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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable John D. McLeod, Administrative Law Judge

Case No. 13-ALJ-17-0585-CC
Appellate Case No. 2017-000736

Frank Mead, III .....Respondent,

v.

Beaufort County Assessor .....Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

Burnet R. Maybank III (3699)
James Rourke (79879)
Nexsen Pruet, LLC
Post Office Box 2426
Columbia, South Carolina 29201
803-771-8900
Attorneys for Respondent

Other Counsel of Record:

Stephen P. Hughes
Andrew Yoho
Post Office Box 40
Beaufort, South Carolina 29901-0040
Attorneys for Petitioner

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COUNTER STATEMENT OF 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. (ALC Order Findings of Facts, ¶ 3.)

Respondent was born in 1939. He has been over 65 years of age since 2004. (*Id.* at ¶ 4.) Respondent qualified for the Homestead Exemption in 2005 and received the Homestead Exemption on his property from 2005 through 2010. (*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. (*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. (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. (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). (Transcript p.5, lines 4-19). Following oral argument on the issue, Judge McLeod noted in favor of Respondent; reversing the determination of the Assessor and the Board. (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." (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." (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. (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. (Order pp. 7-9).

On appeal, the Court of Appeals affirmed Judge McLeod's ruling. The Court determined that "[n]othing in the statutes providing the requirements for eligibility for the homestead exemption make reference to the primary residence classification." Further, the court found that "[t]he 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" but "the clear language of the homestead exemption statutes states otherwise." In response to the

Court of Appeals' decision, Petitioner files a Petition for Rehearing, which was denied by Order dated February 23, 2017. Petitioner then filed its Petition for a Writ of Certiorari with this Court on March 24, 2017.

ARGUMENTS

1. **THE COURT OF APPEALS CORRECTLY DETERMINED THAT ELIGIBILITY FOR THE PRIMARY RESIDENCE EXEMPTION UNDER S.C. CODE ANN. § 12-43-220(c) DOES NOT AFFECT ELIGIBILITY FOR THE HOMESTEAD EXEMPTION UNDER TITLE 12, CHAPTER 37.**

    a. **Both the Administrative Law Court and the Court of Appeals Correctly Concluded the Homestead Exemption and Primary Residence Exemption are Not Dependent on One Another, but Instead are "Two Ships in the Night"**

In its Petition for a Writ of Certiorari, Petitioner has rehashed the identical arguments, which have been reviewed and rejected by both the Administrative Law Court and the Court of Appeals. Petitioner has attempted to identify some interconnection between the homestead and primary residence exemptions, where one simply does not exist.

As discussed at length in prior briefs to the Administrative Law Court and Court of Appeals, and as painstakingly reiterated by both Courts, the exemptions have a number of important differences. In summary, the exemptions: **(1)** rely on different constitutional provisions and statutes (The homestead exemption is created in S.C. Const. Art. 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, Art. X, § 1, and codified in § 12-43-220(c)); **(2)** have different requirements that must be met in order to qualify (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)); **(3)** provide different incentives once a property owner actually qualifies (The homestead exemption provides a provides a $50,000 exemption, *see* § 12-37-250(A)(1) and a 4% assessment ratio, *see* § 12-37-252; The primary residence exemption provides a 4% assessment ratio for primary legal residence, *see* § 12-43-220(c)(1)); and **(4)** applies to different qualifying property (The homestead exemption by statute has no acreage limitation; The primary residence exemption includes the legal residence and not more than five acres contiguous thereto, *see* § 12-43-220(c).

b. Petitioner's Observed Cross References between Chapter 37 and 43 Do Not Effect Eligibility for the Homestead Exemption

In its Petition, Petitioner relies on what it characterizes as a "demonstrated inter-relationship" between S.C. Const. Art. X, § 3, S.C. Code Ann. §§ 12-37-220(A)(9), 12-37-250, 12-37-252, and 12-37-290, which govern the homestead exemption, and § 12-43-220, which governs the primary residence exemption. After careful review and consideration of every supposed "inter-relationship" identified by Petitioner, citing most at length, the Court of Appeals found in favor of Respondent, noting:

> 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, [Respondent] 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.

Petitioner's supposed "inter-relationship of the statutory provisions" is taken in turn.

i. Section 12-37-252(B)

Petitioner first finds support for his argument in § 12-37-252(B), which provides:

> 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.

By way of background, § 12-37-252(A) provides that property qualifying for the homestead exemption is classified and taxed as residential, with a 4% assessment ratio. All § 12-37-252(B) does is provide the taxpayer with an opportunity for refund if he would otherwise qualify as the homestead exemption for prior tax years that are concurrently open for refund under § 12-60-2560 or 12-43-220(c). The statute does not *require* a refund; instead, it provides the taxpayer "may" be eligible for refund to the extent the homestead exemption was not previously applied. Of course, in order to qualify for the refund pursuant to the homestead exemption, the taxpayer would have to meet the qualifications of the homestead exemption, which are described in Chapter 37.

ii. Section 12-37-250(C)

Using the same logic, Petitioner relies on the cross reference found in § 12-37-250(C), which provides:

> (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 12-37-250, 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, although Petitioner takes the position this cross reference supports his position, it actually reflects the legislative intent that the primary residence exemption under § 12-43-220(c) and the homestead exemption under § 12-37-250 can be applied for and received either separately, alternatively, or in conjunction. In order to support Petitioner's interpretation of the statute, property qualifying for the homestead exemption would *automatically* qualify for the primary residence exemption, so there would be no need to reference the exemptions separately here. The plain language of the statute provides that the exemptions are different; and that taxpayers could qualify for one but not the other. "[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.' " *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 716 S.E.2d 877 (2011) (second and third alterations by court) (quoting *State v. Sweat*, 379 S.C. 367, 377, 665 S.E.2d 645 (Ct. App. 2008).

iii. Section 12-37-220(B)(1)(e)(iv)

The homestead exemption is described in § 12-37-220(A)(9). Petitioner refers to a completely separate exemption for permanently disabled veterans, law enforcement officers, and firefighters, which is found under § 12-37-220(B)(1). Petitioner points out that the definition of "house" in § 12-37-220(B)(1)(e)(iv) for purposes of the exemption under (B)(1) refers to § 12-43-220(c). It provides "(e) As used in this *item*: ... (iv) "house" means 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)" (emphasis added).

This reference provides even further support that the General Assembly did not intend to impose the primary residence exemption's restrictions on the homestead exemption. 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. This means the General Assembly specifically sought to apply the reference to § 12-43-220 ***only*** to the exemption available to disabled veterans, law enforcement officers, and firefighters. To draw any other conclusion from § 12-37-220(B)(1)(e)(iv)'s reference to § 12-43-220(c) is contrary to canons of statutory interpretation and the plain language of the statute.

iv. Section 12-43-220(d)(6)

Section 12-43-220(d) provides a limited exemption for agricultural use property. To the extent agricultural use property is converted to a non-agricultural use, the property is subject to roll-back taxes. All § 12-43-220(d)(6) does is provide that if agricultural property is acquired and re-purposed by an entity described in § 12-37-220(A)(1) ("the State, counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions") or § 12-37-220(B)(1) (a disabled veteran, law enforcement officer, or firefighter), then the rollback taxes are not assessed. There is simply no reference to the homestead exemption in this section that should warrant any "demonstrated interconnectedness" between the homestead and primary residence exemptions.

2. THE COURT OF APPEALS REASONABLY RELIED ON THE DEPARTMENT'S WITHDRAWAL OF S.C. REVENUE RULING 97-18 AS EVIDENCE SUPPORTING ITS CONCLUSIONS, WHICH ARE SUPPORTED BY THE PLAIN LANGUAGE OF THE STATUTES.

In finding that a taxpayer can qualify for the homestead exemption under Chapter 37 without meeting the requirement of the primary residence under Chapter 43, the Court of Appeals

provided a thorough and well-reasoned statutory analysis which relied almost exclusively on the plain language of the statutes at issue. However, as additional support, the Court of Appeals added:

> 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 12-37252(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.").
>
> ...
>
> 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.

To contest the Court of Appeals' decision, Petitioner makes two arguments. First, Petitioner argues that SC Rev. Rul. 97-8 and Information Letter 99-4 were not properly before the Court of Appeals for review or consideration. However, Respondent cited to this guidance in its Motion for Summary Judgment and proposed Order before the Administrative Law Court and in the Brief of Respondent before the Court of Appeals. The Administrative Law Court cited to both rulings in its Order.

There is no requirement that a party introduce legal guidance such as secondary sources, cases, and other Departmental guidance into a Record on Appeal as a condition of the Court of Appeals reviewing and relying on such guidance. If that were the case, it would produce an absurd

result that would bind appellate court judges' ability to research and cite to legal sources.

In addition to this argument, Petitioner relies on an affidavit of a Department of Revenue employee which was filed along with the Petitioner's Petition for Rehearing before the Court of Appeals. This affidavit is classic hearsay evidence and was not part of the record of the ALC hearing. Obviously, parties may not attach affidavits as evidence for the first time on a Petition for Rehearing. Thus, on appeal, the Court of Appeals and this Court are bound by facts and Record on Appeal developed in this case.

3. THE COURT OF APPEALS CORRECTLY CHARACTERIZED § 12-43-220(c) AS A PRORATION STATUTE.

Petitioner attempts to read into § 12-43-220(c)(2)(i) an intent that simply is not supported by the plain language of the statute. 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.)

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 § 12-37-900; *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.[1]

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. This section merely authorizes the 4% assessment ratio for primary residences as well as the homestead

[1] 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.

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.)

4. THE COURT OF APPEALS CORRECTLY DETERMINED THAT THE STATUTORY SCHEME AT ISSUE IS NOT AMBIGUOUS.

As described in great detail above, the Court of Appeals correctly determined that the statutory regime governing the homestead exemption is unambiguous. According to the Court of Appeals:

> [T]he 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)).

Moreover, notwithstanding that the plain language of the homestead exemption compels the conclusion that Respondent is entitled to the exemption, to the extent this Court determines the homestead exemption statute is ambiguous, even that ambiguity 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, 190 S.E. 249 (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.

CONCLUSION

Based on the foregoing, Respondent respectfully requests that this Court deny Petitioner's Petition for a Writ of Certiorari.

Respectfully submitted,

Burnet R. Maybank, III
James Rourke
Nexsen Pruet, LLC
1230 Main Street
Columbia, SC 29201
PHONE: 803-540-2048803-
FACSIMILE: 803-727-1472
bmaybank@nexsenpruet.com
jrourke@nexenpruet.com

Attorneys for Respondent
Frank Mead, III

April 24, 2017
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
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The Honorable John D. McLeod, Administrative Law Judge

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Appellate Case No. 2017-000736

Frank Mead, III ..... Respondent,

v.

Beaufort County Assessor ..... Petitioner.

CERTIFICATE OF SERVICE

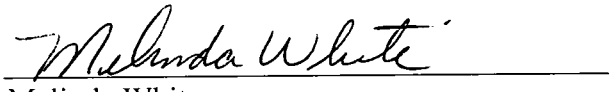
I, Melinda White, do hereby certify and affirm that on this day I have served the person listed below with a copy of the documents specified below by mailing a copy of the same by First Class United States Mail, postage prepaid, to the following address:

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

Enclosures: Return to Petition for Writ of Certiorari

Columbia, South Carolina
Dated: April 24, 2017

Respectfully submitted,



Melinda White
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
P.O. Box 2426
Columbia, SC 29202
Telephone: (803) 771-8900