

AUG 2 8 2014

SC ADMIN. LAW COURT

ARGUMENTS

I. **The Court failed to consider that Chapter 37 is not the sole determinant of Homestead Exemption availability and that §12-43-220(c) imposes an additional requirement for qualification of the Homestead Exemption.**

The Order states that availability of the homestead exemption is governed exclusively by the provisions of §12-37-220, §12-37-250, and §12-37-252. The Order further provides that one who purports to satisfy the limited criteria set forth within those statutes is then qualified for the homestead exemption, as well as a 4% residential assessment ratio. Contrary to the Court's conclusion, however, Chapter 37 is not the sole determinant of the availability of the homestead exemption. The Order fails to consider that the homestead exemption is addressed not only within the referenced statutes in Chapter 37 of the code, but is also addressed, and additional requirements imposed, by the specific provisions of §12-43-220(c), in Chapter 43 of the code. Both chapters constitute parts of an overall statutory scheme encompassing taxation of real property, and both set forth specific provisions governing the availability of the homestead exemption. Any determination, therefore, of the eligibility of the subject property for the requested homestead exemption is necessarily dependent upon an appropriate interpretation of the relevant provisions of each of these chapters.

It is well settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together if possible to produce a single harmonious result. Joyner ex rel. Rivas vs. Rivas, 342 S.C. 102, 536 S.E. 2d 372 (2000). Thus any analysis of the availability of the homestead exemption does not end with consideration merely of §12-37-220, §12-37-250, and §12-37-

252. Equal consideration must also be given to §12-43-220(c), which specifically imposes additional requirements upon taxpayers seeking eligibility for the homestead exemption.

§12-43-220(c)(2)(i) provides:

> To **qualify** for the special property tax assessment ratio allowed by this item, [the preferential 4% residential assessment ratio available under Section 12-43-220(c)(1)] the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. **A residence which has been qualified as a legal residence for any part of the year is entitled to the 4% assessment ratio provided in this item for the entire year**, the exemption from property taxes levied for school operations pursuant to §12-37-251 for the entire year, **and for the homestead exemption under §12-37-250, if otherwise eligible, for the entire year.**

(emphasis added).

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

Thus, by the specific language of §12-43-220(c)(2)(i), **qualification** for the preferential residential assessment ratio provided by §12-43-220(c) is a prerequisite to eligibility for the homestead exemption under §12-37-250.

Despite the ruling of the Court, Chapter 37 does not stand alone as the only chapter relating to the Homestead Exemption. As noted hereinabove, chapters 37 and 43 are parts of a broader statutory scheme relating to taxation of real property, and must, consequently, be read as a whole. In applying the rules of statutory construction-including the mandates (1) that statutes be considered as a whole, (2) that statutes in apparent conflict should be construed to allow both to stand and to give effect to each, and (3) that statutes be construed, if possible, so as to render them valid – this court must conclude that the requirements for eligibility for the homestead exemption include not only those set forth within §12-37-250, but also those specifically set forth within §12-43-220(c)(2)(i).

Both the homestead exemption, addressed primarily in §12-37-250, and the residential assessment ratio, addressed primarily in §12-43-220(c), are available exclusively to the "legal residence" of the taxpayer. Moreover, notwithstanding the arguments of the taxpayer, Chapter 37 contains numerous references to the provisions of Chapter 43, including specific references, within §12-37-252(B) and (C), to §12-43-220(c). Similarly, Chapter 43 contains multiple references to the provisions of Chapter 37, including, most tellingly, §12-43-220(c)(2)(i), which specifically references the homestead exemption statute, §12-37-250, at issue here. Moreover, as emphasized hereinabove, §12-43-220(c)(2)(1), by specific reference to §12-37-250, imposes additional requirements for eligibility for the homestead exemption. Inasmuch as both chapters are parts of an overall statutory scheme addressing assessment and

taxation of real property, and in further view of the specific reference within §12-43-220(c)(2)(i) to the homestead exemption under §12-37-250, it is clear that the statutes must be interpreted in tandem, in furtherance of the legislative ends.

II. The Court failed to consider that the additional requirement imposed by §12-43-220(c) for qualification of the Homestead Exemption includes compliance with the fourteen day rule, as clarified by the Court of Appeals in the Ford decision.

The South Carolina Court of Appeals, in Ford vs. Beaufort County Assessor, 398 S.C. 508, 730 S.E.2d 335 (Ct. App. 2012) (*cert. denied*) specifically stated that, in the absence of any statutory exemption, rental of an owner-occupied residence during the tax year would **disqualify** the residence for the preferential 4% residential assessment authorized by §12-43-220(c). The Court further agreed that the sole statutory exception to the rental disqualification is the limited 14 day rental allowed by §12-43-220(c)(7). Thus, an owner-occupied residence, rented for more than 14 days during the relevant year (as is the case with the taxpayer's property here) is not **qualified** for the "preferred assessment ratio" allowed by §12-43-220(c).

As demonstrated hereinabove, per the specific provisions of §12-43-220(c)(2)(i), property does not **qualify** for the homestead exemption unless and until the property is first **qualified as a legal residence** under §12-43-220(c)1). The taxpayer's subject property here, which was rented for more than 14 days during the relevant tax year, does not come within the limited exception (under §12-43-220(c)(7)), which would otherwise allow the residential assessment notwithstanding rental of the property. Thus, contrary to this Court's ruling, the taxpayer's property (1) fails to satisfy the requirements for residential assessment

as imposed by §12-43-220(c), (2) fails to satisfy the requirements for the homestead exemption, as imposed by §12-43-220(c)(2)(i), and, therefore, (3) simply does not qualify for either the homestead exemption or the residential assessment.

Furthermore, §12-37-252, by its specific provisions, authorizes the 4% residential assessment ratio **only** for a legal residence which in fact "**qualifies**" for the homestead exemption pursuant to §12-37-250. As demonstrated hereinabove, a legal residence does **not** in fact **qualify** for the homestead exemption under §12-37-250 unless and until that property satisfies all legislatively imposed criteria, including the requirements set forth in §12-43-220(c)(2)(i). A residence which has, during the relevant tax year, been rented for a period in excess of 14 days (and which thus is not within the limited exception to the rental disqualification), simply does not satisfy the requirements imposed by §12-43-220(c)(2)(i). Correspondingly, inasmuch as the requirements of §12-43-220(c)(2)(i) are specifically applicable to eligibility under §12-37-250, the subject property (rented for a period in excess of 138 during the relevant tax year), simply **does not** "**qualify**" for the homestead exemption under §12-37-250, and is thus not eligible for either that exemption, or for the preferential residential assessment.

III. The Court erred in its interpretation of §12-37-252 and the plain language of the statute mandates the Court reconsider its ruling and find in favor of the Assessor.

The Court determined that the Assessor's reading of Chapter 37 and Chapter 43 would render the provisions of §12-37-252(A) meaningless because

property qualifying for the homestead exemption would, by definition, qualify for the 4% residential assessment, making unnecessary any further legislative statement. However, in making that determination, the Court has failed to consider the Assessor's arguments and upon doing so will be compelled to find in the Assessor's favor.

As stated, to qualify for the homestead exemption available under §12-37-250, a real property owner must first satisfy the criteria for the 4% residential assessment under §12-43-220(c)(1). The provisions of §12-37-252(A), however, preclude any taxing authority from requiring a taxpayer to **elect** between the homestead exemption and the residential assessment ratio. These provisions guarantee that the taxpayer, who satisfies all statutory criteria for the homestead exemption (including those criteria imposed under §12-37-250 **and** under §12-43-220(c)(2)(1), and who, therefore, by definition, satisfies the requirements for the residential assessment ratio) will, in fact, receive the benefits of **both** the homestead exemption and the preferential residential assessment ratio. Section 12-37-252(A) thus serves as a definitive legislative statement that property, which in fact qualifies for both the homestead exemption and the residential assessment ratio, will be entitled to the benefit of both.

IV. The Court failed to consider that the 4% Assessment in §12-43-220(c) is the same 4% Assessment authorized under §12-37-252 and any other reading is contrary to the South Carolina Constitution.

The Court has erroneously determined that the 4% ratio purportedly granted by §12-37-252(A) is not the residential assessment ratio authorized by §12-43-220(c), but instead is a separate assessment ratio that applies

specifically to homestead exemption residences. This determination is in error.

The South Carolina Constitution sets forth the classifications for ad valorem taxation and specifically enumerates a legal residence classification and accompanying four percent assessment ratio. See Art. X §1(3). The Constitution also provides that all other real property, not specifically provided, for should be taxed at an assessment equal to six percent. Article X §1(5). Contrary to the ruling of the Court, there is no separate four percent assessment ratio authorized by the Constitution or by enactment of the General Assembly. The only four percent assessment ratio available to real property originates in Article X §1 of the Constitution and is further enumerated by enactment of the General Assembly in §12-43-220(c). There is no basis, either under the Constitution or under Title 12 to support the taxpayer's contention that §12-37-252 provides a different four percent residential assessment to properties that qualify for the homestead exemption solely under §12-37-250.

The Constitution and accompanying legislative enactments make clear that there is only one four percent residential assessment ratio for legal residences. Accordingly, because there is only one four percent assessment available to legal residences, logic, coupled with the rules of statutory construction and the obvious intent of the legislature, dictates that the rules specifically created by the General Assembly for obtaining the four percent residential assessment ratio under §12-43-220 also apply to a taxpayer seeking the four percent ratio that accompanies the homestead exemption. This conclusion is further bolstered by constitutional language providing that the

assessment of all property "shall be equal and uniform" to the enumerated classifications. Article X §1(1). Allowing a taxpayer the four percent residential assessment by simply meeting the requirements of §12-37-250, without regard to the statutory confines of the residential assessment, flies in the face of the constitutional mandate that property assessment must be equal and uniform. Therefore, as discussed above, it is abundantly clear that not only are the homestead exemption and the four percent assessment linked, but in order to **qualify** for the homestead exemption, one must first meet the requirements of both §12-37-250 and §12-43-220(c), which, as noted hereinabove includes an explicit prohibition against rental, subject to the fourteen day rental exception.

This Court's ruling which grants the 4% residential assessment to property which fails to satisfy the legislatively imposed criteria for eligibility, renders §12-37-252(A) violative of the provisions of Article X §1(5), because, under this ruling, the general assembly would have created a separate classification not provided for and thus contrary to the enumerated classifications in the Constitution and the constitutional mandate that property assessments be equal and uniform.

In addition, this Court's Order, allows a homeowner (upon satisfaction of the limited criteria set forth in §12-37-250) to rent his residence for 364 days each year, without regard to the requirements of the 4% residential assessment ratio in §12-43-220(c), in contradiction of the specific legislative mandates against such rentals. By contrast, a taxpayer failing to meet the requirements under §12-37-250 (as interpreted by this Court), although the owner of an identical residence, would not be eligible for the 4% residential assessment ratio,

if his residence were in fact rented for a period in excess of 14 days. Such circumstances, which would be allowed by this Court's current decision, are contrary to the enumerations of the Constitution, inconsistent with the specific terms of the relevant statutes, and are incompatible with the policy goals which are inherent in the referenced statutes.

V. The Court erred in determining that §12-43-220(c)(2)(i) is solely a proration statute; furthermore, the Court failed to consider Respondent's arguments that §12-43-220(c)(2)(i) has a broader purpose.

The Court determined that §12-43-220(c)(2)(i) operates as an exception to the general rule against pro-rating tax assessments. However, the Court failed to consider that §12-43-220(c)(2)(i) also encompasses a broader purpose. When Chapters 37 and 43 are read together, the homestead exemption and the four percent assessment are clearly and inextricably linked by direct statutory references to one another. As noted, §12-43-220(c)(2)(i) expressly provides that a residence which has been "qualified as a legal residence" is entitled to the four percent assessment ratio and the homestead exemption under §12-37-250, if otherwise eligible. This section imposes the requirement that in order to receive the homestead exemption, a property must first **qualify** as a legal residence pursuant to §12-43-220(c)(2)(i). This conclusion is supported not only by the clear language of §12-43-220(c), but also the qualifying language for the homestead exemption in Chapter 37 and the clear language of the Constitution.

VI. The Court failed to consider Respondent's Policy Arguments before making its ruling.

In reaching its conclusion, the Court clearly failed to consider the policy arguments in favor of the Assessor's interpretation of Chapters 37 and 43. A requirement that a taxpayer, seeking the homestead exemption for his real property, must first satisfy the criteria for eligibility for the 4% residential assessment ratio under §12-43-220(c), is not only consistent with the specific provisions of the statutes, but also encourages owner occupancy of homes. Such owner occupancy clearly contributes to a sense of community, maintenance of home values, and an overall enhancement of the general welfare.

Furthermore, allowing a taxpayer who rents his home for more than fourteen days a year and is denied the four percent residential assessment ratio to be allowed to then rent his home an unlimited number of days and receive that 4% assessment only by virtue of reaching the age of sixty-five or meeting any other requirement of §12-37-250 undermines the constitutional provision creating the four percent assessment ratio and is contrary to the obvious legislative intent that one cannot rent his residence for more than fourteen days and receive the four percent residential assessment ratio.

VII. The Court failed to consider that any ambiguities found in these statutes must be construed against the taxpayer and in favor of the assessor.

South Carolina appellate courts have provided specific rules for construction of statutes granting exemptions and/or deductions from taxation. Those rules, which require strict construction of such statutes **against** the

taxpayer, are plainly applicable to the exemption provided by §12-37-250, and equally applicable to §12-43-220, which the South Carolina Supreme Court has recently addressed as an exemption statute. CFRE, LLC, 395 S.C. 67, 716 S.E. 2nd 877.

The statutory provisions at issue here clearly impose specific requirements for eligibility for the homestead exemption, including the requirement that such property must also satisfy those criteria for eligibility for the preferential residential assessment ratio under §12-43-220(c). However, even in the absence of such legislative clarity, the provisions set forth within the legislative scheme are, at the very least, ambiguous. Under established rules of construction, ambiguities in statutory language creating exemptions or deductions from taxation are to be strictly construed against the taxpayer. The Supreme Court, in State vs. Life Ins. Co. of Georgia, 254 S.C. 286, 175 S.E.2d 203 (1970), recited the "...well settled rule that constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming exemption; he must clearly bring himself within the constitutional or statutory language upon which he relies." (Internal quotes omitted).

VIII. The Court erred in determining that the taxpayer is entitled to the homestead exemption as well as the four percent ratio. Furthermore the Court erred in granting those exemptions beyond the 2011 tax year.

As discussed in each party's brief and in arguments before the Court, the only issue before the Administrative Law Court is whether the taxpayer was entitled to the homestead exemption for the tax year 2011. Obviously,

Respondent asserts the Court erred in determining the taxpayer was entitled to the exemption in 2011, but in addition to that, Respondent strongly urges the Court to reconsider its ruling that taxpayer is entitled to the exemption for the years following 2011. There has been no evidence presented or findings of fact made regarding taxpayer's eligibility for the homestead exemption beyond the year 2011, and any ruling granting that exemption without a fact finding for those subsequent years constitutes clear error.

CONCLUSION

Therefore, Respondent respectfully moves this Honorable Court to consider the arguments before it in this motion and reconsider its decision. Respondent humbly requests that this Court find the following:

1. Chapter 37 is not the sole determinant of Homestead Exemption availability, and §12-43-220(c) imposes an additional requirement for qualification of the Homestead Exemption.

2. The additional requirement imposed by §12-43-220(c) for qualification of the Homestead Exemption includes compliance with the fourteen day rule under the Ford decision.

3. The purpose of §12-37-252 is to ensure a taxpayer, eligible for the 4% residential assessment ratio and the homestead exemption, not be required to elect between the two benefits, and to guarantee that the taxpayer receive the benefit of both exemptions.

4. The 4% Assessment in §12-43-220(c) is the same 4% Assessment authorized under §12-37-252 and any other reading violates the South Carolina Constitution.

5. The Court erred in determining that §12-43-220(c)(2)(i) is solely a proration statute; furthermore, the Court failed to consider Respondent's arguments that §12-43-220(c)(2)(i) has a broader purpose.

6. Public policy considerations also support the Assessor's determination that one cannot receive the homestead exemption without first meeting the requirements of the 4% residential assessment ratio.

7. Any ambiguities found in these statutes must be construed against the taxpayer and in favor of the assessor.

8. The taxpayer is not entitled to the homestead exemption or 4% residential assessment ratio for the year 2011, and eligibility for any year following 2011 is not as issue before the Court.

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August 25, 2014

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion for Reconsideration upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on 28th day of August, 2014.

COPY

By: _____
Stephen P. Hughes

FILED
AUG 28 2014
SC ADMIN. LAW COURT

NEXSEN|PRUET

Burnet R. Maybank, III
Member
Admitted in SC

October 15, 2014

The Honorable John D. McLeod
SC Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Frank R. Mead, III vs. Beaufort County Assessor
13-ALJ-17-0585-CC

Dear Judge McLeod:

Although not required pursuant to ALC Court Rule 29(D), Petitioner Frank R. Mead, III files this response in opposition to Respondent Beaufort County Assessor's Motion for Reconsideration, which was filed August 28, 2014. Respondent is challenging this Court's determination that Petitioner is entitled to the homestead exemption as well as the 4% assessment ratio beginning in 2011.

In its Motion for Reconsideration, Respondent argues that the Court made errors of law which require that its judgment be amended. However, the Respondent attempts to reargue the merits and law already presented before this Court.

Based on the foregoing, the Petitioner hereby requests that this Court deny Respondent's Motion for Reconsideration.

Very truly yours,

Burnet R. Maybank, III

BRM/maj
Enclosure
cc: Stephen P. Hughes, Esquire

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Honorable John D. McLeod

Civil Action No.: 13-ALJ-17-0585-CC

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

-vs-

BEAUFORT COUNTY ASSESSOR..... Appellant.

NOTICE OF APPEAL

The Beaufort County Assessor appeals the Orders of the Hon. John D. McLeod, dated August 19, 2014, and the denial of Appellant's Motion for Reconsideration, effective September 27, 2014. Appellant received notice of the August 19 order that same day, and thereafter filed a Motion for Reconsideration on August 28, 2014. Judge McLeod did not respond to the Motion, and pursuant to Rule 29(D), SCALC, the order was therefore deemed denied following the expiration of thirty days on September 27, 2014. Pursuant to Rule 203(b)(6), SCACR, the Beaufort County Assessor now timely appeals the order of Judge McLeod.

RECEIVED
OCT 30 2014
SC Court of Appeals

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October 27, 2014

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THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
Honorable John D. McLeod

13-ALJ-17-0585-CC

FRANK R. MEAD, III ..... Petitioner - Respondent,

vs.

BEAUFORT COUNTY ASSESSOR ..... Respondent – Appellant.

PROOF OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing Notice of Appeal upon all counsel of record, and the Administrative Law Court, by affixing same with proper postage and placing same with the United States Postal Service on 27th day of October, 2014 addressed to the following:

Honorable John D. McLeod
Administrative Law Court
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Columbia, SC 29201

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Beaufort, South Carolina

October 27, 2014

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 13-ALJ-17-0585-CC

Frank R. Mead, III,

Petitioner,

v.

Beaufort County Assessor,

Respondent.

COPY

MOTION HEARING

****

Wednesday, June 25, 2014
10:01 a.m. - 11:02 a.m.

The hearing before the Honorable John D. McLeod was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 25th day of June, 2014, before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina.

APPEARANCES

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EXHIBITS

(There were no exhibits marked during this hearing.)

STIPULATIONS

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

THE COURT: My name is John McLeod. My law clerk is Anthony Goldman. Ms. Andie Taylor is our court reporter. Mr. Maybank.

MR. MAYBANK: Thank you, Your Honor.

THE COURT: Mr. Hughes.

MR. HUGHES: Good morning, Your Honor.

THE COURT: This is Docket 13-ALJ-17-0585-CC, Frank R. Mead, III v. Beaufort County Assessor, opposing motions for summary judgment. First, gentleman, let's discuss how we want to proceed. Do you want to handle these individually procedurally, or you want one to be in reponse? For instance, yours, Mr. Hughes, simply to be in response to Mr. Maybank's? Do you follow what I'm ---

MR. MAYBANK: Your Honor, we both moved for cross motions for summary judgment and we both agree this is an appropriate summary judgment case. I would suggest we just both hand in proposed orders and you sign whichever order you find appropriate to deny one and grant the other.

THE COURT: Yes. I meant as far as the argument goes.

MR. MAYBANK: Oh, oh.

THE COURT: How do you want to handle it? In other

words, it seems that what you may present you filed first, and I was going to hear your motion first; that what Mr. Hughes may say in response is, essentially, or at least includes his case. Do you want to handle the motions separately with the proponent going forward and response and finish your motion and then start over on his, or do you want to handle it all as one? I don't want to work any burden on you.

MR. HUGHES: I believe, Your Honor, that the former would be more appropriate. My recitation would be virtually identical regardless of whether it's in response or in direct support of my motion.

THE COURT: That's what I presumed.

MR. MAYBANK: Right.

THE COURT: All right. We'll proceed that way. And that being said, because it varies somewhat thank normal procedure -- Ms. Ruple, how are you doing sitting back there?

MS. RUPLE: Good morning, Your Honor.

THE COURT: Because it varies in procedure somewhat, I'll be liberal in allowing you to respond to argument.

MR. MAYBANK: Yes, Your Honor.

THE COURT: Very good. Proceed, Mr. Maybank.

MR. MAYBANK: Thank you. And I've got a couple posters here just straight out of my brief. Your Honor, the petitioner and respondent agree that this case should be decided by summary judgment. There aren't any facts in dispute. Let me move this over a little bit out of the way here. There aren't any facts in dispute, but petitioner and respondent agree the sole legal issue is, quote, and this is out of the respondent's brief, "The homestead exemption under Section 2-37-250 is only available to property that allows qualifies for the preferential residential assessment ratio made available by Section 12-43-220(C)." So we both agree this is a summary judgment fact case. There are no facts in dispute, and we both agree as to what the sole legal argument here is. Just briefly on the facts and the law. Our motion for summary judgment involves whether petitioner is entitled to the homestead exemption for his property located at [redacted], for the tax year 2011 and thereafter. In January 2011, the Beaufort County Assessor determined

that the property was no longer eligible for homestead exemption because the petitioner rented out the subject property for more than 14 days in the prior years, and thus was not eligible for the primary residence statute, and therefore, was also not eligible for homestead exemption. And we concede or stipulate we rented it for more than 14 days. This property has been the sole legal residence and the sole domicile of the petitioner since he bought it on April 1st, 1976. He had the homestead exemption from 2005 through 2010, and the auditor -- actually, the Beaufort County auditor's rationale in denying the exemption was that because the petitioner had lost his primary residence four percent assessment ratio by virtue of renting it out for more than 14 days, his property also no longer qualified for the homestead exemption. So she's stating, in other words, that in order to be entitled for the homestead exemption, you also had to qualify for the primary residence status. Now, as we went into my briefs, South Carolina has a whole bunch of property tax incentives. There's probably, if you count sub-items,

there's probably 80 to 100 property tax exemptions and incentives. They're for farmers, manufacturers, individuals, and others. There are three major exemptions for individuals: there's farm, there's primary residence, and there's homestead exemption. And all three of them have different exemptions or different incentives and all three of them have different requirements. The homestead exemption requirement is actually found in Article 10, Section 3 of the South Carolina Constitution. It establishes a homestead exemption for persons 65 years of age or older, totally and permanently disabled, or blind. And the Constitution goes on that the homestead exemption not specifically provided for in this section may be provided for by the General Assembly and general law. And the General Assembly has codified the homestead exemption actually in quite a few statutes, but primarily in 12-37-220, 250, and 290. And under these three code sections, a person's dwelling place qualifies for the homestead exemption which he has been, one, he or she been a resident of the state for at least a year and has reached the

age of 65; two, has been classified as totally and permanently disabled by a state or federal agency having the function of classifying persons; or three, is legally blind. Once the application for the homestead exemption has been approved, the exemption, "Continues to be effective for successive years in which the ownership of the homestead remains unchanged." And that's found in the major homestead exemption statute 12-37-252(A). Now Beaufort claims in order to be entitled to the homestead exemption, the property also has to meet the qualifications of the primary residence statute. As we went into in great length in the brief and going over briefly now, the homestead exemption and the primary residence statute are two ships in the night. If you put a farmer in, they're three ships in the night. There's completely different exemptions or incentives, different criteria, different exemptions. So the homestead exemption's created in Article 10 Section 3, and it's primarily codified in four different code sections, 220 -- 12-37-220, 250, 252(A) and 290. The primary residence statute is found in

a different constitutional provision, Article 10 Section 1, and it's codified in a different chapter of Title 12, not just a different section, but different chapter of Title 12. Homestead exemption is in Chapter 37; primary residence is in Chapter 43. The requirements for those two exemptions or incentives are different. The homestead exemption requires a person who's 65 or older, permanently disabled, or blind. The primary residence statute requires a legal primary residence and not more than five contiguous acres owned by a person who does not claim legal residence in another state with a four percent assessment ratio on another residence and who does not rent the primary residence for more than 14 days. The incentives are different. The incentives, Article 10 Section 3 provides a $10,000 homestead exemption. 12-37-290 exempts the first $10,000, and 12-37-250 provides a $50,000 exemption. In addition, 12-37-252(A) provides a four percent assessment ratio for homestead exemptions. So those are the incentives for the homestead exemption. 12-43-220(C)(1) provides a four percent assessment ratio for

primary legal residence and other statutes provide credits, local option sales tax for primary residence. Now, when the General Assembly enacted the four percent assessment ratio for homestead exemptions, they recognized the person might meet the requirements for the homestead exemption, but not the primary residence statute. And my basis for that is Section 12-37-250(A). 252(A) plainly states, "Notwithstanding any other provision of law, property that qualifies for the homestead exemption pursuant to Section 12-37-250 is classified and taxed as residential on an assessment ratio equal to four percent of the property's fair market value." Now, if the respondent's correct, if you have to meet the primary residence statutory requirements as well as the homestead exemption, why would the General Assembly have enacted 12-37-252(A)? There was already a four percent assessment ratio for primary residence. Why would the General Assembly have also enacted a four percent assessment ratio for homestead exemptions and also contained the phrase "notwithstanding any other provision of law" if

you had to meet the primary residence four percent? By definition, if you had to meet both, why would the General Assembly have enacted a second four percent assessment ratio statute? And even if the requirements for primary residence and homestead exemption are largely the same, which they are, the 14 day rental rule, which is at the heart here, or really the only issue here, the 14 day rental rule would not apply to homestead exemptions. The 14 day rule was contained in Chapter 43 at 12-43-220(C)(7), that's the primary residence statute. That's not the homestead exemption statute. And that section states, "Notwithstanding any other provision of law, the owner occupant of a 'legal residence' is not disqualified from receiving the four percent assessment ratio allowed by this item if the taxpayer meets the requirements of Section 220(A)(6) of the Internal Revenue Code," which is the Internal Revenue Code allows you to rent your house for 14 days and not pay income tax on the rentals. So, in this case, the homestead exemption is not dependent on legal residence, nor does our four percent

-- the four percent assessment ratio we're arguing for today, it doesn't derive from this item. This item is 12-43-220(C). Our homestead four percent ratio derives from 12-37-252(A), and it states, "Notwithstanding any other provision of law, property that qualifies for the homestead exemption pursuant to Section 12-37-250, which states you've got to be 65 or permanently disabled or blind, is entitled to the four percent assessment ratio." Now, there's no cross-reference of homestead exemption statutes to Federal Internal Revenue Code Section 280(G). In summary, the requirements for the homestead exemption statute are somewhat uniquely stated in four separate places, Article 10, Section 3; Section 12-37-229; Section 12-37-250; and 12-37-290. All of those constitutional provision statutes say you've got to be 65, permanently disabled, or blind. To my knowledge, there's no other incentive or exemption in South Carolina law for property taxes -- and we have a whole bunch of them, a hundred, maybe 200 if you count sub-items -- there's no other one with the requirements where the particular incentive or

exemption are stated in four different code sections. All four different, the Constitution and three other code sections say what you have to do to be entitled to the homestead exemption. And I'm not aware of any other one that contains a -- references it in four separate places. And none of those statutes, homestead exemption statutes of the Constitution cross-reference the 14 day rule. Now, if you look at it, the General Assembly has dwelt at length on what is the homestead exemption. There's a whole bunch of different code sections on the homestead exemption, and on primary residence, there's only two. There's a different Constitutional provision and there's a different code section. So homestead exemption, the General Assembly, for whatever reason, they have gone in great length in describing the homestead exemption, the primary residence found in a different constitutional provision and it's found in a different section. So to argue that the Internal Revenue Code 14 day rule, which is found in 12-43-220(C)(7) applies to the homestead exemption, you have to ignore, first

of all, the 14 day rental rule is found not only in a different code section, but it's in a different chapter than homestead exemption. Primary residence is in Chapter 43; homestead exemption is in Chapter 37. You also have to ignore the fact that the 14 day rental rule explicitly references this item. This item is 12-43-220, not homestead exemption statute. You third have to ignore the fact that the four percent, the homestead four percent exemption statute 12-37-252 states, "Notwithstanding any other provision of law." So to say that the 14 day rule applies, you would have to read out of that statute notwithstanding any other provision of law. And then lastly, Section 12-37-252 explicitly references requirements contained in 12-37-250. So the four percent homestead exemption statute 252, it explicitly references the requirements contained in 12-37-25-, 65, permanently disabled, or blind. It doesn't have any cross-reference whatsoever to primary residence, much less the 14 day rental rule. Now, the fallacy of Beaufort County's argument is primarily found in respondent's brief on page 3, quote, and I'm quoting

Beaufort County's brief. "Petitioners argued further that one who satisfies the limited criteria set forth within those homestead exemption statutes is qualified for the homestead exemption," and I agree with all that. It goes on to say, "As well as the four percent residential assessment ratio authorized by Section 12-43-220(C)." Let me read that again, Petitioners further argue that -- "Petitioners argued further that one who satisfies the limited criteria set forth within the homestead exemption statutes is qualified for the homestead exemption, as well as the four percent residential assessment ratio authorized by Section 12-43-220(C)," which is the primary residence statute. We've never argued, ever argued that we're entitled to that four percent assessment ratio. The four percent assessment ratio in 12-43-220(C) is limited to primary residence, and we concede we rented the house for more than 14 days, we're not entitled to that. Our four percent assessment ratio is found in an entirely different code section. Our four percent assessment ratio is found not only in a

different code section, but a different chapter of Title 12. We're arguing we're entitled to the four percent assessment ratio for homestead exemptions which is found in Section 12-37-252(A), not 12-43-220(C), and that section I've already quoted it a few times. I'll quote it again. It says, "Notwithstanding any other provision of law, property that qualifies for the homestead exemption pursuant to 12-37-250 is classified and taxed as residential on an assessment equal to four percent of the property's fair market value." That's the four percent assessment ratio that we've been arguing for. Now the remainder of respondent's argument is based upon a reading of the anti December 31st no proration statute, 12-43-220(C)(2)(I) and the county has done a good vigorous job of arguing; indeed, I would say this is virtually their entire argument, that the 14 day rental rule is roped in by this particular statute, and this statute says to qualify for the special property tax assessment ratio. And let me give you the background for why the General Assembly adopted that particular statute. Property taxes are

generally not prorated in South Carolina, first of all. And I quote Ms. Ruple's property tax manual, "Numerous opinions of the South Carolina Attorney General have stated that there's no proration when more than one person owns a property during the year." Instead, the DOR or the assessor, they take a snapshot of the property on December 31st of the prior year and taxes are imposed in the next year based on the value and usage of that property on that date for the following entire year regardless of the subsequent change of usage or value. That issue was before the South Carolina court -- I can't remember if it was the Court of Appeals or Supreme Court, but in 2013. In Hampton Friends of the Arts v. Department of Revenue, Hampton Friends of the Arts purchased the property in March of 2008. It was undisputed that prior to that, i.e. on December 31st, 2007, the property was taxable; it was owned by a for profit. The DOR -- the appellant was granted an exemption for 2009 property taxes and subsequent years by Ms. Ruple and the DOR, but the DOR denied the exemption for 2008. Remember Hampton Friends

of the Art had charity purchased it in March of 2008. And so Hampton Friends of the Arts appealed a 2008 determination. The Supreme Court upheld the Administrative Law Court's determination the property was not exempt in 2008 stating, "Hampton avers that because it acquired the property prior to the tax levy for the 2008 tax year, the property became exempt and no taxes is owed. We disagree for the law is clear that property tax liability is determined as of December 31st of the preceding tax year, regardless of the subsequent transfer to an exempt corporation or when the tax actually levied." Now, the Supreme Court concluded, "Pursuant to settled law, the 2008 tax status of the Hampton County property was determined on December 31st, 2007. Because the property was subject to property taxes on December 31st, 2007, the property is subject to 2008 property taxes." So with that background, first of all, you take a snapshot on December 31st of the prior year and however that property is taxed on December 31st of the prior year, it's taxed for the entire remaining year regardless of a change of usage in the next

year. So with that background, there's no proration, snapshot on December 31st, and the following year, subsequent year, the property is taxed exactly like that. Now, with that background, that's why the General Assembly adopted this statute. And it says to qualify for the special property tax assessment ratio allowed by this owner, the owner-occupant must have actually owned and occupied the residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year. It then goes on, for the exemption for property taxes and school operations, for the entire year and for the homestead exemption under 12-37-250 if otherwise eligible for the entire year. So what this statute does is overrule Hampton Friends of the Arts and every other -- the anti-proration December 31st rule. All this code section does is overrule that. There's no December 31st rule. There's no anti-proration rule under this code section. So if a person

-- if I bought a second home as my primary residence in August of 2007, if it was a secondary home, if I bought someone's beach home, it would be taxed at six percent when I bought it. I bought it for my primary residence. I apply for it; I get the four percent, my primary residence. What this statute does is overrule Hampton Friends of the Arts. I get four percent for that entire year because of this statute. But for this statute, Hampton Friends of the Arts would control and I wouldn't get the four percent until the following year. So this says if I own it for any part of the year, I get the four percent assessment ratio for the entire year. So for -- the only three exceptions to the December 31st anti-proration rule are for churches, which is irrelevant to this, primary residence and homestead exemptions. They are proration rule for the churches because the General Assembly passed an anti-December 31st no proration statute for churches about six years ago. But for primary residence and homestead exemption, all this statute says is if I buy -- a person over the age of 65 buys a second home

in August, or if a primary resident buys a second home in August, it's taxed at four percent for the entire year. If I owned it any part of the year, I get the four percent for the entire year. And that's all this particular statute does. And that's a -- it's a significant statute, but that's all that that particular statute does. Now, the respondent argues that that section imposes the 14 day rule on homestead exemptions because of the cross-reference to the homestead exemption which is contained in it. But that's not what the section states. It first states a residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year. This item refers to that code section 12-43-220(C). Our four percent assessment ratio is not found in 12-43-220; ours is found in 12-37-252(A). It does cross-reference the homestead exemption statute. It says, "And for the homestead exemption under Section 12-37-250, if otherwise eligible for the entire year." For the entire year they're reversing Hampton Friends of the

Arts December 31st no proration statute. So our -- it says for the homestead exemption under 12-37-250, all 12 -- when I say all, what Section 12-37-250 says is if you're 65, disabled, or blind, you're entitled to the homestead exemption. Mr. Mead is over the age of 65. As it's previously stated, our assessment ratio is not 12-37-250, it's in 12-37-252(A). So even this code section doesn't cross-reference our four percent assessment ratio statute. One other major roadblock lies in the County's way. They're trying to impose a 14 day rule so as to override the four percent assessment ratio contained in the homestead exemption 12-37-252(A). The 14 day rule is added in subsection 7 of Section 12-43-220(C) and 2000 Act Number 145. And we give -- in our taxes, our brief, we've given the legislative history and the House and Senate journals for when that Act was voted upon. According to legislative history, Act 145 did not receive a two-thirds reading in either house. Article 10 Section D of the Constitution says the General Assembly may change the assessment ratios but only with the

approval of at least two-thirds of the membership of each house. That particular, the 14 day rule did not receive a two-thirds vote in either house, much less both houses. So consequently, the 14 day rule, Act 145, does not provide Beaufort County with the authority to impose a six percent assessment ratio on homestead exemptions which meet the homestead exemption requirement. That's all I have, Your Honor. Thank you.

THE COURT: First, I'd say that's certainly a scholarly argument.

MR. MAYBANK: Thank you. I always get nervous when they start with that.

THE COURT: How many days of rental in a year would prevent you from getting the exemption you seek?

MR. MAYBANK: If I'd served in Afghanistan for two years, and I came back, I would be entitled to it even though I never set foot in the house in two years. See, residency is a state of mind, and in our case -- in that particular example, serving in the armed forces in Afghanistan, if I never set foot in the house for two years, I'd be entitled to it because it is my

intention to return. Now residency in our case, we were registered to vote ---

THE COURT: I think we're talking about the word dwelling place.

MR. MAYBANK: Right.

THE COURT: Yeah.

MR. MAYBANK: It's our sole -- Mr. Mead's sole dwelling place in Beaufort County. When he rented the house out, he rented an apartment or principally traveled. It was his intention to return and he did return. But stated another way, was he entitled to vote? Yes.

THE COURT: Thank you. Mr. Hughes.

MR. HUGHES: Your Honor, needless to say, I disagree with most of the contentions asserted by Mr. Maybank. It is the contention of my client, the Respondent Assessor that the subject property simply fails to satisfy the legislatively imposed criteria and is thus ineligible for the homestead exemption sought by the taxpayer. It is our specific contention that the homestead exemption under Section 12-37-250 is available only to those properties which also qualify for the four percent residential assessment ratio available under

Section 12-43-220(C) of the code. The Court may recall then the recent case of Ford v. The Beaufort County Assessor. The Court of Appeals specifically determined that properties rented for periods of greater than 14 days in any tax year do not qualify for the residential assessment ratio under Section 12-43-220(C). The property at issue here was rented during the tax year 2011 for a period of no fewer than 138 days. Under those circumstances, this property certainly doesn't qualify under Ford for the four percent residential assessment ratio in Chapter 43, and we will argue, I believe effectively, that under those circumstances, it similarly does not qualify for the homestead exemption otherwise authorized under Section 12-37-250. Mr. Maybank has argued with great fervor that the availability of the homestead exemption is determined exclusively by the provisions of Section 12-37-220, 12-37-250, and 12-37-252. He has argued with equal fervor that a taxpayer who satisfied those limited criteria is then automatically qualified not only for the homestead exemption under Section 12-37-250,

but also for the preferential residential assessment ratio available to qualifying legal residences. Contrary however to Mr. Maybank's arguments, Chapter 37 does not contain the only statutory provisions relating to the homestead exemption, nor does Chapter 37 serve as the sole determinant of the availability of the homestead exemption. The homestead exemption is also addressed within the provisions, or is not only addressed within Chapter 37, but it's also addressed and additional requirements specifically imposed by the particular provisions of Section 12-37-220(C)(2)(1) found within Chapter 43 of the code. Both Chapters 37 and 43 constitute parts of an overall statutory scheme relating to that taxation of real property, and both Chapters 37 and 43 set forth specific requirements governing the eligibility for homestead exemption. Under those circumstances, any determination of eligibility here is necessarily dependent upon an appropriate interpretation of the relevant provisions of both chapters. As the Court is aware, the cardinal rule of statutory construction is to ascertain and effectuate the

intent of the legislature. I would submit that equally important in terms of statutory construction is the rule that the statute must be read as a whole and sections which are part of the same general statutory scheme must be read so as -- must be construed together so as to give each one proper effect. I would submit that the application of those rules of statutory construction to the statutory provisions at issue here render Mr. Mead's property ineligible for the homestead exemption he seeks today. As Mr. Maybank has pointed out, the homestead exemption is initially addressed within Article 10, Section 3 of our Constitution. That provision, however, is not a blanket grant of the exemption. Under the specific terms of Article 10, Section 3, the homestead exemption is to be made available only -- only under such conditions as our legislature may prescribe. And I would note that Section 12-37-220 in initially addressing the exemption speaks in exactly the same words, authorizing the homestead exemption only under such conditions as may be prescribed by the General Assembly. Now, Chapter -- excuse me,

Section 12-37-250 in more comprehensively addressing the availability of the statute references a homestead exemption available for the first $50,000 of the fair market value of the dwelling place of the taxpayer when that taxpayer is either 65 years or older, totally and permanently disabled, and/or legally blind. It bears emphasis that the exemption under Section 12-37-250 is only available for the dwelling place -- dwelling place. And a dwelling is further defined within Section 12-37-250 at Section (A)(5) as the permanent home and legal residence of the applicant. Under the circumstances, it is clear under the statute that it is only a legal residence as that term is used within our statutes which qualifies for the homestead exemption. Mr. Maybank has argued that under Section 12-37-252, the residential assessment ratio is available to any legal residence where that residence is owned by an applicant or an owner or taxpayer who's 65 or older, legally blind, or permanently disabled. I would submit that that is an incorrect reading of that statute. What Section 12-37-252 actually says is only

that a legal residence which qualifies -- which qualifies for the homestead exemption under Section 12-37-250 is classified and taxed as residential on an assessment equal to four percent. The inquiry then becomes when is the residence so qualified under Section 12-37-250. And the inquiry into that qualification is not determined solely by a review of Sections 12-37-220, 12-37-250, and 12-37-252. Under our rules of construction, equal consideration must be given to other statutory provisions which also address the eligibility of the homestead exemption under Section 12-37-250. And that analysis thus necessarily requires a review of the provisions of Section 12-43-220, which imposes by a specific language additional criteria for eligibility for the exemption under 12-37-250. As Mr. Maybank has pointed out, Section 12-43-220(C)(2)(1) states that a residence which has been qualified as a legal residence for any part of the tax year is entitled, among other benefits, to the homestead exemption under Section 12-37-250 if otherwise eligible for the entire year. A specific statement of additional requirements

in addition to those imposed by Section 12-37-250 for eligibility for the homestead exemption. I would submit that Section 12-43-220(C)(2)(1) sets forth a specific reference to the homestead exemption under Section 12-37-250. It also sets forth a specific recitation of additional requirements for eligibility for the homestead exemption under Section 12-37-250, and it sets forth a specific statement of legislative intent that the homestead exemption under Section 12-37-250 is available only where that property also satisfies the requirements for residential assessment under Section 12-43-220. Under the specific language therefore of Section 12-43-220(C)(2)(1), property qualifies for the homestead exemption under Section 12-37-250 only where that property first qualifies for the residential assessment of Section 12-43-220. The Court will recall again that in the case of Ford v. The Beaufort County Assessor, our Court of Appeals determined -- determined that the legal residence is qualified for the four percent residential assessment only where that property is, in fact, the legal residence of the taxpayer,

where it is also owned and occupied by the taxpayer, and where that property is not rented for a period of more than 14 days during any tax year. I would submit that under the circumstances, Section 12-43-220(C)(2)(1) qualifies under that section property is -- that section imposes a qualification for legal residence assessment prior to the availability of -- prior to eligibility of the property for the homestead exemption under 12-37-250. Moreover, because all relevant statutes must be construed together, any interpretation of Section 12-37-252 which addresses both the homestead exemption and the residential assessment must also take into account the requirements imposed by Section 12-43-220(C)(2)(a), which as I've said, clearly require that prior to eligibility for the homestead exemption under Section 12-37-250, property must first satisfy the requirements for eligibility for the four percent residential assessment under Chapters 12 -- Chapter 43, Section 12-43-220. Contrary to the assertions of Mr. Maybank, the homestead exemption is not addressed solely within

Chapter 37. It is addressed specifically and by direct reference within the provisions of Section 12-43-220. Not by a general reference to exemptions, but by specific reference to the requirements for eligibility for homestead exemptions under Section 12-37-250. Contrary to the arguments of Mr. Maybank, that statute also not only references the homestead exemption under Section 12-37-250, it also sets forth additional specific requirements for eligibility for that homestead exemption. I would submit here that the property at issue fails to satisfy the criteria for eligibility for the four percent residential assessment having been rented far more than 14 days during the relevant tax year and, under the circumstances, simply does not qualify under the criteria imposed by the statute for the homestead exemption under 12-37-250. Now, equally importantly here for the Court's consideration are the rules of construction which must govern interpretation of these statutes. As the Court is well aware, those rules of construction require that statutes granting exemptions or deductions from taxation

are to be construed against the taxpayer. Clearly the exemption set forth in Section 12-37-250 is such an exemption statute. Equally clearly under the rationale utilized by the Court in CFRE v. Beaufort County, Section 12-43-240 is considered to be an exemption statute. Under those circumstances, those are clearly statutes providing deductions or exemptions, they are clearly matters of legislative grace, and those statutes are to be resolved against the taxpayer in the event of a question such as is presented here. Equally importantly, any ambiguities in the construction of these statutes is to be resolved in the favor of the taxpayer. Now, I would submit that the language is clear and an appropriate interpretation of Sections 12-37-250, 12-37-252, in conjunction with 12-43-220(C)(2)(1) clearly imposes the requirements for satisfaction of four percent residential assessment status prior to the availability of the exemption under 12-37-250, a clear legislative statement within Section 12-43-220 that says this is an additional requirement to eligibility for the homestead exemption.

However, even in the event that that's not clear, as I've suggested in the brief, the absence of such clarity that's no -- provides no help to the taxpayer. Again, ambiguities in statutes which, at best, would be the case here are to be resolved under the circumstances here in favor of the assessor. The taxpayer within his brief suggests that such ambiguities are to be resolved in favor of the taxpayer as opposed to resolved in favor of the assessor. As I believe the Court is aware, and I believe I'm correct in asserting, the law is clear that ambiguities in the granting of deductions or exemptions from taxation are always resolved in favor of the governmental entity. It is only where there is a question concerning the breadth of the statute, whether or not a particular activity or object or property is encompassed by that statute when the ambiguity might be resolved in favor of the taxpayer; otherwise, questions regarding exemptions and deductions are routinely, per authoritative opinions of our Supreme Court, resolved in favor of the governmental entity, and that is the case here. Finally, I believe that our

legal rationale is correct, but I also believe that it's equally important for this Court in the determination of this issue to consider the potential public policy considerations of its ruling. A ruling in favor of the taxpayer on this issue when there are such significant questions concerning the availability of this exemption would give rise to a somewhat profligate use of the residential assessment ratio redounding to the detriment of county fiscal conditions throughout the state. Moreover, I believe it was the intention of the legislature in enacting residential assessment ratios and in providing for exemptions, homestead exemptions, to encourage individual occupancy of private residences. A ruling in favor of the taxpayer would clearly undermine that legislative preference with all of the attendant problems that that would entail. And I would simply point out that those are additional considerations which I believe should be considered by the Court in resolving this issue, and that is basically our position.

THE COURT: Well, I likewise thank you for an erudite and articulate argument. Thank you,

Mr. Hughes. Be seated. Mr. Maybank.

MR. MAYBANK: Thank you, Your Honor. Briefly, all the 14 day statute does is eliminate your right to a four percent assessment ratio. It doesn't mean it's not your "legal residence." Mr. Hughes perhaps would suggest if you rented your house for 15 days, would you lose your right to vote? Of course you wouldn't. Could you not send your child to public school? Of course not. All the 14 day rule says is if you rent your house for 15 days, you don't get the four percent assessment ratio for primary residence. It doesn't say it's not your legal residence. It just says you lose the four percent. Read literally, I suppose, Mr. Hughes would argue you rent your house for 15 days you can't vote and you can't send your kid to public school, and that's clearly, obviously not what the statute says. Mr. Hughes again repeats, and I laud him for saying it, he repeats his brief, Petitioners argued further that one who satisfies the limited criteria set forth within the homestead exemption statutes is qualified for the homestead exemption, as well as the four percent residential assessment ratio

authorized by Section 12-43-220(C). We've never argued that. That's not our four percent assessment ratio statute. Our assessment ratio statute is a different code section. It has nothing to do with 12-43-220(C). Our four percent assessment ratio is found in 12-37-252(A), the General Assembly chose to give people entitled to the homestead exemption their own four percent assessment ratio, further said notwithstanding any other provision of law, property that qualifies for the homestead exemption pursuant to Section 12-37-250 is classified and taxed at a four percent assessment ratio. Section 250 says over 65, blind, or disabled. So we're not arguing, we've never argued we're entitled to a four percent assessment ratio for primary residence. We're arguing we're entitled to the homestead exemption four percent assessment ratio found in an entirely different code section in an entirely different chapter of the code. It would make just as much sense for them to argue we have to own five acres of timber or we have to sell $2,000 worth of row crops to qualify for the primary residence. To

be entitled to the farmer's fair market value, you've got to have five acres of timber or you've got to sell $2,000 worth of row crop. He would in essence argue we have to have five acres of timber to satisfy the homestead exemption. They're three entirely different ships in the night. Farmers, homestead exemptions, primary residence are three different ships in the night. They don't correlate. They don't require -- being a primary residence doesn't require you to own five acres of timber. Now, Mr. Hughes again argues that this code section says we can't rent for 15 days. And again, I defy you to tell me where in this code section it says that. And this is basically the County's entire case. It first of all says the owner-occupant, if he's owned it for some period, a residence which has been qualified for any part of the year is entitled to the four percent assessment ratio for the entire year. That's all it says. You buy your house on December 25th, you're entitled to a four percent assessment ratio for the entire year and for the exemption for property taxes levied for

school operations for the entire year, and for the homestead exemption under Section 12-37-250 for the entire year.

THE COURT: What was the date of enactment of that portion of that statute?

MR. MAYBANK: That's a good question, and I'm not sure when that actually came in.

THE COURT: I'll find out. That's all right.

MR. MAYBANK: Okay. So what that statute does, and all it does, is wipes out the December 31st anti-proration, no proration rule. That's all the code section does. And to the extent it references homestead exemption, if you own homestead exemption for any part of the year and you're qualified under 12-37-250, you're eligible for it for the entire year. That's all it's saying. If you're entitled to the homestead exemption for some part of the year, you don't buy it on December 31st, then you get it for the entire year. That's all the code section does. It doesn't do anything else, and it certainly doesn't reference the 14 day rule, and it explicitly references 12-37-250. 12-37-250 says you've got to be 65, disabled, or blind. So that's all that code section does.

I say all, if you buy your house in the middle of the year and it was at six percent, you buy a second home in the middle of the year it entitles you to a significant property tax -- the difference between primary and secondary can be 50 or 60 percent higher. So it gives you a significant property tax savings the first year you buy it, your primary residence, if you buy at six percent or homestead exemption if you buy at six percent. And that's all that particular code section does. When he says we need to read it all together, when you read it all together, again, you look at -- the General Assembly, for whatever reason, has chosen to speak at great length on the homestead exemption. They're all found in Chapter 37.

THE COURT: Let me ask you this. I was a dirt lawyer. Having somebody prorating the taxes on a sale like that, would you go to the assessor and have it changed before the closing or ...

MR. MAYBANK: That is a very good question, and I've never done any dirt law, and I'm embarrassed to say I don't know. Normally, of course, you'd get a bill and you'd prorate it at closing. So

I guess, and it obviously ---

THE COURT: Well, if the assessment was going to change say from a six percent to a four percent, you'd have to get that done ahead of time, I presume.

MR. MAYBANK: I presume, and I confess I've never done a bit of dirt lawyering, so I'm not sure. But every other -- in every other commercial transaction, of course, the buyer and seller prorate the taxes whatever day of the year it is. And then if there's a change, you buy a -- if a law firm sells to a charity, for example, you know, the tax change is the following year, so the seller doesn't worry about it. And the assessor doesn't worry about it because the change doesn't take place until the following tax year. So all this statute does is override Hampton Friends of the Art, a 2013 case, for primary residence and homestead exemptions and for nobody else. That's all I have, Your Honor. Thank you.

THE COURT: I presume that statute was enacted after Hampton?

MR. MAYBANK: No. No, sir, this statute has been on the books forever.

THE COURT: Is that right?

MR. MAYBANK: Hampton is a 2013 case. This has been on there probably for two decades or so. So it only applies, as I say, it only applies in those two narrow circumstances, a primary residence buys a second home and a homestead exemption buys a second home. Everybody else would be covered by Hampton. Hampton, the reason I bring up Hampton illustrates in a 2013 case ---

THE COURT: I see.

MR. MAYBANK: --- the normal rule of law, and this statute takes you out of Hampton.

THE COURT: I understand.

MR. MAYBANK: Thank you, Your Honor.

THE COURT: Yes, sir. Mr. Hughes.

MR. HUGHES: Just a few points, Your Honor. Mr. Maybank has asserted initially that he seeks the four percent residential assessment ratio which he says is granted by the provisions of Section 12-37-252. I would point out that 12-37-252 makes that residential assessment ratio available only where the property in the first instance qualifies for the homestead exemption. Not only that, the language of 12-37-252 in

authorizing that residential exemption quotes almost verbatim the language in Section 12-43-220, which also addresses the qualifications for the residential assessment ratio. Moreover, Section 12-37-252(B) and (C) when speaking also of the four percent residential assessment ratio make specific reference to provisions of Section 12-43-220. So I would submit that it is the intent of the legislature in addressing the residential assessment ratio to the extent it might be available under 12-37-252 to utilize the same requirements as set forth in 12-43-220(C). That, however, is largely irrelevant to the argument we have made. We have said that what Section 12-37-252 does, as I've said earlier, is authorize -- it makes available, it doesn't -- what 12-37-252 does is state that a legal residence which qualifies, a legal residence which actually qualifies for the homestead exemption under Section 12-37-250 will be qualified also for the residential assessment, four percent residential assessment. Property in the first instance actually has to qualify for the homestead exemption in order to be eligible for the four

percent residential assessment ratio.

THE COURT: Excuse me. Go ahead.

MR. HUGHES: Again, the question becomes when does property qualify for the homestead exemption, and as I've stated earlier, that qualification is not determined specifically or exclusively by review of Sections 12-37-250, 12-37-252, or 12-37-220. Section 12-43-220(C)(2)(1) also by its specific provisions imposes additional requirements for eligibility under the very exemption statute that we're arguing about today. And it says again, property that is qualified as a legal residence and qualified as a legal residence under Ford, means property that satisfies the criteria for the four percent residential assessment ratio, and under Ford, property that qualifies for the four percent residential assessment ratio does not include property rented for more than 14 days, as is the case here. So under the criteria imposed by Section 12-43-220(C)(2)(1), which specifically says where property qualifies, where legal residence is qualified for the four percent residential assessment ratio, then among other benefits, it is also eligible for.

the homestead exemption under Section 12-43-220. That is a specific legislative articulation of the imposition of an additional requirement for the homestead exemption under Section 12-37-250 by its specific reference. I'm not pulling this out of thin air, that statute itself says this. Now, Mr. Maybank in the eleventh hour has come back and attempted to justify his position by saying that this statute was enacted in order to remedy a predicament imposed by the Hampton Friends of the Arts case. The idea that a statute enacted 20 years ago was designed to ameliorate conditions -- the idea that a case that was issued by the court in 2013 was designed to remedy a proposed, a supposed predicament under a statute that is at least 20 years old borders on the preposterous. This statute is no more designed to address Friends of the Arts than I will ascend bodily into heaven. The fact is this statute, it might also effect what Mr. Maybank says it does. It might well deal with enabling a taxpayer to obtain for a full year the preferential assessment, but that was not the intent of the legislature at the time this

was enacted. And even if it were, clearly among the other equally valid and important considerations to our legislature was the imposition of an additional requirement for eligibility under the -- for the homestead exemption under 12-37-250. Again, the statute itself makes a direct reference to Section 12-37-250 and sets forth directly the imposition of an additional qualification, that qualification being that the property must first satisfy the criteria for eligibility for the four percent residential assessment ratio. And again, in this case, under an authoritative ruling from our Court of Appeals in 2011, property that's rented for more than 14 days simply does not qualify. And I believe, Your Honor, that that is our position.

THE COURT: Thank you. Mr. Maybank, any parting shots?

MR. MAYBANK: Yes, Your Honor. I do have your dirt lawyer's response. The statute says that you apply for it and the assessor would grant it, and if the assessor granted it before the date the tax bill went out, typically October -- August, September, October, then it would be

granted for that year. And if the tax bill came out later, you closed after the tax bill came out, 12-43-220(C)(3) says, "Notwithstanding other provision of law, a taxpayer may apply for a refund of property taxes overpaid because the property was eligible for the legal residence assessment ratio." So if you applied early enough in the year, you get a tax bill at four percent. If you bought the property later in the year and the tax bill had already gone out, you could get a refund for it, so from a dirt lawyer's perspective. I did not say that that statute overrode Hampton, was designed to override Hampton Friends of the Arts. Hampton Friends of the Arts describes a scenario exactly why that statute was imposed. Hampton Friends of the Arts 2013 case just reiterates we're a December 31st no proration rule for everybody but primary residence and homestead exemptions. So for everybody but homestead exemptions there's no proration December 31st. What this statute says and the only thing the statute says is Hampton Friends of the Arts doesn't control if you buy a primary -- a person bought

a second home taxed as a second home for his primary residence or homestead exemption, then we don't have the December 31st no proration rule. That's all I have, Your Honor.

THE COURT: Thank you. And I will quickly add I have no intention of going back to practicing dirt law. Does that conclude your argument, Mr. Hughes?

MR. HUGHES: Yes, Your Honor. Thank you.

THE COURT: Very well. I'd ask that each of you submit proposed orders. It would serve you well to have them look somewhat like a flow chart as far as the interrelation of these statutes; do you understand what I mean by that?

MR. MAYBANK: I do.

THE COURT: You understand, Mr. Hughes?

MR. HUGHES: Yes, sir.

THE COURT: The only other comment I had is I -- and do not read too much into this because I'm certainly not pre-judging, but I dislike the idea that someone may use the homestead exemption to reap the benefit of an exemption like this or a reduction in tax. It in truth may be governed by these statutes that I'm

going to look at very precisely, but you might try to deal with that directly, Mr. Maybank, in your order.

MR. MAYBANK: And that's a notion of renting the house as the homestead exemption?

THE COURT: Yes.

MR. MAYBANK: Right.

THE COURT: Because it's not available to the ordinary taxpayer, that may be the distinction. I can't think of anything else. I wish all of you a safe journey back to where you're going. We'll be adjourned.

MR. MAYBANK: Thank you.

MR. HUGHES: Thank you, Your Honor.

(There being nothing further, the hearing was adjourned at 11:02 a.m.)

CERTIFICATE

This is to certify that the within hearing consisting of forty-nine (49) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

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

IN WITNESS WHEREOF I have hereunto set my hand and seal on November 19, 2014.

Andrea R. Taylor
Court Reporter

Notary Public for South Carolina
My Commission Expires: February 18, 2024